Neutral Citation: [2015] IEHC 200

THE HIGH COURT

COMMERCIAL

[2014/9156 P]

BETWEEN

JOHN MORRISSEY

PLAINTIFF

AND

IRISH BANK RESOLUTION CORPORATION LTD (IN SPECIAL LIQUIDATION), LSREF III STONE INVESTMENTS LIMITED, KIERAN WALLACE, EAMONN RICHARDSON, THE MINISTER FOR FINANCE, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Ms. Justice Costello delivered the 11th day of March, 2015

1. This judgment is to be read in conjunction with a judgment I am delivering on the same day in a related matter entitled *LSREF III Stone Investments Ltd. v. John Morrissey*, Rec. No. 2011/1548 S ("the Debt proceedings judgment"). This judgment concerns motions brought by the first, third and fourth named defendants ("the IBRC defendants") and separately by the second named defendant ("Stone") to strike out all or part of these proceedings ("the New proceedings") as constituting an abuse of process. It is not concerned with the case pleaded against the fifth, sixth or seventh defendants ("the State defendants"). It is based on the fact that in the related proceedings ("the Debt proceedings") many of the issues now sought to be agitated have already either been determined or have been excluded or remain to be determined in the Debt proceedings. It is argued that the institution and maintenance of these proceedings therefore is seeking to re-litigate matters which have been decided or could have been decided or matters which more properly remain to be decided in the Debt proceedings.

2. In the Debt proceedings judgment I have set out a detailed recital of the history of the Debt proceedings and of the matters which have been decided to date in the Debt proceedings. I have also analysed the Amended Defence and Counterclaim delivered on 16th January, 2015, in the Debt proceedings and I have ruled on the matters therein pleaded which either have been determined in those proceedings or which have been ruled out in the Debt proceedings and which cannot now be raised in the Debt proceedings. I adopt the recital and the rulings in this judgment. I do not propose repeating the facts and conclusions set out in the Debt proceedings judgment. I use the same terminology in this judgment that I use in the Debt proceedings judgment. Anglo Irish Bank Corporation Ltd. is "Anglo" or "the Bank" as the context requires. I attach the Statement of Claim of 19th December, 2014, which runs to 58 pages and 110 paragraphs as a schedule to this judgment for ease of reference.

Motion to strike out the New proceedings

3. The IBRC defendants brought a motion to strike out the proceedings on the basis that the claims advanced in the Statement of Claim are each barred by the principle *of res judicata* and the rule in *Henderson v. Henderson* because all of the pleas which have been raised in the Statement of Claim in the New proceedings have either already been adjudicated upon by way of judgments delivered in the Debt proceedings or they remain to be dealt with in the final module of that case. They argued that the New proceedings constitute an impermissible attempt to re-litigate matters which have already been determined in the Debt proceedings or they amount to a collateral challenge to the decisions in the Debt proceedings and thus constitute an abuse of the process of the Court.

4. Stone brought a similar motion on the same principles. In addition, it seeks an order staying the New proceedings and preventing Mr. Morrissey from taking any further steps within the New proceedings pending the determination of the Debt proceedings.

Legal principles

5. It is a fundamental principle of law that a party should not be entitled to re-litigate matters or raise issues which have already been determined by a final judgment of a court of competent jurisdiction between the same parties and their privies. This is known as the principle of *res judicata*. But beyond the strict limitations of *res judicata* the courts have long recognised that there may be abuse of process outside of the relatively confined limitations of the rule and the courts have always been prepared to balance the rights of parties to have their cases heard and determined by the courts with the rights of the opposing parties to fair procedures in the conduct of litigation and, where necessary, to strike out proceedings if they amount to an abuse of process. In addition to the private rights of litigants, there is a public policy interest in ensuring finality of litigation and preventing vexatious litigants from subjecting the same parties to multiple law suits on the same issue. In *Re Vantive Holdings* [2010] 2 I.R. 118 at pp. 124-125 Murray C.J. said:-

> *"[20] Citizens have the right of access to the courts so that their entitlements, rights and obligations may be determined in accordance with due process. Due process means a right to a fair and complete hearing of the issues of law and fact in any proceedings. The courts have always had an inherent jurisdiction to stay or dismiss proceedings which abuse the due process of the administration of justice where to do otherwise would seriously undermine its effectiveness or integrity. In addition under the rules of court the courts have, in civil proceedings, the power to dismiss proceedings on the grounds that they are "frivolous" or "vexatious". Indeed abuse of process may take many forms according to the context or the nature of the proceedings, such as whether they are criminal or civil. In this case the court is obviously concerned with civil proceedings only.*
>
> *[21] In the High Court and in this court ACC Bank plc relied on the rule of estoppel in Henderson v. Henderson (1843) 3 Hare 100, but by way of analogy. In his judgment the trial judge stated:-*
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> *"The rule in Henderson v. Henderson is to the effect that a party to litigation must make its whole case when the matter is before the court for adjudication and will not afterwards be permitted to reopen the matter to advance new*

grounds or new arguments which could have been advanced at the time. Save for special cases, the plea of res judicata applies not only to issues actually decided but every point which might have been brought forward in the case. In its more recent application this rule is somewhat mitigated in order to avoid its rigidity by taking into consideration circumstances that might otherwise render its imposition excessive, unfair or disproportionate."

[22] Viewing it through the prism of estoppel and res judicata the rule in Henderson v. Henderson (1843) 3 Hare 100 strictly speaking applies to proceedings between parties where those proceedings determine the rights or obligations between those parties. It is intended, inter alia , to promote finality in proceedings and to protect a party from being harassed by successive actions by another party when the issues between them either were or could have been determined with finality in the first proceedings….

[25] Underlying the rule in Henderson v. Henderson (1843) 3 Hare 100 is the policy of the need to protect the due and proper administration of justice from an abuse of process and uphold the principle of finality in legal proceedings.

He approved of the statement of Bingham L.J. in *Johnson v. Gore Wood & Co*. [2002] 2 A.C. 1 at p. 31 where he identified the rule in *Henderson v. Henderson* (1843) 3 Hare 100 as being an aspect of the doctrine of abuse of process. He noted that it had been cited and approved by the Supreme Court in the judgments of Hardiman J. in *Carroll v. Ryan* [2003] 1 I.R. 309 and *A.A. v. Medical Council* [2003] 4 I.R. 302. The statement is as follows:-

"… Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not."

6. Denham J. at pp. 141-142 likewise reaffirmed the rule as follows:-

[85] [T]he underlying principle is similar to the concept of the abuse of process. As Bingham M.R. stated in Barrow v. Bankside Ltd. [1996] 1 W.L.R. 257 at p. 260:-

> *"The rule in Henderson v. Henderson (1843) 3 Hare 100 is very well known. It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."*

…

[89] There are exceptional circumstances, in the interests of justice, when a matter may be revisited. But the fundamental principle is that it is in the public interest and for the common good that there should be finality in litigation. An aspect of this principle is that parties should not be exposed to multiple litigation and should have closure on an issue. Also, there is the public interest that the limited resources of the courts should be used justly and with economy."

7. *Woodhouse v. Consignia Plc* [2002] 1 WLR 2558 was a decision of the Court of Appeal in England concerning the renewal of an interlocutory application which was based on material which was not but which could have been deployed in support of the first application. Brooke L.J. stated at para. 55 of his judgment as follows:-

"The application of 8th November 2000 was undoubtedly a "second bite at the cherry". It was supported by evidence that was available at the time of the first application. There was no good reason for the failure to place that evidence before the court on the first occasion. We accept that the fact that the evidence relied on in support of the application that was made on 8th November could and should have put before the court in support of the earlier application is material to the exercise of the discretion conferred by CPR 3.9(1). There is a public interest in discouraging a party who makes an unsuccessful interlocutory application from making a subsequent application for the same relief, based on material which was not, but could have been, deployed in support of the first application. In some contexts, this is partly because; as Chadwick LJ said in Securum (Securum Finance Ltd. v. Ashton [2001] CH 291) there is a need for the court to allot its limited resources to other cases. But at least as important is the general need, in the interests of justice, to protect the respondents to successive applications in such circumstances from oppression. The rational for the rule in Henderson v. Henderson (1843) 3 Hare 100 that, in the absence of special circumstances, parties should bring their whole case before the court so that all aspects of it may be decided (subject to appeal) once and for all, is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever, and that a defendant should not be oppressed by successive suits when one would do; see per Sir Thomas Bingham MR in Barrow v Bankside Ltd. [1996] 1 WLR 257, 260 A-D."

8. The IBRC defendants and Stone also relied upon the decision in *A.A. v. The Medical Council* [2003] 4 I.R. 302. The applicant brought judicial review proceedings seeking to prohibit the Medical Council from holding an enquiry. He was unsuccessful in the original

judicial review proceedings. He then subsequently brought a second judicial review seeking to restrain the holding of the enquiry on the grounds of the Medical Council's alleged failure to provide him with legal aid. It was argued that he ought to have raised this point in his first judicial review proceedings and therefore was not entitled to raise it in these second proceedings. Hardiman J. quoted at p.315 the principle in *Henderson v. Henderson* and referred to the decision of *Cox v. Dublin City Distillery (No. 2)* [1915] 1 I.R. 345 where Pallas C.B. said at p.372 that:-

> *"… a party to previous litigation, as against the other party in that action was bound 'not only by any defences which they did raise in that suit, but also any defence which they might have raised, but did not raise therein'."*

9. He also quoted with approval the passage of Brooke L.J. in *Woodhouse v. Consignia plc*, cited above.

10. Hardiman J. held as follows at p.319:-

> *"I consider this to be the determining feature of the present proceedings. The applicant obtained on 13th March, 2000, an order restraining the conduct of an enquiry fixed for the next day on the ground that the enquiry as proposed to be conducted was a denial of his legal and constitutional rights. That issue having been decided and the enquiry re-fixed for 20th February, 2000, he again sought to restrain its conduct or continuance on the basis that this would again constitute an invasion of his legal or constitutional rights, but on different grounds, those relating to legal aid or funded representation. No reason has been advanced, and none appears on the evidence as to why these points could not have been raised two years previously. The applicant's financial position had not worsened in the interval: he was impecunious at all material times. He had first raised the question of legal aid less than a month before the institution of the present proceedings, and no reason has been advanced for not raising it earlier. The information he received in reply to his solicitor's letter of 24th February, 2002, cannot have come as a surprise to any lawyer or doctor and no case has been made to the contrary. The issues in relation to legal aid are, therefore, to adapt the language of Henderson v. Henderson (1843) 3 Hare 100 at p. 115, issues "which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time" of the first proceedings. In the language of Johnson v. Gore Wood & Company [2002] 2 A.C. 1, there are issues which might "sensibly" have been brought forward in the previous litigation. The present litigation in my view runs foul of the rule of public policy "based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits were one would do", in the words of Brooke L.J. in the passage cited above in Woodhouse v. Consignia p.l.c. [2002] 1 W.L.R. 2558 at p. 2575."*[1]

There was agreement on all sides as to the relevant principles to be applied. Counsel for Mr. Morrissey placed greater emphasis on the flexibility of the application of the principles and urged that they should not be applied in a rigid or dogmatic may. Counsel for the moving parties did not dissent from this submission.

11. Mr. Morrissey also argued that the Court should approach the issue in the light of the decisions in *Sun Fat Chan v. Osseous Ltd* [1992] 1 I.R. 425 and *Aer Rianta c.p.t. v. Ryanair Ltd.* [2004] 1 I.R. 506. These were cases where the Court was asked to strike out proceedings at the commencement of the litigation on the basis that they had no prospect of success. This line of authority is fundamentally different to the issues for determination on the motions before this Court. The very basis for these applications is that there have been hearings and determinations and the matters should not be re-litigated. Therefore, these authorities and the observations recording the reluctance of a court to strike out proceedings are not applicable for the motions for consideration by this Court.

12. It was also submitted that the motions in the New proceedings contradicted the motion by Stone in the Debt proceedings seeking to strike out the Amended Defence and Counterclaim of 16th January, 2015, on the basis that the affidavit filed in support of the application by the IBRC defendants in the New proceedings argued that matters fell to be decided in the Debt proceedings which Stone was arguing should be struck out in those proceedings. While undoubtedly there is a considerable degree of overlap and a ruling on one motion is relevant to the consideration and ruling on another motion, this does not mean that the motions to strike out the proceedings in the New proceedings are in and of themselves flawed or provide an answer to the issues raised in the motions.

13. Thus, in reading the Statement of Claim this Court has to determine whether or not an issue raised in the Statement of Claim has been decided in the Debt proceedings. If it has, then it should be struck out applying the principle of *res judicata*. Secondly, this Court has to consider if there are issues which could properly have been raised (and therefore decided in the Debt proceedings) which it is now sought to raise in this Statement of Claim. Such issues should be struck out on the principle of the rule in *Henderson v. Henderson* unless a special circumstance is established which justifies the raising of the issue in the New proceedings. Thirdly, this Court has to decide whether issues are raised which have yet to be decided in the Debt proceedings. Any such issue should be struck out in the New proceedings and continued in the Debt proceedings. They cannot be continued in both proceedings.

Mr. Morrissey's submissions

14. Before considering the Statement of Claim in detail (and the submissions of the IBRC defendants and Stone) I propose outlining the submissions advanced on behalf of Mr. Morrissey in opposition to the motion. Firstly, it should be noted that senior counsel accepted that the relief sought in the New proceedings was in substance that which was objected to in the Debt proceedings.[2] It was also submitted that the substance of the New proceedings had a great commonality with the original proceedings. It was accepted that a number of matters pleaded had been determined in the Debt proceedings[3] but these were not identified in the Statement of Claim. It was suggested that the judgments of Finlay Geoghegan J. were interlocutory or in some way non binding upon this Court. It was argued that as a matter of principle to grant the reliefs sought would be to deny Mr. Morrissey his constitutional right to litigate without a full trial.

15. A considerable part of the submission was devoted to argument in relation to the overcharging of interest. It was alleged that the overcharging had been deliberately covered up, it was said that the State (even though Ireland is not a party to the Debt proceedings) had misrepresented the position to the Court, it was said that IBRC, IBRC (in Special Liquidation), the Special Liquidators and by implication their legal representatives, knew that they were not entitled to bring the claim and that it amounted to an abuse of process for the claim to have been maintained and fought. There was speculation that the State defendants (as they were characterised) may have known that IBRC was persisting in making a claim which it knew it was not entitled to advance and that the State was attempting to keep the overcharging issue "hidden from the Court." In my judgment in the Debt proceedings I have dealt with these allegations. I found that they were without foundation and the allegation that IBRC, the Special Liquidators and their solicitors and counsel knowingly sought to mislead the Court ought not to have been made in the circumstances.

16. It was not alleged either on affidavit, in written submissions or in oral submissions that new evidence had come to light which had

not previously been available to Mr. Morrissey which amounted to a special circumstance such that he was justified in bringing these New proceedings. It was submitted that the Court should be flexible in its application of the rule in *Henderson v. Henderson* and it was argued that the Debt proceedings had been exceptional proceedings and that this therefore constituted a special circumstance that would justify this court in refusing to apply the rule in *Henderson v. Henderson*. It was pointed out that the proceedings had been commenced by Anglo which then became IBRC. During the course of the proceedings IBRC went into special liquidation with the enactment of the Irish Bank Resolution Corporation Act 2013 and the Special Liquidators were appointed. Finally, in March, 2014 IBRC (in Special Liquidation) and the Special Liquidators purported to assign the loans, the subject matter of the Debt proceedings, to Stone and they duly entered into the Deed of Transfer of 11th July, 2014. While undoubtedly this constituted a series of developments which were required to be dealt with in the Debt proceedings, the significant fact is that Finlay Geoghegan J. at all times afforded Mr. Morrissey the opportunity to take instructions and make submissions and to raise points as they arose in the light of those developments. There were at least two hearings directed towards the issues which Mr. Morrissey chose to raise in light of the enactment of the Act of 2013 and then subsequently in light of the Loan Sale Agreement. Given that he was afforded the opportunity to deal with these developments within the Debt proceedings, they cannot now constitute special circumstances as to why the New proceedings should not be subject to the rules of *res judicata* and *Henderson v. Henderson*, where they apply.

17. Secondly, it was suggested that the fact that the Debt proceedings had been dealt with as a modular trial amounted to a reason why the rule in *Henderson v. Henderson* should not apply. Clearly this cannot amount in and of itself to a special circumstance. If anything, it would suggest a reason why the rule should be vigorously applied. The parties to modular trials have the opportunity to deal with relevant issues in the context of case management by the Court. It is open to the parties in those circumstances to advance to the Court any arguments and issues which they feel ought to be raised in the proceedings. If, in the course of a modular trial, the Court rules that certain issues may not be raised, or rules against a party on certain issues, they cannot then subsequently be raised in new proceedings.

18. Thirdly, it was said that the manner in which the modular trial had progressed in the Debt proceedings had resulted in a failure to hear a motion for discovery brought by Mr. Morrissey and that the Bank failed to reply to interrogatories raised by Mr. Morrissey. If the motion for discovery and the interrogatories raised were important to Mr. Morrissey then it clearly was a matter for his legal representatives to ensure that the matters were heard and disposed of in a timely fashion and in any event to ensure that the material to which he says he was entitled was available to him before the relevant modules were heard. If they were not, he cannot now be heard to say that the existence of that motion and the unanswered interrogatories (copies of which have not been furnished to this Court at the hearing of this motion) give rise to a special circumstances as to why the rule in *Henderson v. Henderson* ought not to be applied to the New proceedings.

19. Finally, it was said that the New proceedings should not be struck out because Kelly J. would not have allowed the issues raised in the New proceedings to be brought in the Debt proceedings. There could be no clearer indication of the fact that the New proceedings were seeking to circumvent rulings in the Debt proceedings. I reject this as reason to refuse the reliefs sought.

20. It is important to note that Mr. Morrissey's counsel informed the Court that it was his intention to appeal the decisions in the Debt proceedings once the modular trial concluded. This is significant in the light of Mr. Morrissey's argument that the reliefs sought in these motions should be refused on the basis that they allegedly would deny him his constitutional right to litigate without a full trial. I do not agree. It is abundantly clear that when the Debt proceedings conclude Mr. Morrissey will have had his constitutional right of access to the courts fully vindicated. He will have had the opportunity to advance his case as he saw fit within the legitimate constraints of the liberty granted him to defend the debt claim and case management by the Court in accordance with the Rules of the Commercial List of the High Court. This is not a ground to refuse the reliefs sough in these motions.

The Statement of Claim

21. Some of the allegations made against the IBRC defendants are also made against the Minister for Finance, the fifth named defendant. As the fifth named defendant did not bring a motion seeking to have the New proceedings struck out as against him, if I strike out any pleadings in this judgment against the IBRC defendants or Stone, this does not strike out the pleas advanced against the fifth named defendant.

22. There are 33 substantive prayers for relief in the Statement of Claim, an increase from the 26 claimed in the Plenary Summons. 27 declarations are sought, 10 of these declarations expressly concern the prosecution or conduct of the Debt proceedings. Prayer number 17 seeks an order dismissing or in the alternative permanently staying the Debt proceedings. The other declarations all relate to the legal issues surrounding the Loan Sale Agreement and Deed of Transfer which have either already been decided by Finlay Geoghegan J., remain to be decided in the Debt proceedings or have been struck out by me in the Debt proceedings in the judgment I am delivering in those proceedings today in conjunction with this judgment. In many cases the pleading is virtually identical to that in the Debt proceedings. This was accepted and conceded by counsel for Mr. Morrissey.

23. There are also claims for damages including exemplary and aggravated damages for the torts of maintenance, champerty and the causing of economic loss by unlawful means and conspiracy and for breaches of the plaintiff's constitutional rights including his right to litigate, his right of access to the courts, his right to equal treatment and for fundamental breach of contract by Anglo in relation to matters which were ruled upon by Finlay Geoghegan J. in her first judgment of 14th May, 2013. There is also a claim to rescind the loan contract on the same basis. Finally there is a claim against the IBRC defendants for damages under s. 3 of the European Convention on Human Rights Act 2003.

24. Thus, before even considering the substance of the Statement of Claim it is abundantly clear that the institution of these proceedings by way of plenary summons on 30th October, 2014, has the effect and indeed in some cases the explicit intention of reversing binding decisions reached in the Debt proceedings. The correct approach is, in due course, to appeal the decisions of the High Court with which Mr. Morrissey is dissatisfied: it is not permissible to institute second proceedings to make what is not so much a collateral attack as a direct attack on valid decisions of the High Court which are binding on Mr. Morrissey vis-à-vis the IBRC defendants and Stone. This is not a technicality or some 19th century arcane law, as was argued in submissions on behalf of Mr. Morrissey. It is fundamental to the right of access to the courts that there also be protection of the defendants (in this case) so that they are not harassed by repeated attempts to re-litigate matters which have been previously determined. Mr. Morrissey's constitutional rights or human rights under the European Convention on Human Rights Act 2003 have been vindicated and protected by the rulings, directions and hearings that have taken place and will take place in the Debt proceedings. However, other litigants also enjoy rights in relation to litigation. They are entitled to rely upon the fact that, subject to a right of appeal, a determination by the High Court of an issue which has been raised (or which ought to have been raised), is final and may not (save in special circumstances which do not arise here) be re-agitated. These fundamental principles protect the rights of the IBRC defendants and Stone. By definition Mr. Morrissey's rights have been protected by his opportunity, already exercised, to advance his case as he saw fit within the lawful constraints of court rulings and case management decisions.

25. In light of the above it is, in my judgment, appropriate to dismiss the entirety of these proceedings against the IRBC defendants and Stone as constituting an abuse of process as infringing the rules of *res judicata* and the rule in *Henderson v. Henderson*. Insofar as there may be some actions validly open to Mr. Morrissey to bring against the State defendants in the Statement of Claim dated 19th December, 2014 (which runs to 46 closely typed pages and comprises more than 110 paragraphs (some paragraph numbers having been duplicated)), it might be preferable for Mr. Morrissey to institute separate proceedings against the State defendants in relation to the issues raised in these proceedings. I will hear submissions in relation to this point.

26. Notwithstanding this judgment and in case I be in error in this decision, I turn to consider the Statement of Claim in detail. Paragraphs 1-7 merely identifies the parties and nothing turns on those paragraphs. Paragraphs 8-17 deals with the alleged obligations of the IBRC defendants and the fifth named defendant. For the purposes of this section of my judgment I am not concerned with the pleadings against the fifth named defendant. The pleas at paras. 8-14 closely mirror the pleadings in the Amended Defence and Counterclaim of 16th January, 2015, in the Debt proceedings. Some of the alleged duties are predicated upon a fiduciary duty existing between Anglo and Mr. Morrissey. As I have noted in the Debt proceedings judgment, there has been a decision of the High Court that there was no such fiduciary relationship between Anglo and Mr. Morrissey and therefore there is no such duty of care as has been pleaded in these proceedings. It is not open to Mr. Morrissey to circumvent this ruling by recasting this essential point. It must be rejected as offending the rule of *res judicata* and the rule in *Henderson v. Henderson*. Mr. Morrissey alleges that the IBRC defendants owe him a statutory duty pursuant to the Act of 2013 and that he was owed obligations of fair procedures. In the Debt proceedings I have already decided that public law issues of these types are governed by the time limits applicable to judicial review proceedings. They cannot be avoided by instituting plenary proceedings instead. The same principle applies to the argument in relation to fair procedures, which is clearly a public law point for the reasons advanced in the Debt proceedings judgment.

27. As in the Amended Defence and Counterclaim delivered by Mr. Morrissey on 16th January, 2015, in the Debt proceedings, it is sought to recast the duties allegedly owed by the IBRC defendants and Stone in these proceedings by reference to the Constitution, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The question of the duties owed by the IBRC defendants and Anglo to Mr Morrissey has been argued and decided in the Debt proceedings by the learned trial judge. Insofar as Mr. Morrissey seeks to raise this point again, this is an abuse of process: it is either *res judicata* or offends the rule in *Henderson v Henderson* as permitting the reintroduction of obligations which have simply been reformulated. Accordingly paras. 8-14 should be struck out

28. Paragraphs 15-19 (including the two paras. 18 and 19) are concerned with the loan facilities with Anglo. There are pleas raised concerning express or implied terms of the loan facilities, of a duty of care and of alleged breaches of the terms of the loan facilities and alleged breaches of the pleaded duty of care. All of these matters have been ruled upon and rejected by Finlay Geoghegan J. They are *res judicata*. Issues predicated upon a fiduciary relationship between Anglo and Mr. Morrissey have already been comprehensively rejected by Finlay Geoghegan J. in her first judgment of 14th May, 2013. They cannot be revived in these proceedings. Similarly, claims based on alleged misrepresentation have been raised, ruled upon, rejected and are now *res judicata*. Insofar as any new angle in relation to these issues is now sought to be advanced which was not previously advanced in the Debt proceedings, they quite clearly must be struck out as they offend the rule in *Henderson v. Henderson*.

29. Paragraphs 20-29 of the Statement of Claim deal with the Anglo Irish Bank Act 2009 (which nationalised Anglo) and the establishment of IBRC. It is pleaded that there was an alleged systemic overcharging of interest by Anglo and IBRC and there are complaints about how it was dealt with successively by Anglo, by IBRC and the Special Liquidators. Nearly all of the matters pleaded pre-date the Debt proceedings and all of them pre-date the hearing by Finlay Geoghegan J. of the module dealing with the overcharging of interest. All of these points were either ruled out by Kelly J. in October, 2011 in the Debt proceedings or, if not ruled out then, they could have been raised in the Debt proceedings. The failure to do so in circumstances where all the relevant information was either known or could have been known to Mr. Morrissey means that any such pleas must be ruled out by an application of the rule in *Henderson v. Henderson*. Furthermore, insofar as public law arguments are advanced, these are subject to the rule in *O'Donnell v. Dun Laoghaire Corporation* [1991] 1 I.L.R.M. 301 which I discuss in the Debt proceedings judgment. For the reasons therein set out, it is not open to Mr. Morrissey to introduce these types of arguments in the New proceedings. He is several years too late to do so. No explanation to justify the delay in bringing forward these arguments to this point in time was advanced. Finally, all matters in relation to the overcharging of interest were heard, or could have been heard, by Finlay Geoghegan J. in June, 2014 and they have been ruled upon by her. Thus, the pleadings relating to wrongs allegedly stemming from interest overcharging are *res judicata* and Mr. Morrissey has already had his remedy in this regard in the reduction of the amount due and owing in the Debt proceedings. In the alternative, they fall foul of the rule in *Henderson v. Henderson*.

30. These principles apply notwithstanding the fact that Mr. Morrissey now seeks to frame his claims as constituting a breach of his constitutional rights or an infringement of his rights under the European Convention on Human Rights Act 2003 and the first protocol of the Convention or the Charter of Fundamental Rights of the European Union. I therefore strike out all of paras. 20-29 of the Statement of Claim.

31. Paragraphs 30-36 of the Statement of Claim deal with the Debt proceedings. They directly challenge matters which have been determined in the Debt proceedings. It refers to a purported demand: Finlay Geoghegan J. has held that Anglo was entitled to make demand when it did. There is a plea that the demand was void, unlawful and of no affect. This clearly is an attempt to challenge the ruling of Finlay Geoghegan J. Likewise there is a further plea in relation to the alleged unlawful charging of interest. As has been previously pointed out in both this judgement and the Debt proceedings judgment, Finlay Geoghegan J. has ruled on the interest question. It cannot now be revisited in whatever guise Mr. Morrissey chooses to present it in these proceedings. I strike out paras. 30-36 as constituting an abuse of process. It amounts to a collateral attack upon the determinations of the High Court in the Debt proceedings.

32. Paragraphs 37-42 of the Statement of Claim deal with the enactment of the Irish Bank Resolution Corporation Act 2013 and the Special Liquidation Order made pursuant to s. 4 of the Act appointing the third and fourth named defendants as the Special Liquidators. At para. 41 it is pleaded that the Special Liquidation Order is unlawful and invalid. Clearly this is a very far reaching plea. If Mr. Morrissey wished to raise it, he should have done so promptly and in the appropriate fashion. It is simply not permissible to raise such a plea of fundamental importance to the State, never mind the parties to this litigation, other than promptly and in the appropriate fashion: judicial review proceedings against the State brought within the time allowed for under the Rules of the Superior Courts. In addition to this fundamental objection, it is to be noted that the Debt proceedings continued before Finlay Geoghegan J. for a number of directions motions and the four day hearing in June, 2014, including an application to amend the then Amended Defence and Counterclaim in the Debt proceedings, and this argument was not advanced at that point in time. It clearly offends the rule in *Henderson v. Henderson* to seek to raise it in these proceedings at this stage.

33. Paragraph 42 concerns the Deed of Transfer of 11th July, 2014, of *inter alia* Mr. Morrissey's loan facilities by IBRC and the Special Liquidators to Stone. The pleas listed (a)-(f) have either been ruled out in the Debt proceedings judgment or have been allowed to be

raised in the final module of the Debt proceedings. Either way, it is not permissible to raise the same issues in two different sets of proceedings. Given that I have refused the application to consolidate the proceedings and I have ruled on these pleas in the Debt proceedings, I strike out para. 42 in the Statement of Claim, though I acknowledge that the issue as to the effect of the Deed of Transfer of 11th July, 2014, has yet to be resolved in the Debt proceedings.

34. Paragraphs 43-46 again deals with the issue of the overcharging of interest by Anglo and the claim for the overcharged interest in the Debt proceedings. In para. 45 it is pleaded that on the 17th January, 2013, Mr. Morrissey wrote to the Directors of IBRC raising concerns relating to the alleged systemic and long term overcharging of interest by Anglo. As has been stated previously in this judgment, this issue either was ruled out in the Debt proceedings, was not raised in the Debt proceedings when it could have been, or was raised and was determined. In any event it is not open to Mr. Morrissey to seek a "second bite of the cherry" in relation to the complaint he has regarding overcharging of interest by Anglo no matter how he seeks to frame the plea in these proceedings.

35. Paragraphs 47-50 is headed "The module dealing with the quantum issue". In the New proceedings Mr. Morrissey is seeking to found a cause of action based on what occurred in the Debt proceedings. Essentially this amounts to a notice of appeal in the Debt proceedings. It is not open to Mr. Morrissey to challenge the decisions of Finlay Geoghegan J. in this fashion. His rights are protected by his right of appeal in the Debt proceedings. In this regard it is important to note that counsel for Mr. Morrissey indicated that it was Mr. Morrissey's intention to appeal the decisions in the Debt proceedings when the modular trial finally concludes.

36. Paragraphs 51-62 of the Statement of Claim relate to the loan sale sales process and claimed breaches of fair procedures. On Mr. Morrissey's own case, he was fully engaged in the process as a debtor of IBRC from September, 2013 onwards. It is pleaded that the sales process was to be complete by 31st December, 2013, or as soon as practicable. Complaint is made that IBRC (in Special Liquidation) and the Special Liquidators entered into the Loan Sale Agreement with Stone dated 31st March, 2014, and that Mr. Morrissey and the Court were only informed of the existence of the Agreement on 2nd May, 2014. It is then pleaded that the sale process failed to afford the plaintiff fair procedures and/or natural and/or constitutional justice and that the first, third and fourth named defendants unlawfully fettered their discretion in following the process applied. It is also alleged that there was improper corporate governance which invalidated the sale process.

37. In paras. 63-66 it is pleaded that there was a failure by the vendors to comply with Ministerial directions and/or instructions and that therefore the purported transfer and/or sale of Mr. Morrissey's loans was invalid, void and/or of no effect.

38. These pleas ignore the fact that Finlay Geoghegan J. has held that the Special Liquidators had power to sell Mr. Morrissey's loans. It is not permissible for him to seek to circumvent this express ruling by pleading to the contrary in these new proceedings. Finlay Geoghegan J. expressly afforded Mr. Morrissey the opportunity to raise arguments in relation to the Loan Sale Agreement after the Court and Mr. Morrissey had been informed of the agreement on 2nd May, 2014. Mr. Morrissey was given a redacted copy of the Loan Sale Agreement in accordance with her directions and there was an exchange of written submissions in relation to such issues as Mr. Morrissey sought to raise. It is not open to him either to re-agitate matters expressly ruled upon by Finlay Geoghegan J. or to raise matters which could have been raised and which were not raised before her in June, 2014. A *fortiori* it is not open to him to raise matters which she ruled out in June, 2014. Accordingly, I strike out paras. 51-66 of the Statement of Claim as an abuse of process.

39. Paragraphs 67-87 deal with the redacted Loan Sale Agreement/Deed of Transfer and Mr. Morrissey's arguments in relation to maintenance and/or champerty. Paragraphs 67-70, 76 and 79 recite the events in relation to the redaction of the Loan Sale Agreement in the Debt proceedings. Paragraphs 71-75 set out Mr. Morrissey's complaints that the Loan Sale Agreement was void for the torts of maintenance and/or champerty. These are precisely the arguments which were advanced before Finlay Geoghegan J. and which were expressly ruled upon by her in her judgment of 10th November, 2014. In para. 77 it is pleaded that in producing a heavily redacted loan sale agreement and/or a deed of transfer the IBRC defendants failed to comply with public law obligations or to comply with fair procedures and interfered with the valid administration of justice. This was expressly ruled upon by Finlay Geoghegan J. and cannot now be raised in these proceedings. Furthermore, in para. 78 Mr. Morrissey purports to reserve his entitlement to raise further arguments in relation to the Loan Sale Agreement and the Deed of Transfer when seeking an unredacted copy of the documents. It is not open to Mr. Morrissey to do so in these New proceedings. These are matters which properly belong in the Debt proceedings and have been disposed of in the Debt proceedings and his remedy lies in the Debt proceedings. The pleas in paras. 80-87 refer to the conduct of the Debt proceedings subsequent to the 2nd May, 2014, when the IBRC defendants informed the Court and Mr. Morrissey of the Loan Sale Agreement dated 31st March, 2014. The matters therein raised belong properly within the Debt proceedings and either have been disposed of in the Debt proceedings or remain to be heard in the last module of those proceedings. It is not permissible to seek to litigate them in separate proceedings. Accordingly, I strike out paras. 67-87 of the Statement of Claim.

40. Paragraphs 88-99 of the Statement of Claim concern the power of the Special Liquidators to prosecute the Debt proceedings and to assign, transfer or sell the Debt proceedings to a third party and specifically to Stone. It is alleged that they had no statutory power to effect such a sale. This argument was advanced before and rejected by Finlay Geoghegan J. In particular, she dealt in detail in her judgment of 10th November, 2014, with the argument based on s. 231 of the Companies Act 1963, as amended. She has left over to the final module of the Debt proceedings the actual validity of the Loan Sale Agreement of 31st March, 2014, and Deed of Transfer of 11th July, 2014. The power of the Special Liquidators to enter into the Agreement and Deed has already been decided. Accordingly, it is not open to Mr. Morrissey to maintain these pleas in the New proceedings. Insofar as an issue has been raised which has not yet been determined by Finlay Geoghegan J. in relation to the Loan Sale Agreement and the Deed of Transfer, these will be decided in the last module in the Debt proceedings and therefore cannot be raised in the New proceedings. Therefore, paras. 88-99 must also be struck out.

41. Paragraphs 100-104 relate to the power of the IBRC defendants to transfer Mr. Morrissey's loans to Stone based on clause 18 of the general terms and conditions of the relevant facility letter, s. 28(6) of the Supreme Court of Judicature Ireland Act 1877 and s. 12 of the Irish Bank Resolution Corporation Act 2013. These matters clearly fall within the remit of the Debt proceedings and either have already been ruled on or remain to be decided within those proceedings. They cannot be raised in the New proceedings for the reasons set out above. I accordingly strike out paras. 100-104 of the Statement of Claim.

42. Paragraphs 105-110 of the Statement of Claim concern s. 12 of the Irish Bank Resolution Corporation Act 2013. It is pleaded that insofar as s. 12(1) of the Act of 2013 provides that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting the sale or transfer or any other legal or equitable restriction in ability or in capacity that does not apply to the right of the Special Liquidators to prosecute, conduct or continue legal proceedings and in particular to the Debt proceedings. It is pleaded that it interferes with the integrity of the litigation process or the administration of justice by constituting maintenance or champerty or an abuse of judicial process and/or a breach of constitutional rights of Mr. Morrissey. It is pleaded that the section is incompatible with the provisions of the Constitution and that it unlawfully interferes with the rights of Mr. Morrissey protected by the Charter of Fundamental Rights of the European Union. It is said that the section breaches public policy and the fiduciary duty of a liquidator in

the conduct of a liquidation and that it interferes with the integrity of the litigation process, breaches the plaintiffs property rights and/or his constitutional rights and/or his rights under the Charter.

43. In June, 2014 the powers of the Special Liquidators to assign the conduct of the proceedings were argued before Finlay Geoghegan J. Counsel for Mr. Morrissey submitted that the right to prosecute and continue the proceedings against him was a statutory power and/or right of the Special Liquidators and it was not a right, title, interest or benefit of IBRC. It was therefore argued that it was not and could not be transferred to Stone pursuant to the Deed of Transfer. In applying to substitute Stone as the plaintiff in the Debt proceedings, the applicants therein (the IBRC defendants and Stone in these proceedings) relied if necessary upon s. 12 of the Act of 2013. Finlay Geoghegan J. concluded that it was unnecessary to consider this matter as she found in their favour on other grounds. However, she found as a matter of law that the Special Liquidators had the capacity to enter into the purported transaction. She so held in a judgment where the applicability of s. 12 to the transaction was vigorously contested by Mr. Morrissey. If these paragraphs in the Statement of Claim were to be permitted to stand as against the IBRC defendants and Stone it would have the effect of a collateral attack on this determination of the learned trial judge. Accordingly, as this is impermissible, they must be struck out.

44. In the Debt proceedings I have ruled that Mr. Morrissey is entitled to raise issues in relation to s. 12 of the Act of 2013 save that he may not plead in the Debt proceedings by reference to the New proceedings. Thus he will not be entitled to argue that s. 12 of the Act is unconstitutional in the Debt proceedings. If Stone obtains judgment against him in the Debt proceedings in reliance on s. 12 then Mr. Morrissey arguably should be free to raise a challenge to the constitutionality of the section. I will hear the parties' submissions in relation to this point.

Conclusions

45. On the application of the IBRC defendants and Stone I strike out paras. 8 -110 of the Statement of Claim. This amounts to the entirely of the Statement of Claim against each of these defendants. However, Mr. Morrissey should not be debarred from challenging whether s. 12 of the Irish Bank Resolution Corporation Act 2013 is compatible with the Constitution if Stone should succeed in obtaining judgment against him in the Debt proceedings on the basis of the section. In the circumstances, the continuance of the proceedings as they will stand after effect is given to this order against the State defendants will be very cumbersome and unsatisfactory. I will hear submissions from the parties as to the appropriate order to make in the circumstances.

Schedule

THE HIGH COURT

Record No. 2014/9156P

BETWEEN/

JOHN MORRISSEY

Plaintiff

-and-

IRISH BANK RESOLUTION CORPORATION (IN SPECIAL LIQUIDATION), LSREF III STONE INVESTMENTS LIMITED, KIERAN WALLACE AND EAMONN RICHARDSON , THE MINISTER FOR FINANCE, IRELAND AND THE ATTORNEY GENERAL

Defendants

STATEMENT OF CLAIM

Delivered on the 19th December 2014, by Black & Co. Solicitors on behalf of the Plaintiff

The Parties

1. The Plaintiff is a businessman and resides at 36 Palmerston Road in the city of Dublin.

2. The First Named Defendant ("IBRC") is a statutory body incorporated under the Irish Bank Resolution Corporation Act 2009.

3. The Second Named Defendant is a company involved in financial investment, having its registered office at 25-28 Adelaide Road, Dublin 2.

4. The Third and Fourth Named Defendants are the special liquidators of the First Named Defendant who were appointed under the Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013 (S.I. No. 36/2013) and whose place of business is situated at KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2

5. The Fifth Named Defendant is a Minister of Government and a corporation sole, whose office is situated at Government Buildings, Upper Merrion Street, Dublin 2.

6. The Sixth Named Defendant is the juristic person answerable at law for the actions of the Defendants, their servants and agents.

7. The Seventh Named Defendant is the Law Officer of the State designated by the Constitution of Ireland and is sued in her representative capacity and whose office is situated at The Office of the Attorney General, Government Buildings, Upper Merrion Street, Dublin 2.

The parties' obligations

8. The First, Third, Fourth and Fifth Named Defendants, in the exercise of their respective functions, including statutory functions, and in their conduct generally, and the second named Defendant, in its conduct generally, owed a duty of care to the Plaintiff to avoid causing him reasonably foreseeable damage in respect of his personal, family, economic and proprietary interests. The said Defendants were in a relationship of proximity with the Plaintiffs such as generated the said duty and it was just and reasonable that such a duty of care arose.

9. The First and Third, Fourth and Fifth Named Defendants, their servants and agents, in the exercise of their statutory functions, including the several functions under the Irish Bank Resolution Corporation Act 2013, owed a statutory duty to protect the rights and

interests of the Plaintiff.

10. The First and Third, Fourth and Fifth Named Defendants are subject to public law obligations, including a requirement to observe fair procedures.

11. The First, Third and Fourth Named Defendants: (i) were and are required not to act outside the limits prescribed by the Irish Bank Resolution Corporation Act 2013; (ii) were and are limited by its purposes, functions and powers as set out in the said Act; and (iii) were and are otherwise subject to the provisions of the Irish Constitution.

12. The First and Third, Fourth and Fifth Named Defendants, in the exercise of their functions, including statutory functions, and in their conduct generally and the Second Named Defendant, in its conduct generally, and furthermore, the Sixth Named Defendant, as duty-bearer in respect of the constitutional rights of citizens and of non-citizens recognised by and under the Constitution as being owed by the State, each owed a duty to avoid breaching, or threatening to breach, the constitutional rights of, or interfering with the discharge of their duties by, the Plaintiff, including:

i his right to property, under Article 40, section 3 and Article 43 of the Constitution;

ii his right to the person, under Article 40, section 2 of the Constitution:

iii his right to equality before the law, under Article 40, Section 1 of the Constitution;

iv his right to human dignity, under Article 40, Section 1 and 3 of the Constitution;

v his right to access of the courts, under Article 40, Section 3 of the Constitution;

vi his right to litigate under Article 40, Section 3 and 43 of the Constitution;

vii his right to fair procedures, including natural and/or other constitutional justice;

vii his rights as spouse, guardian and parent under Articles 40 and 41 of the Constitution.

13 The First and Third, Fourth and Fifth Named Defendants, as organs of the State, in the exercise of their respective functions, including statutory functions, and in their conduct generally, were obliged to act in accordance with the requirements of the European Convention on Human Rights Act 2003 in respect of the Plaintiff's rights under the said Convention and First Protocol thereof.

14 The First, Third, Fourth and Fifth Named Defendants, in their acts and omissions constituting the implementation of European Union law, had a duty to respect and protect the Plaintiff's rights under the Charter of Fundamental Rights of the European Union, including in particular Articles 15, 16, 17, 20, 21 and 47 thereof.

The loan facilities

15 The Plaintiff took out a number of loan facilities with Anglo Irish Bank from 2000 onwards, culminating in a loan facility provided in 2009. Such loans were secured by reference to certain properties. The Plaintiff reserves the entitlement to rely on the terms of the same and security attached to such loans.

16 The contracts for the said loan facilities contained terms, express or implied, that Anglo Irish Bank, its senior managers, servants and agents:

(i) had conducted, and would, during the currency of the said loans, conduct its business in a lawful manner,

(ii) had not acted, and during the currency of the said loans would not act, intentionally, recklessly or negligently in the conduct of its business in such a manner as to damage the financial security of the Plaintiff,

(iii) had not acted, and during the currency of the said loans would not act, intentionally, recklessly or negligently in the conduct of its business in such a manner as to so damage the economy of the country that

(1) the value of the properties that constituted the security for the said loans would be so reduced as to render it impossible for the Plaintiff to comply with the terms of the said loans; and

(2) it would foreseeably precipitate the enactment of legislation that would further damage the financial security of the Plaintiff;

(iv) would ensure that the said Bank was not insolvent at a time when the Plaintiff was entering into a loan contract with the Bank or thereafter;

(v) would not intentionally, recklessly or negligently engage in a course of conduct involving the overcharge of interest on any or all of the Plaintiff's loans;

(vi) would not initiate legal proceedings asserting an entitlement to interest to which, to its knowledge, it was not entitled;

(vii) would not, in any such proceedings, make the assertion of its entitlement to such interest, knowing or having reason to know that it was false, in the face of a claim by the Plaintiff that he had been or was being overcharged;

(viii) would not persist in making such false assertion during the currency of the said proceedings.

17 In respect of its negotiating and entering into the said contracts and in respect of the discharge thereof, Anglo Irish Bank, its senior managers, servants and agents owed the Plaintiff a duty of care:

(i) not to foreseeably imperil, directly or indirectly, the Plaintiff's financial interests;

(ii) to disclose whether it had failed to conduct its business in an unlawful manner such as would reasonably foreseeably cause financial damage to the plaintiff if he entered into such loans;

(iii) to ensure that the said Bank was not insolvent at a time when the Plaintiff was entering into a loan contract with the Bank or thereafter;

(iv) during the currency of the said loans,

(1) to conduct its business in a lawful manner,

(2) not to act, intentionally, recklessly or negligently, in the conduct of its business in such a manner as to damage the financial security of the Plaintiff,

(3) to take reasonable care to prevent the said Bank from becoming insolvent,

(3) not to act, intentionally, recklessly or negligently, in the conduct of its business in such a manner as to make such a material contribution to damaging the security of the banking industry and, consequently, the economy of the country that:

(i) the value of the properties that constituted the security for the said loans would be so reduced as to render it impossible for the Plaintiff to comply with the terms of the said loans; and

(ii) it would foreseeably precipitate the enactment of legislation that would further damage the financial security of the Plaintiff.

(4) not to engage in a course of conduct involving the overcharge of interest on any or all of the Plaintiff's loans.

The First Named Defendant's breach of the terms of the loan facilities and breach of its duty of care

18 In breach of the said terms, Anglo Irish Bank and certain of its senior managers, servants and agents:

(i) had conducted its business in an unlawful manner;

(ii) during the currency of the said loans, conducted its business in an unlawful manner;

(iii) intentionally and/or recklessly and/or negligently conducted its business in such a manner as foreseeably to damage the financial security of the Plaintiff;

(iv) was insolvent when it entered into a loan facility for the Plaintiff;

(v) unlawfully charged interest on the Plaintiff's loans which, to its knowledge, it was not entitled to do. The said unlawful charging of interest included (1) a practice of unlawful overcharging of a large number of its customers, including the Plaintiff, in which the first named Defendant engaged over several years from 1999 to 2004 and (2) the unlawful charging of five days' extra interest per annum every year since 2003, in which the first named Defendant had knowingly, but secretively, engaged, in respect of a large number of its customers, including the Plaintiff, from the facility letter of July 2003 onwards.

19 Anglo Irish Bank issued the loans/facilities including a share purchase facility ("Share Portfolio") to the Plaintiff:

(i) in the full knowledge that the Plaintiff would be investing in Anglo Irish Bank and other Irish bank shares,

(ii) at a time when it was engaged in the distortion of its share price arising out of its efforts to deal with the Quinn Family CFD position,

(iii) at a time when its Board was concerned about a potential "run" on the Bank's deposits,

(iv) when it appears Anglo Irish Bank may have been manipulating its financial accounts by the unusual movement of large scale deposits and directors' loans to and from Irish Life and Permanent and Irish Nationwide respectively, and

(v) at a time when Anglo Irish Bank has subsequently been shown to have been insolvent.

18. Each of the said breaches and/or foregoing actions and/or conduct, and the said breaches and/or actions and/or conduct cumulatively, constitutes a fundamental breach of contract.

19. In breach of Anglo Irish Bank's duty of care to the Plaintiff, Anglo Irish Bank and certain of its senior managers, servants and agents:

(i) acted so as foreseeably to imperil and to damage the Plaintiff's financial interests;

(ii) failed to disclose that it had conducted its business in an unlawful manner such as would reasonably foreseeably cause, and did cause, financial damage to the plaintiff as a result of his having entered into such loans;

(iii) during the currency of the said loans, failed to conduct its business in a lawful manner in several respects, including, but not limited to:

(1) the falsification of accounts and records regarding directors' loans;

(2) the movement of monies into and out of accounts so as to present a false picture of the solvency and general financial state of the Bank;

(3) the engagement in unlawful acts in respect of contracts for difference involving certain investors.

(iv) acted, intentionally and/or recklessly and/or negligently in the conduct of its business in such a manner as to result in damage to the financial security of the Plaintiff,

(v) acted, intentionally and/or recklessly and/or negligently in the conduct of its business in such a manner as to result in damage to the security of the banking industry and, consequently, the economy of the country, with the reasonably foreseeable consequences that:

(1) the value of the properties that constituted the security for the Plaintiff's loans were so reduced as to render it impossible for the Plaintiff to comply with the terms of the said loans; and

(2) legislation was enacted that further damaged the financial security of the Plaintiff;

(vi) engaged in a course of conduct involving ongoing overcharging of interest on all of the Plaintiff's loans.

The Anglo Irish Bank Act 2009

20. The Anglo Irish Bank Corporation Act 2009 provided for the nationalisation of the Anglo Irish Bank and for the transfer to the Fifth Named Defendant, or the Fifth Named Defendant's nominee, of all the shares in Anglo Irish Bank Corporation Public Limited Company. As a result of the said Act 2009, Anglo Irish Bank was subject to public law obligations and/or requirements in all of its actions and/or decision making.

21. The said Act, and acts and omissions of the First and Fifth Named Defendants, its servants and agents pursuant to or resulting from the enactment of the said Act, constitute the implementation of European Union law.

22. Under the said Act, the First and Fifth Named Defendants, its servants and agents, with respect to the Plaintiff, as a borrower from Anglo Irish Bank,

(i) owed the Plaintiff a duty of care (a) to protect him from the effects of prior wrongdoing by Anglo Irish Bank, including in particular its unlawful acts and omissions of which the third named Defendant, its servants and agents became, or ought to have become, aware, and (b) not to engage in wrongful acts or omissions that would damage the Plaintiff, including the overcharging of interest;

(ii) owed the Plaintiff a duty to vindicate his constitutional rights, including in particular his right to property;

(iii) as an organ of the State, owed a duty to the Plaintiff under the European Convention on Human Rights Act 2003 to respect and protect his Convention rights, including in particular his rights under Articles 6, 13 and 14 and Article 1 of the First Protocol thereof;

(iv) owed a duty to the Plaintiff to respect and protect his rights under the Charter of Fundamental Rights of the European Union, in particular under Articles 15, 16, 17, 20 and 47 thereof.

23. The First and Fifth Named Defendants breached the said duty, thereby causing the Plaintiff loss and damage, by:

(i) failing to alert him to the wrongdoing, including unlawful conduct, of Anglo Irish Bank of which the Fifth Named Defendant, its servants and agents were or ought to have been aware;

(ii) by failing to take steps to remedy the said wrongdoing;

(iii) by overcharging interest on the Plaintiff's loans.

The establishment of the IBRC

24. Following the merger of Anglo Irish Bank and the Irish Nationwide Building Society, both of which were insolvent, the Irish Bank Resolution Corporation (the "IBRC) was established on the 1st July 2011. The IBRC assumed control of the loans and bank assets formerly held by Anglo Irish Bank. The IBRC was also subject to public law obligations and/or requirements in all of its actions and/or decision making.

25. By June 2010, the IBRC (as explained by the Third Named Defendant in Chapter 15 Bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware on 8 October 2013 involving IBRC (In Liquidation) "did realize it had an overcharging issue". The IBRC purported set up a steering committee, chaired by Mr Mike Aynsley, to deal with that issue. Reports were prepared and finalised by the end of 2010.

26. The said reports were then forwarded to the board of the IBRC, the Regulator, the Central Bank, for their review and for their comment, in order (as the Third Named Defendant subsequently explained in the said Delaware proceedings) "to make sure that everybody was comfortable in the work that was undertaken, and trying to get to the bottom of the cost of funds issue, which they (sic) contractual rate of interest that was being charged was different than the actual rate of interest being charged."

27. The said reports have never been published and their contents are unknown to the public. The Plaintiff reserves the entitlement to rely upon the content of the same and/or seek the same by way of discovery.

28. The IBRC had at its disposal all relevant means for becoming aware of (i) the nature, (ii) incidence, (iii) extent and (iv) reason, for all the overcharging on the Plaintiff's loans and on loans to other customers.

29. It was publicly represented on behalf of the IBRC that all customers who had been overcharged had been compensated by the IBRC. The Third Named Defendant stating in the said Delaware proceedings that: "in the first quarter of 2012, the bank wrote out to

all of those affected customers, which were affected by the cost of funds issue, and provided them with checks for what they had determined was the compensation for that overcharging". Contrary to the same, the IBRC had never made, and did not subsequently make, to the Plaintiff any such compensation for the amount overcharged by Anglo Irish Bank. IBRC (i) continued to charge unlawful interest on the money advanced to the Plaintiff, (ii) hid from the Plaintiff the fact of its unlawful character, (iii) took legal proceedings seeking compensation for interest that had been and continued to be unlawfully charged and (iv) in the said proceedings, in the face of an express assertion by the Plaintiff that he had been overcharged, persisted in the false assertion to the contrary.

The First Named Defendant's proceedings against the Plaintiff

30. In January 2010, the nationalised Anglo Irish Bank purported to issue a demand for repayment of the loans from the Plaintiff. In doing so, the said Anglo Irish Bank failed to comply with its public obligations which included a requirement to observe fair procedures, which comprised, *inter alia*, a requirement to give adequate notice to the Plaintiff and/or an opportunity to make submissions in respect of any proposal to issue a demand. Such an obligation in particular, arose, *inter alia*, in the context of the history of dealings between Anglo Irish Bank and the Plaintiff whereby new loan facilities were granted to replace existing facilities and/or in circumstances where the demand represented a change of strategy from a previous standstill arrangement.

31. As a result of the failure of Anglo Irish Bank to comply with the said requirements of fair procedures, such demand was void, unlawful and/or of no effect.

32. In proceedings entitled *Anglo Irish Bank Ltd v John Morrissey (Record No. 2011/1548 S/2011/86 COM),* the First Named Defendant sought, but was refused, summary judgment against the Plaintiff for money allegedly due to the first named Defendant on foot of loan facilities provided to the Plaintiff by the first named Defendant. The Commercial Court in January 2012 directed a modular trial.

33. Insofar as the Second Named Defendant has been substituted as Plaintiff in those proceedings seeking judgment against the Plaintiff, such judgment is on foot of the aforesaid unlawful and/or void demand of Anglo Irish Bank and the Second Named Defendant is not entitled to judgment and/or any relief and/or to take any enforcement action with respect to the said loans.

34. The said proceedings included a claim for interest which, as the First Named Defendant, its servants and agents, was not lawful by reason of the fact that it involved overcharging in two respects: (i) a practice of unlawful overcharging of a large number of its customers, including the Plaintiff, in which the First Named Defendant engaged over several years and (ii) the unlawful charging of five days' extra interest *per annum* every year since 2003, in which the First Named Defendant had knowingly, but secretively, engaged, in respect of a large number of its customers, including the Plaintiff, following Ireland's change of currency from the Irish pound to the euro.

35. The Plaintiff in his Defence stated that he had been overcharged interest but the Plaintiff denied this and persisted in its claim for such overcharged interest.

36. In initiating proceedings in the knowledge that it was making a claim to which it was not lawfully entitled and in persisting in the assertion of its entitlement to interest which it knew to include interest unlawfully charged, the First, Third and Fourth Named Defendants were guilty of:

(i) An abuse of the judicial process;

(ii) the tort of malicious institution of civil proceedings;

(iii) the tort of fraudulent misrepresentation;

(iv) the tort of negligent misrepresentation;

(v) the tort of negligence;

(vi) the tort of misfeasance of public office;

(vii) the tort of causing economic loss by unlawful means;

(viii) breach of the Plaintiff's constitutional rights, including:

(1) his right to property, under Article 40, section 3 and Article 43 of the Constitution;

(2) his right to the person, under Article 40, section 2 of the Constitution:

(3) his right to equality before the law, under Article 40, Section 1 of the Constitution;

(4) his right to human dignity, under Article 40, Section 1 and 3 of the Constitution;

(5) his right to access of the courts, under Article 40, Section 3 of the Constitution;

(6) his right to litigate under Article 40, Section 3 and 43 of the Constitution;

(7) his right to fair procedures, including natural and/or other constitutional justice.

The IBRC Act 2013 and the Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013

37. On the 5th February 2013, IBRC was put into statutory "special liquidation" by force of the provisions of the Irish Bank Resolution Corporation Act 2013 for the purposes of a process of winding up subject to certain exemptions from provisions of the Companies Acts.

38. The said Act contains provisions that impact on the rights, including constitutional rights, and entitlements of the Plaintiff.

39. Under S.I. No. 36/2013 - Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013, the Fifth Named Defendant

purported to issue the Special Liquidation Order pursuant to section 4 of the Irish Bank Resolution Corporation Act 2013 and to appoint the Third and Fourth Named Defendants as special liquidators of the First Named Defendant. As a result of such Order the Third and Fourth Named Defendants are subject to public law obligations in their actions and/or decision making as special liquidators of the First Named Defendant. Section 7(8) of the Irish Bank Resolution Corporation Act, 2013 provides that,

> "Where the Minister appoints more than one special liquidator, the Minister shall provide in the Special Liquidation Order whether any act by this Act or the Companies Acts, as they apply to IBRC, required or authorised to be done by the special liquidator is to be done by all or any one or more of the persons appointed."

40. Article 3(c) of the Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013 states:

> *"(b) each power and duty conferred and imposed upon a special liquidator by the Act may be exercised and fulfilled by either or both of the joint Special Liquidators, acting jointly or individually; and*
>
> *(c) any act required or authorised by the Act to be done by a special liquidator pursuant to the Act may be done by either or both of the joint Special Liquidators, acting jointly or individually".*

41. The Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013 failed to satisfy the mandatory requirement of section 7(8) of the 2013 Act insofar as it failed to provide in the Special Liquidation Order whether any act by the Companies Acts, as they apply to IBRC, required or authorised to be done by the special liquidator is to be done by all or any one or more of the persons appointed. As a result of the breach of section 7(8) of the 2013 Act, the Special Liquidation Order is unlawful and invalid. In addition and further and/or in the alternative, the purported appointment of the Third and Fourth Named Defendants are unlawful and/or void and/or of no effect and/or are a nullity.

42. Further and/or in the alternative and without prejudice to the foregoing, by way of purported deed of transfer dated 11th July 2014, the First Named Defendant purported to transfer to the Second Named Defendant its rights, title and/or interests in facilities between the IBRC and the Plaintiff, as borrower. Insofar as the said deed of transfer was only executed by the Third Named Defendant and not jointly by both special liquidator, the purported deed of transfer was not effective to transfer the facilities/loans and/or associated rights relating to Plaintiff loans to the Second Named Defendant and in this respect the Plaintiff pleads as follows:

> (a) The purported transfer was an act done by the Third Named Defendant pursuant to section 231 of the Companies Act.
>
> (b) The Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013, failed to provide whether an act done by the Companies Act, required or authorised to be done by the special liquidator is to be done by all or any one or more of the persons appointed.
>
> (c) The Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013, does not authorise an act of sale or transfer under section 231 of the Companies Act, to be done by one special liquidator (the Third Named Defendant) acting individually.
>
> (d) Insofar as the purported deed of transfer of the loans/facilities, including the Plaintiffs loans was only executed by the Third Named Defendant individually, it was ineffective to transfer the facilities and/or loans to the Second Named Defendant.
>
> (e) Arising from the above, the Second Named Defendant has no entitlement to seek judgment against the Plaintiff on foot of such loans/facilities.
>
> (f) Insofar as the Second Named Defendant has acted on foot of such purported ineffective transfer, it is has been guilty of trespass to property, has unlawfully obtained access to confidential information, interfered with business relations between the First Named Defendant and the Plaintiffs, has been committed the torts of conspiracy, maintenance and/or champerty and/or has otherwise acted unlawfully. As a result of the unlawful actions of the Second Named Defendant, the Plaintiff has suffered loss, damages, inconvenience and/or expense.

Overcharging

43. After their appointment, the Third and Fourth Named Defendants purported to review the issue of overcharging. The Third Named Defendant in his evidence in the Chapter 15 Bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware on 8 October 2013, having asserted (incorrectly in respect of the Plaintiff in the within proceedings at least) that the IBRC in 2012, had written to all customers affected by the "cost of funds Issue" [i.e. the overcharging of interest from 1999 to 2004], and provided them with cheques for what the IBRC had determined was the compensation for that overcharging, went on to state that the Special Liquidators had "reviewed all of that and became very comfortable with it. And it is our view that the overcharging does not exist in IBRC today." With regard to the issue of whether interest was charged on a 360 or 365 day basis, Third Named Defendant stated that "again, we independently had a review of that, and we are comfortable that an issue does not exist in that regard."

44. The said assertions, so far as they purports to indicate that the Third and Fourth Named Defendant are "comfortable" in standing by what had been done, and not done, by the IBRC in respect of the overcharging, constitutes a knowing endorsement and adoption of the conduct of IBRC, which said conduct was unlawful as identified herein.

45. By letter dated 17th January 2013, the Plaintiff wrote to the directors of the IBRC, raising concerns relating, *inter alia*, to systematic and long term overcharging of interest by Anglo Irish Bank. No response was received with respect to such concerns.

46. The Plaintiff pleads in respect of the First, Third and Fourth Named Defendants that, it and/or they:

> (i) continued to maintain proceedings against the Plaintiff seeking unlawfully charged interest:
>
> (ii) purported to assign to the second named Defendants a cause of action which they knew and know to include an unlawful claim for overcharged interest, and
>
> (iii) contractually bound the IBRC, during the period until substitution of the second named Defendant might occur, to continue to seek compensation in ongoing litigation against the Plaintiff for overcharged interest.

(iv) The said acts of Third and Fourth Named Defendant, for which the accordingly the First Named Defendant is legally responsible, as a legal person and vicariously, constitute::

(a) An abuse of the judicial process;

(b) the tort of malicious adoption and further maintenance of civil proceedings;

(c) the tort of fraudulent misrepresentation;

(d) the tort of negligent misrepresentation;

(e) the tort of negligence;

(f) the tort of misfeasance of public office;

(g) the tort of causing economic loss by unlawful means;

(h) the tort of conspiracy;

(i) breach of the Plaintiff's constitutional rights, including:

(1) his right to property, under Article 40, section 3 and Article 43 of the Constitution;

(2) his right to the person, under Article 40, section 2 of the Constitution:

(3) his right to equality before the law, under Article 40, Section 1 of the Constitution;

(4) his right to human dignity, under Article 40, Section 1 and 3 of the Constitution;

(5) his right to access of the courts, under Article 40, Section 3 of the Constitution;

(6) his right to litigate under Article 40, Section 3 and 43 of the Constitution;

(7) his right to fair procedures, including natural and/or other constitutional justice;

(j) Breach of section 3 of the European Convention on Human Rights Act 2004;

(k) Breach of the Plaintiff's rights under the Charter of Fundamental Rights, f the European Union, in particular Articles, in particular Articles 15, 16, 17, 20 and 47 thereof.

The module dealing with the quantum issue

47. In the proceedings then entitled, IBRC (in special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM), the module addressing the issue of quantum of the amount of the Plaintiff's claim was heard over three days, from 3 to 5 June 2014. The First Named Defendant had previously, at a late stage, purported to waive the amount that it had overcharged before 2004, whilst failing to acknowledge that it was not entitled to claim this sum.

48. The First Named Defendant denied that it had since 2003 charged the Plaintiff five days *per annum* more interest than was its contractual entitlement deriving from all facility letters that followed the change from the Irish pound to the euro. The Plaintiff will rely upon the transcript of evidence during the hearing and without prejudice, in particular, it will rely upon the following matters and/or extracts from the same:

(i) The First Named Defendant adopted the clear position through its submissions on the opening day (3 June 2014) and through the evidence given on the opening day by Mr Ambrose, an employee of the First Named Defendant and the evidence in chief given on the opening and second days by its expert witness, Mr Jacobs, that the change from a 365 day computation of interest to one based on 360 days had involved no extra cost to the Plaintiff. It specifically denied that it had charged interest on a 365/360 day basis.

(ii) On the opening day (3 June 2014), when Mr Ambrose was asked in cross examination whether the First Named Defendant had gained out of the change from 365 to 360 days, he replied that it had not. When the Honourable Ms Justice Finlay Geoghegan asked him "...From your investigation of the figures relating to Mr Morrissey's accounts did Anglo get more actual interest paid to them after the conversion from 365 to 360 relative to the same rates of interest?", Mr Ambrose replied: "No I don't – having reviewed Paul Jacobs' model I don't believe that they did on a daily accrual basis."

(iii) Mr Jacobs's evidence in chief and initial replies during cross examination invited the Court to accept that the First Named Defendant, in all the years after the change from the Irish pound to the Euro, had made no increased charge for interest, by reason of such change.

(iv) On the opening day (3 June 2014), counsel for the First Named Defendant took Mr Jacobs through two different periods with different interest rates, "just chosen for the purposes of illustration". (Page 139 of the Transcript.) They were described as "both post 1 January 2002", which was the date of the change to the Euro. (Page 139). They were "just simply worked examples". (Pages 139-140). Mr Ambrose invited the Court to conclude that the move from a 365 day calculation to one of 360 days involved no increase in the interest charged the Plaintiff. Counsel for the first named Defendant asked:

"And so the difference between the two is, prior to 1 January 2002 is 365/365, subsequent to that date it's 360/360?"

Mr Jacobs replied:

"Yes, that's correct." (Page 140.)

(v) On the morning of the second day (4 June 2014), Mr Jacobs initially maintained this position. Mr Ambrose in cross-examination was asked to compare two scenarios, in 2000 and 2007, respectively, where a borrower borrowed one million euros at 5% interest. Would there be any difference in the amount of interest he had to pay, with interest being calculated on a 365 day and 360 day basis, respectively? The Court clarified the question asked by counsel to this effect and

Mr Jacobs replied:

"Okay. So, Judge, I can confirm that if there's the same facility letter and the same terms that numerically there would be the same value of interest which would be charged in 2000 and would be in 2007." (Page 26)

Counsel for the Plaintiff enquired:

"Even though in 2000 they calculated on a 365? They moved to 360 and you're saying that the same amount would be charged in 2007?"

Mr Jacobs replied:

"That's right. And I have set that out in the cut off testing that I actually did and I presented to the Court earlier today, Judge." (Pages 26-27)

Later, counsel for the Defendant asked:

"....Did the bank in many years after the transition from the earlier system, the 365 days to the 360 days, did the Bank charge its customers more money as a result of moving to 360 days? It either did or it didn't."

Mr Jacobs replied:

"No, it didn't." (Page 29)

(vi) The Court proceeded to seek clarification from Mr Jacobs on the issue. It emerged from this initiative of the Court that the period following the change to the euro which Mr Jacobs had used as a point of comparison between the earlier 365-day basis for interest calculation and the later 360 day basis, so as to demonstrate to the Court that the change had not involved an extra charge of interest to the Plaintiff, had been during the period of transition of the Irish currency to the euro. Under the previous facility letter of [July] 2002, the first named Defendant had been contractually bound to calculate interest on a 365-day basis. The fact that the Irish currency system had changed on 1 January 2003 could have no effect on the interest rate charged under that contract for the duration of that contract. The very next facility letter, however, of July 2003 contained a different formula, which Mr Jacobs represented as involving no extra cost to the Plaintiff. Yet, in order to "prove" that no extra charge was involved, Mr Jacob based his comparison on the figures derived from the period between 1 January 2003 and July 2003. This strategy was calculated to mislead the Court and hide the fact those five days extra interest had been charged the Plaintiff from July 2003 to date.

(vii) Mr Jacobs sought to persist in arguing that there was no extra cost to the borrower but, on invitation from the Court (pages 60-61) agreed that there was (Page 61). Mr Jacobs appeared to resile from this position in subsequent cross examination and it required further elaboration from the Court to get him to return to that concession. (Pages 64-66)

(viii) The evidence of Mr O'Connor, an expert witness called on behalf of the Plaintiff, revealed fully the truth of what the first named Defendant had actually been doing. Thereafter, in the light of what could no longer be denied, the first named Defendant sought to rehabilitate its claim by seeking to justify on contractual grounds the charging of five days' extra interest per annum since 2003. Such a strategy was directly contrary to what the first named Defendant had invited the Court to adopt at the commencement of the module and through the evidence adduced in examination in chief of the first named Defendant's witnesses.

49. The said conduct by the First Named Defendant constituted (i) an abuse of the judicial process, (ii) a breach of the Plaintiff's constitutional rights, (iii) a breach of the Plaintiff's Convention rights under section 3 of the European Convention on Human Rights Act 2003, (iv) a breach of the Plaintiff's rights under the Charter of Fundamental Rights of the European Union, and (v) a fundamental breach of contract.

50. In a judgment dated October 2014, Ms Justice Finlay Geoghegan held that the First Named Defendant had been charging five days' interest per annum to which it was not lawfully entitled.

Purported Loan Sales Process and Breach of Fair Procedures

51. A copy of a letter from the special liquidator dated 9th September 2013 referring to the loan sales process and enclosing extracts from the Ministerial Directions and/or Instructions was forwarded to the Plaintiff. The said letter of 9th September 2013 was a generic letter sent to all debtors of the IBRC. The letter itself stated that no decision had yet been taken by the special liquidator regarding how the loans would be offered for sale and referred to an entitlement to make submission as to: (1) how the loans are to be sold and (2) the criteria for determining who may be regard as a qualified bidder. Attached to the letter was Schedule 2 (said to be based on professional advice) which related to the relevant criteria identified by the Special Liquidators for the decision as to the method of disposing of the loans and also Schedule 3 (again said to be based on professional advice) which referred to relevant criteria identified by the special liquidators for determining whether or not a bidder should be regarded as a qualified bidder. In this respect the Plaintiff pleads as follows:

(i) The First, Third and Fourth Named Defendant are subject to public law obligations and/or in carrying out the loan sales process, were obliged to afford fair procedures and/or natural and/or constitutional justice, to the borrowers which included the Plaintiffs. In this regard the requirements of fair procedures, include adequate notice of its proposed decisions, an opportunity to make submissions, the provision of adequate information to the Plaintiff to allow him to make submissions and/or a requirement of notice of its ultimate decision to sell the loans and/or a requirement to give reasons.

(ii) Any purported entitlement to make submissions on these matters was entirely undermined by the fact that the special liquidator had already set pre-ordained criteria set out in Schedule 2 and 3 attached to the letter of 9th September 2013

(iii) In accepting the criteria set out in Schedule 2 and 3, the First, Third and Fourth Named Defendants unlawfully fettered their discretion in in respect of the loans sales process.

(iv) Any purported entitlement to make submission on these matters was entirely illusory and meaningless.

52. Nonetheless and without prejudice to the foregoing, a submission dated 10th September 2013 was made by Black and Company solicitors on behalf of the Plaintiff to the special liquidator. These submissions referred, *inter alia*, to the existence of the present proceedings which had been ongoing for some two years and that the special liquidator was not entitled to seek property which was the subject of litigation, as this would breach his constitutional rights. Without prejudice to this, submissions were also made to the effect, *inter alia*, that the Plaintiff should qualify as a qualified bidder and that the loans should be offered for sale individually as they have no economic connection with would justify the loans being offered as part of a larger portfolio. The letter of 10th September 2013 further requested that the Plaintiff be informed of a range of matters including the valuations and the terms of conditions of sale and sales process and sought a response from the special liquidator.

53. No response was received to aforesaid letter and a further letter dated 20th September 2013 was sent to the Third and Fourth Named Defendants. Again no response was received and another letter dated 4th October 2013 was sent to the Third and Fourth Named Defendant stating, inter alia, that for the special liquidators, as an organ of State, to take any steps which would affect the ongoing litigation would be an unconstitutional interference with the separation of powers.

54. A letter dated 9th October 2013 was received from the Third and Fourth Named Defendants. The response made no reference to the ongoing litigation and said that a decision had been made for the sale of INBS assets which includes the defendant's obligations but that no decision had been made on the Anglo Assets (which was the subject of the existing IBRC proceedings). As regards potential purchasers it said that the special liquidators had decided that the criteria which they will apply are those set out in Schedule 3 and repeated the same formula as was set out in their earlier letter in respect of Schedule 3 of having regard to professional advice and based on their objective of maximising sales realisation in the public interest. The letter simply confirmed the criteria which had already been established and there was no evidence of having considered any submissions. The letter concluded by saying that the special liquidators were considering on the appropriate method of selling the Plaintiff's Anglo obligations and the appropriate criteria as to who would qualify to make a bid for these loans. It then said that it is currently anticipated that the substantial majority of loans will be offered for sale by way of large loan portfolios and the submission of the Plaintiff would be considered.

55. By letter dated 1st November 2013, the Plaintiff was forwarded a letter from the First Named Defendant. The letter referred to the First Named Defendant's earlier letter dated 9th September 2013 and stated that a decision had been taken by the special liquidators to include all of the Plaintiff's loans in a large portfolio of loans as defined in the September letter. It further said that in the September letter, the Plaintiff was informed that they anticipated that a substantial majority of loans would be offered for sale in large loan portfolios. No mention whatsoever was made of the fact that the Plaintiff had made submissions in respect of the sale of the loans and furthermore no reasons were given for the apparent rejection of the same. Furthermore, the reference back to the previous letter of 9th September 2013 and endorsement of the criteria stated therein, further supports the view that the request for submissions on such criteria was entirely illusory.

56. The letter further said that the First Named Defendant had obtained advice from their professional advisors in relation to the Plaintiff's loans and having regard to the criteria set out in Schedule 2 of the letter of September, it had been decided that the loans should be sold in this way having regard to the size of the loans; the likely credible interest from adequately funded qualified bidders and in order to maximise sales realisations in the public interest. In respect of the same, the Plaintiff pleads as follows:

> (a) Insofar as the letter referred to advice from their professional advisors, this was the same formula used in the September 2013 letter and the First, Third and/or Fourth Defendants unlawfully fettered their discretion.
>
> (b) Insofar as the letter said that "having regard" to the criteria set out in Schedule 2 of the letter of September, it is evident that no regard was had to the submissions made by the Plaintiff.

57. The letter further said that the special liquidators were acting in accordance with their obligations under the Act and the Ministerial instructions which include to sell the assets of IBRC as soon as possible and in no any event, by not later than 31 December 2013 or as soon as practicable thereafter. It said that the special liquidators expect the portfolio of loans to put on the market or around 11th November 2013 and will be sold as soon as possible thereafter. As regards the sales process, the letter said that the special liquidators had decided that the criteria which they will apply are those which were set out in the Schedule 3 of the September letter. It said that special liquidators have taken this decision having regard to professional advice and based on their objective of maximising sales realisations in the public interest. It further said the portfolio will have a part value of approximately €1.33 billion. There was no evidence that the First Named Defendant had regard to the submissions made by the Plaintiff (and there was no reasons given for the apparent rejection of his submissions) and it again referred back to the criteria on qualified loan bidders in the September letter, notwithstanding that it had sought submissions on such criteria in that letter.

58. The letter further said that if no bid is received or if the bids fall below the valuation price, the special liquidator will be obliged to sell the portfolio to NAMA. The letter further said that it will be necessary for the special liquidators in the course of the sales process, to provide information about the loans to qualified bidders and will only provide such information to qualified bidders who have agreed to comply with non-disclosure obligations.

59. Notwithstanding that the sale was to be completed by the 31st December 2013 no further communication of the process or decisions was made by the special liquidators to the Plaintiff. It appears that on the 31st March 2014 a contract for the assignment of the Plaintiff's loans was entered into between the First and Second Named Defendant. However, it was only during the first week of May 2014 that the existence of such agreement was disclosed to the Plaintiff, by counsel for the IBRC in Court on 2nd May 2014 and by letter from Arthur Cox to Black Solicitors for the Plaintiff on 7th May 2014. As will be set out hereinafter, the First Named Defendant purported to transfer the loans of the Plaintiff to the Second Named Defendant on the 11th July 2014.

60. In respect of all the foregoing, the Plaintiffs pleads that in the purported loan sales process and/or purported sale of the Plaintiff's loans:

> (a) The First, Third and Fourth Named Defendant failed to comply with fair procedures and/or natural and/or constitutional justice.
>
> (b) Without prejudice to the above, the First, Third and/or Fourth Named Defendant failed to afford the Plaintiff fair procedures and/or natural and/or constitutional justice:
>
> > (i) in failing to give any or any adequate notice of the purported transfer and/or assignment to the second named Defendant;

(ii) in failing to provide any meaningful and/or adequate entitlement to make submissions in circumstance, *inter alia*, where the criteria for the sale of loans and/or qualified bidders was already pre-ordained and/or decided;

(iii) in failing to give any reasons for the rejection (and/or notice of the rejection) of the submissions made by Plaintiff regarding, *inter alia*, the purported sale of his loans and/or facilities;

(iv) in failing to inform and/or promptly inform the Plaintiff of the purported sale of the Plaintiff's loans to the second named Defendant;

(v) in failing to consider and/or give adequate consideration to the submissions made by the Plaintiff relating to the purported sale/transfer of his loans.

(vi) in failing to disclose adequate and/or intelligible details and/or terms relating to such sale and/or assignment by producing a redacted and/or excessively redacted loan sale agreement and/or deed of transfer.

(vii) in failing generally to keep the Plaintiff fully informed of the purported sale and/or transfer and/or process leading to such purported sale and/or transfer.

(c) The First, Third and Fourth Named Defendant, unlawfully fettered their discretion in purporting to establish criteria as to the method of disposing of the loans (as set out in Schedule 2) and in purporting to establish criteria as to whether or not a bidder should be regarded as a qualified bidder (as set out in Schedule 3)

61. Following the entry into special liquidation of the First Named Defendant, the following corporate governance structure was established for the First Named Defendant which included:

1. A Supervisory Committee responsible for:

– oversight of IBRC in Special Liquidation;

– overseeing the risk profile and implementation of the strategy for the liquidation/Winding Up Plan in adherence to Ministerial Instructions as well as management of legacy matters; and

– monitoring the system of internal controls.

Members of the Supervisory Committee are Kieran Wallace (Chairman), Eamonn Richardson and John Hansen (KPMG partner). Members of IBRC's senior management and other KPMG partners also attend.

2. Credit Sanctioning Authorities with responsibility for, inter alia, the role of credit sanctioning authorities is to approve, monitor and control credit risk (including banking and treasury credit risk).

3. Senior Management Meeting. The Senior Management Meeting has been delegated authority from the Third and Fourth Named to manage IBRC's day-to-day affairs. Its role is to:

– propose the policies, processes and standards under which IBRC will execute the wind up strategy;

– assist in developing the work-out plan for submission to the SLs; and

– oversee implementation of the agreed work-out plan in support of the SL.

- The Meeting is chaired by Declan Keane (KPMG partner) and its members include IBRC senior management and KPMG workstream leaders

62. With respect to the aforesaid committees and/or authorities, the Plaintiff pleads as follows:

(1) There was no authority to establish such committees and/or authorities.

(2) The establishment of the same and conferring on such committees and/or authorities of decision making powers constitutes an unlawful delegation and/or abdication of statutory duties and power by the Third and Fourth Named Defendants.

(3) Insofar as the Senior Management Meeting decided and/or authorised and/or approved the loan sale process including the relevant criteria, the same was unlawful insofar as such decision was no made solely by the Third and Fourth Named Defendants.

(4) Insofar as the Senior Management Meeting and/or any other committee or authority decided and/or authorised and/or approved the sale of the Plaintiffs loans to the Second Named Defendant, the same was unlawful insofar as such decision was not made solely by the Third and Fourth Named Defendants.

Failure to Comply with Ministerial Directions and/or Instructions

63. Pursuant to section 9(1) of the IBRC Act 2013, the Fifth Named Defendant purported to issue directions and/or instructions to the Third and Fourth Named Defendants setting out the details in respect of the manner in which the winding up of IBRC is to proceed. The said directions and/or instructions (including those issued on the 10th May 2013) required the sale of the assets of the First Named Defendant as soon as possible and in any event, by not later than 31 December 2013 or as soon as practicable thereafter. It further said that it would thereafter be obliged to sell to NAMA.

64. In a letter dated 1st November 2013 to the Plaintiff the First, Fourth and/or Fifth Named Defendants further represented that the

Plaintiff's loans would be sold as soon as possible and in any event, by not later than 31 December 2013 or as soon as practicable thereafter. The letter further said that if no bid is received or if the bids fall below the valuation price, they will be obliged to sell the portfolio to NAMA.

65. Section 9(3) of the IBRC Act 2013 states that a special liquidator shall comply with instructions issued or any direction given under the Act. In breach of the said directions and/or instructions issued by the Fifth Named Defendant, the Third and Fourth Named Defendant failed to sell the same assets, by not later than 31 December 2013 or as soon as practicable thereafter. In further breach of the directions and/or instructions, the Third and Fourth Named Defendant failed to sell the portfolio to NAMA. Additionally, in breach of the Ministerial directions and/or instructions, the First, Third and/or Fourth Named Defendants purported to sell loans of the First Named Defendant, including that of the Plaintiff to the Second Named Defendant by way of deed of transfer dated 11th July 2014.

66. The First, Third and/or Fourth Named Defendants had no authority and/or power and/or jurisdiction to sell the said loans to the Second Named Defendant and as consequence any such purported transfer and/or sale to the Second Named Defendant is invalid, void and/or of not effect.

Redacted Loan Sale Agreement/Deed and Maintenance and/or Champerty

67. As hereinbefore set out, it was only during the first week of May 2014 that the existence of such agreement was disclosed to the Plaintiff, by counsel for the IBRC in Court on 2nd May 2014 and by letter from Arthur Cox to Black Solicitors for the Plaintiff on 7th May 2014.

68. The Plaintiff responded to this disclosure by issuing a notice of motion on 15th May 2014 which was directed by Kelly J to this Honourable Court.

69. The motion was heard on 27th May 2014 and during the hearing of the motion the question arose as to the extent to which the loan sale agreement purported to give an entitlement to the purchaser of the Plaintiff's loans to interfere with or influence the within litigation. The Court made an order for production of a copy of the loan sales agreement, in advance of the hearing on 3rd June, redacted of all commercially sensitive and confidential information not relating to:

> "(1) The nature of the interest in the loans and related rights of action ....being sold or transferred pursuant to the deed;
>
> (2) The position of the plaintiff or the vendor in relation to the loan pending completion of the sale and
>
> (3) The respective rights and obligations of the vendor or Plaintiff, if the Plaintiff is not the vendor, and purchaser, whether monetary or otherwise in relation to the rights of action the subject of the loan sale deed both prior to and after completion of the sale."

70. In purported compliance with the said, the First Named Defendant on 29th May 2014 produced a heavily redacted loan sale agreement which was almost completely redacted and The Plaintiffs pleads that heavily redacted loan sale agreement was not in compliance with order for production, in particular the requirement (3) of the Order of Production cited above.

71. Notwithstanding the heavily redacted loan agreement, it contained a number of provisions which allowed the Second Named Defendant to interfere with the litigation and so impact on the First Named Defendant's conduct in the extant proceedings against the Plaintiff. Under paragraph 11.1.8, the First Named Defendant agreed that it:

> "….shall not initiate or settle litigation in respect of an asset in which the vendor is the plaintiff against an obligor, or consent to orders in such litigation, which relates to an asset without first notifying the purchaser of its intention to do so and the vendor will reasonably consider any request received in writing from the purchaser to take any action or refrain from taking any action in any such current or proposed litigation, subject always to the vendor's ability to reasonably refuse to take or refrain from taking any such action ...."

The effect of such a clause, in the context of the agreement as a whole, was to place the First Named Defendant under the control of the purchaser in circumstances where the special liquidators were exercising their statutory power to prosecute and continue the proceedings against the Plaintiff.

72. The First Named Defendant made a range of contractual commitments which could apply to and/or affect the extant litigation including:

> - Under paragraph 11.1.3, the First Named Defendant agreed that it would "consider any reasonable request received in writing from the Purchaser to take any action or refrain from taking any action with respect to a particular Asset (as the case may be), subject always to the Vendor's ability to reasonably refuse to take or refrain from taking any such action ...."
>
> - Under paragraph 11.1.5, the First Named Defendant agreed that it "shall not waive any breach by an Obligor under any Facility, Finance Agreement and/or any Hedging Transaction."
>
> - Under paragraph 11.1.6, the First Named Defendant agreed that it "shall not assign or novate or sub-participate any of its rights under any of the Finance Agreements or any of the Hedging Agreements."

73. As will be set out hereinafter, the right of the special liquidators to prosecute and continue the proceedings (and also the control or funding of such proceedings) against the Plaintiff was and/or is not capable of lawful assignment to the Second Named Defendant and in purporting to do so the loan sale agreement was void and/or invalid. In addition and without prejudice to the foregoing, the loan sale agreement was inherently champertous insofar as the First Named Defendant entered into a binding agreement of sale, but had also continued with the proceeding against the Plaintiff

74. Certain clauses in the purported agreement also dealt with an application for substitution of the First Named Defendant after completion. Under paragraph 11.8.5, the purchaser undertook the obligation, within 30 days of completion, to apply to this Honourable Court to be substituted as Plaintiff in proceedings (which would include the extant IBRC proceedings). The purchaser further undertook irrevocably and unconditionally, to indemnify the Plaintiff (i.e. the IBRC) and Special Liquidators "against all costs incurred in relation to any Plaintiff Proceedings after the relevant Completion Date or, if later, the date on which ....notification of such Plaintiff

Proceedings .... is provided under this Clause 11.6.5 (including but not limited to all legal professional fees end disbursements incurred by the Vendor after the relevant Completion Date and any extant or further orders requiring the Vendor to pay costs of any party to such litigation)."

75. Under the same paragraph, the First Named Defendant was said to be under no obligation to continue the litigation after completion but then somewhat confusingly and contradictorily stated that the First Named Defendant when called upon by the purchaser was bound to take or refrain from taking any action in the litigation after the relevant Completion Date, provided it was reasonable and would not breach duties of the special liquidators. In this regard it stated:

> "It is agreed that the Vendor shall be under no obligation to continue any such litigation in respect of the Assets and shall be entitled to take such action or refrain from taking such action as the Vendor sees fit (including discontinuing or settling the litigation or consenting to orders in the litigation) provided always that if the Purchaser has filed a Substitution Application within the timeframe referred to above and if the Purchaser calls upon the Vendor to take or refrain from taking any action in the litigation after the relevant Completion Date the Vendor shall agree to take such action or refrain from taking such action in the litigation (provided such requested action or inaction is reasonable and would not give rise to a breach or potential breach by the SLs of any of their official or other duties as SLs)…."

the above clause also mandated champertous actions, insofar as the First Named Defendant had purported to transfer the assets to the Second Named Defendant but nonetheless had committed to taking action in the proceedings on behalf of the purchaser.

76. On 10th June 2014, the First Named Defendant produced a copy of the full text of the said clause, contained in the redacted loan sale agreement. The previously redacted portion of Clause 11.1.8 makes a reference to "the Purchaser's indemnity set out in Clause 11.12", yet the document has been so radically redacted that, not only is Clause 11.12 entirely redacted but no mention of the Clause is contained in the Contents. Furthermore, the redaction of all of the clauses from Clause 2.3.6 to Clause 9.6 and the failure in the Contents even to identify what is the subject matter of these clauses make it impossible for the Plaintiff to have any idea as to what has been redacted or what justification there might be for such redaction.

77. In producing a heavily redacted loan sale and/or deed of transfer, the First, Third and/or Fourth Named Defendant, failed to comply with public law obligations, which includes a requirement to comply with fair procedures and/or further failed to comply with duties to (and respect for) the Court, including that justice should be administered publically and/or the due and valid administration of justice.

78. The Plaintiff reserves the entitlement to refer to and/or rely upon other provisions of the redacted loan sale agreement and/or deed of transfer and/or to seek discovery of an unredacted loan sale agreement and/or deed of transfer and to rely upon the terms of the same.

79. On 11th August 2014, the Second Named Defendant issued a Notice of Motion and Affidavit seeking an Order that it be substituted for the Plaintiff (Irish Bank Resolution Corporation Ltd in Special Liquidation) in the those proceedings. Exhibited with this application was a letter of consent from the special liquidators, the Third and Fourth Named Defendants. In purporting to give consent to the application to substitute, the Third and Fourth Named Defendants had sought to consent to transferring the control of proceedings to a third party, in breach of their fiduciary duties and in abdication of their responsibilities in the liquidation process. In so consenting the Third and Fourth Named Defendants wrongly acknowledged that First Named Defendant had assigned and/or transferred to the right to prosecute and/or to conduct the proceedings, which was an exercise of statutory discretion by the Third and Fourth Named Defendants.

80. The acts of the First and Second Defendants, in entering into a loan sale agreement dated 31st March 2014 under which the Second Named Defendant was purportedly contractually entitled, before completion of the sale, to interfere with and/or influence the conduct of the First Named Defendant as Plaintiff in the extant and ongoing legal proceedings between the first named Defendant and the Plaintiff (which proceedings are entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* and/or in entering/executing the purported deed of transfer on the 11th July 2014:

> (i) constituted and/or constitutes the torts of maintenance, champerty, the causing of economic loss by unlawful means and conspiracy,
>
> (ii) was and/or is an abuse of the judicial process,
>
> (iii) breached and/or breaches the Plaintiff's constitutional rights, including his right to litigate, his right of access to the courts and his right to equal treatment.

81. The said loan sale agreement dated 31st March 2014 and/or the purported Deed of Transfer consequent on the same dated 11th July 2014 was and/or is illegal and void and/or such portion of the same, was and/or is illegal and void insofar it purports to relate to the loans and/or accounts of the Plaintiff.

82. At all material times while the first named Defendant was litigating against the Plaintiff neither the loan sale agreement nor any plans for such an agreement or agenda for the trafficking of the first named Defendant's and all other Anglo loans were disclosed to the Commercial Court.

83. In the premises the Plaintiff was deprived of fair procedures and gravely prejudiced in the exercise of his constitutional rights (i) to litigate, (ii) of equal treatment and (iii) of access to the courts.

84. On 23 May 2014 the Commercial Court at a case management hearing was misinformed and misled as to the nature and effect of the loan sale agreement and gave directions for the disclosure of the said loan sale agreement to the Plaintiff, as appears from the Order of 23 May 2014.

85. The loan sale agreement and/or purported deed of transfer, insofar as may be discerned from those parts of it that are unredacted:

> (i) purports to constitute the sale of ongoing legal proceedings,
>
> (ii) creates strong financial incentives for the first named Defendant:

(a) to maintain the litigation,

(b) to maintain that element of its claim, known by it to be unlawful, for the unlawfully charged interest,

(iii) not to withdraw the said claim,

(iv) not to inform the Court of the unlawful character of the claim.

86. The said redacted loan sale and/or deed of transfer does not amount to lawful basis and/or evidence of the transfer of the loans of the Plaintiff to the Second Named Defendant.

87. On the 10th November 2014, Ms Justice Finlay Geoghegan made an order in the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* substituting Stone Investments (the Second Named Defendant in the present proceedings) for the IBRC (the First Named Defendant in the present proceedings) as Plaintiff in those proceedings. In making such Order for substitution the Court made no determination as to the effectiveness or validity of the purported transfer or assignment of the debts or loans of the Plaintiff pursuant to the deed of the 11th July 2014.

Purported Sale of Right to Continue and Prosecute proceedings in The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)

88. Following the appointment of the Third and Fourth Named Defendants as special liquidators to the First Named Defendant on the 7th February 2013, Counsel for the First Named Defendant informed Ms Justice Finlay Geoghegan on the 8th February 2013, that they had been instructed by the Third and Fourth Named Defendant to continue the proceedings then entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM*) against the Plaintiff. In continuing to prosecute the proceedings the Third and Fourth Named Defendants were acting in the purported exercise of their statutory powers under section 231(1)(a) of the Companies Act 1963 as amended.

89. By an agreement in writing made the 23rd March 2013 the Third and/or Fourth Named Defendant purported to negotiate a sale of the First Named Defendant's loans (including relating to the Plaintiff) to the second named Defendant.

90. Without prejudice to any pleading contained in this Statement of Claim, on 11 July 2014 the Third Named Defendant purported to execute a Deed of Transfer whereupon the First Named Defendant waived and abandoned all rights, title and interest to the Plaintiff's loans and/or the security provided by the relevant Facility Letters.

91. The said extant proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* were at the date of the purported loan sale agreement and/or deed of transfer being prosecuted and/or conducted by the special liquidators of the first named Defendant pursuant to their statutory power under section 231(1)(a) of the Companies Act 1963 as amended.

92. The power and/or entitlement of the Special Liquidators of the first named Defendant to prosecute and conduct the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* was not capable of lawful assignment, transfer and/or sale and was not lawfully assigned, transferred and/or sold to the second named Defendant.

93. The control and funding of the said proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* is not capable of lawful assignment, transfer and/or sale and/or was not assigned, transferred and/or sold to the second named Defendant.

94. Any power and/or right of the special liquidators of the first named Defendant to prosecute and conduct the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* does not fall within the scope of the purported loan sale agreement and/or deed of transfer of the Plaintiff's loans to the second named Defendant.

95. The power and/or right of the special liquidators of the first named Defendant to prosecute and conduct the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM)* is not an asset of the First Named Defendant and was and/or is not capable of lawful assignment and/or sale.

96. Insofar as the special liquidators of the First Named Defendant decided on the 8th February 2013 to continue with the existing proceedings *Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM*), they did so pursuant to their statutory powers under section 231 of the Companies Act and as such the proceedings constituted a cause of action vested in the special liquidator by virtue of their statutory powers and not a cause of action of the First Named Defendant.

97. The Third and Fourth Named Defendants, acted unlawfully and/or in breach of their fiduciary duties and/or statutory duties or otherwise and/or in breach of the integrity of the liquidation process and/or in breach of public policy, in purporting to transfer and/or agree to transfer the right to prosecute and/or conduct the existing proceedings (*The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM)* to the Second Named Defendant.

98. The second named Defendant has no lawful entitlement to prosecute and/or conduct and/or obtain judgment as plaintiff in the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey (Record No. 2011/1548 S/2011/86 COM*), whether as a result of the purported loan sale agreement, deed of transfer or otherwise and, insofar as the purported loan sale agreement and/or deed transfer purports to so entitle the second named Defendant, the same are null, void and/or of no effect.

99. In the alternative and without prejudice to the foregoing, insofar as the First Named Defendant has transferred, sold and/or assigned the loans of the Plaintiff, the subject matter of the earlier proceedings, then:

(i) the right of first named Defendant and/or the special liquidators of the first named Defendant to prosecute and/or conduct such proceedings constitutes a bare right with no underlying assets and they have no standing and/or entitlement to continue those proceedings,

and

(ii) such right to prosecute and/or conduct such proceedings has not and/or is and has not lawfully been transferred, sold and/or assigned to the second named Defendant,

and

(iii) consequently, those proceedings require to be struck out and/or dismissed.

Absence of Legal Basis and/or Power to transfer loans to the Second Named Defendant

100. Without prejudice to the foregoing, the First Named Defendant purports to transfer the loans of the Plaintiff to the Second Named Defendant pursuant to Clause 18.2 of the General Terms and Conditions which accompanied the facility to the Plaintiff dated 2nd February 2009.

101. Section 18 of the General Terms and Conditions which entitled "Disclosure of Information". Clause 18.1relates to disclosure of information relating to the performance by the Defendant of obligation to the Irish Credit Bureau Limited and to other credit reference bureaus. Also Clause 18.3 provides that the Defendant as borrower consents for the purposes of the Data Protection Act, 1988 to the disclosure of personal data to the Irish Credit Bureau Limited.

102. In the context of the above, Clause 18.2 relates to the disclosure of information and does not in itself confer a substantive entitlement to the Bank to transfer and/or assign the agreement and/or security. Clause 18.2 of the general terms and condition is not a valid legal basis for the purported transfer and/or assignment of the facilities from IBRC to Stone Investments.

103. Further and/or in the alternative, insofar as the First, Third and/or Fourth Named Defendant seeks to rely upon section 28(6) of the Supreme Court of Judicature Ireland Act 1877 as the legal basis and/or authority for the transfer/sale , such provision was not invoked by the First Named Defendant as the basis for the sale and/or transfer and/or is such provision inapplicable to the purported sale/transfer and/or if it is applicable, the conditions of the subsection, were not satisfied so as to effect the sale and/or transfer to the Second Named Defendant.

104. Further and/or in the alternative, insofar as the First, Third and/or Fourth Named Defendant seeks to rely upon section 12 of the IBRC Act 2009 as the legal basis and/or authority for the transfer/sale such provision is not inapplicable and/or if applicable, in the alternative, is unconstitutional.

Section 12(1) of the Irish Bank Resolution Corporation Act 2013

105. Insofar section 12(1) of the Irish Bank Resolution Corporation Act 2013 provides that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, the same:

(i) does not apply and/or extend to the purported transfer, sale and/or assignment of the power/right of the special liquidators to prosecute, conduct and/or continue legal proceedings,

(ii) more particularly, does not apply and/or extend to the right to prosecute, conduct and/or continue as Plaintiff in the proceedings entitled Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM

(iii) does not have the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a right of action that, apart from the said subsection,(a) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process and/ or breaches the constitutional rights of a Defendant in such action.

106. Insofar as section 12(1) of the Irish Bank Resolution Corporation Act 2013, in providing that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, has the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a right to prosecute and/or conduct proceedings that, the same:

(i) Breaches public policy, the integrity of liquidation process and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process or

(iii) breaches the constitutional rights of a Defendant in such action and

(iv) breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

the said subsection is invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

107. Insofar as sections 12(1) and/or 12(5) authorise the First, Third and/or Fourth Named Defendants to sell or transfer a cause of action, on such terms and conditions as the special liquidators thinks fit, notwithstanding any enactment or rule of law, and purports to have the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of the right of a liquidator to prosecute and/or conduct and/or continue proceedings that, the same:

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation and/or

(ii) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process and/or

(iii) breaches the constitutional rights of a Defendant in such action, including the right to litigate and/or

(iv) breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

and the said subsection is invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

108. Insofar as sections 12(1) and/or 12(5) of the Irish Bank Resolution Corporation Act 2013, authorises the First, Third and/or Fourth Named Defendants to sell or transfer an asset, on such terms and conditions as they thinks fit, notwithstanding any enactment or rule of law, and has the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of an asset which would not otherwise be effective and/or lawful, the same, breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

and the said subsections are invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

109. Insofar as section 12(1) of the Irish Bank Resolution Corporation Act 2013, in providing that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, has the intended effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a power/right of a liquidator to prosecute and/or conduct and/or continue proceedings that, apart from the said subsection;

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or

(iii) breaches the rights of a Defendant (including the right to litigate, fair procedures and/or property rights) in such action that are protected by the Charter on Fundamental Rights of the European Union,

the said subsection violates Articles 15, 16, 17, 20 and 47 of the said Charter.

110. Insofar as section 12(5) of the Irish Bank Resolution Corporation Act 2013, in authorising the special liquidators to sell or transfer an asset and/or a cause of action, on such terms and conditions as the special liquidators thinks fit, notwithstanding any enactment or rule of law, has the intended effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of an asset and/or a right of action that, apart from the said subsection,

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or

(iii) breaches the rights of a Defendant in such action that are protected by the Charter on Fundamental Rights of the European Union,

the said subsection violates Articles 15, 16, 17, 20 and 47 of the said Charter.

The Plaintiff's claim is for:

1. A declaration that that the acts of the First Named and Second Named Defendants, in entering into a loan sale agreement dated 31st March 2014 under which the Second Named Defendant was purportedly contractually entitled, before completion of the sale, to interfere with and/or influence the conduct of the First Named Defendant as Plaintiff in the extant and ongoing legal proceedings between the First Named Defendant and the Plaintiff (which proceedings are entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*) and/or in entering/executing the purported deed of transfer of the 11th July 2014

(i) constituted and/or constitutes the torts of maintenance, champerty, the causing of economic loss by unlawful means and conspiracy,

(ii) was and/or is an abuse of the judicial process,

(iii) breached and/or breaches the Plaintiff's constitutional rights, including his right to litigate, his right of access to the courts and his right to equal treatment.

2. A declaration that the said loan sale agreement dated 31st March 2014 and/or the purported Deed of Transfer dated 11th July 2014 was and/or is illegal and void and/or such portion of the same, was and/or is illegal and void insofar it purports to relate to the loans and/or accounts of the Plaintiff.

3. A declaration that the said extant proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*) were at the date of the purported loan sale agreement and/or deed of transfer being prosecuted and/or conducted by the special liquidator of the First Named Defendant pursuant to his statutory power under section 231(1)(a) of the Companies Act 1963 as amended

4. A declaration that the power and/or entitlement of the special liquidators, the Third and Fourth Named Defendants, to prosecute and conduct the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*) is not capable of lawful assignment, transfer and/or sale and was not assigned, transferred and/or sold to the Second Named Defendant.

5. A declaration that the control and funding of the said proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*) is not capable of lawful assignment, transfer and/or sale and/or was not assigned, transferred and/or sold to the Second Named Defendant.

6. A declaration that power and/or right of the Special liquidators, the Third and Fourth Named Defendants, to prosecute and conduct the proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM)* does not fall within the scope of the purported loan agreement and/or deed of transfer of the Plaintiff's loans to the Second Named Defendant.

7. A declaration that the Second Named Defendant has no lawful entitlement to prosecute and/or conduct and/or to be substituted as Plaintiff in the proceedings entitled Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM, whether as a result of the purported loan sale agreement, deed of transfer or otherwise and/or further, if insofar as the purported loan sale agreement and/or deed transfer purports to so entitle the Second Named Defendant, the same are null, void and/or of no effect.

8. Further and/or in the alternative and without prejudice to the foregoing, a declaration that if insofar as the First Named Defendant has transferred, sold and/or assigned the loans of the Plaintiffs, the subject matter of the earlier proceedings, then:

(i) The right of First Named Defendant and/or the special liquidator, the Fourth and Firth Named Defendants, to prosecute and/or conduct such proceedings constitutes a bare right with no underlying assets and they have no standing and/or entitlement to continue those proceedings and

(ii) Such right to prosecute and/or conduct such proceedings has not and/or is and has not lawfully been transfer, sold and/or assigned to the Second Named Defendant and

(iii) Consequently, the proceedings require to be struck out and/or dismissed.

9. A declaration that the First Named Defendant and/or the Third and/or Fourth Named Defendants, Special Liquidator of the First Named Defendant, are subject to public law obligations, including the requirement to observe fair procedures and/or natural and/or constitutional justice in purporting to transfer/assign the loans and/or facilities of the Plaintiff and that the First Named Defendant and/or special liquidators, the Third and Fourth Named Defendants, failed to observe fair procedures and/or natural and/or constitutional justice and/or also failed to observe the legitimate expectation of the Plaintiff, in purporting to transfer/assign the loans and/or facilities of the Plaintiff to the Second Named Defendant, in particular

(i) By failing to give any or any adequate notice of the purported transfer and/or assignment to the Second Named Defendant.

(ii) In failing to provide any meaningful and/or adequate entitlement to make submissions in circumstance, *inter alia*, where the criteria for the sale of loans and/or qualified bidders was already pre-ordained and/or decided.

(iii) In failing to give any reasons for the rejection (and/or notice of the rejection) of the submissions made by Plaintiff regarding, *inter alia*, the purported sale of his loans and/or facilities.

(iv) In failing to inform and/or promptly inform the Plaintiff of the purported sale of the Plaintiff's loans to the Second Named Defendant.

(v) In failing to consider and/or give adequate consideration to the submissions made by the Plaintiff relating to the purported sale/transfer of his loans.

(vi) In failing to disclose adequate and/or intelligible details and/or terms relating to such sale and/or assignment by producing a redacted and/or excessively redacted loan sale agreement and/or deed of transfer.

(vii) In failing generally to keep the Plaintiff fully informed of the purported sale and/or transfer and/or process leading to such purported sale and/or transfer

10. A Declaration that the purported sale of the Plaintiff's loan by virtue of the loan sale agreement of 31st March and/or the deed of transfer dated 11th July 2013 and/or the sale of all other loans and/or assets contained in such agreement and/or deed, is invalid and/or void and/or ultra vires by virtue of being in breach of the Ministerial instruction dated 10th May 2013 (and/or other Ministerial instructions and/or declarations), that the First Named Defendant sell its assets not later than 11.59pm on 31 December 2013 or as soon as practicable thereafter (the sales deadline) and/or is further void and/or invalid by virtue of being in breach of a representation to such effect in a letter by the First, Third and/or Fourth Named Defendant to the Plaintiff dated 1st November 2013.

11. A Declaration that that the Third and Fourth Defendants acted in breach of their obligations under section 9(3) of the Irish Bank Resolution Corporation Act 2013 by failing to comply with aforesaid Ministerial instruction dated 10th May 2013 to sell the First Named Defendant's assets not later than 11.59pm on 31 December 2013 or as soon as practicable thereafter (the sales deadline).

12. An order quashing the decision of the First Named Defendant and/or of the Third and Fourth Named Defendants, special liquidators of the First Named Defendant, to enter into an agreement for the sale of the Plaintiff's loan and/or in executing a purported deed of transfer of the loans of the Plaintiff.

13. A declaration that the special liquidators, the Third and Fourth Named Defendants, acted unlawfully and/or in breach of their fiduciary duties and/or statutory duties or otherwise, in purporting to transfer and/or agree to transfer the right to prosecute and/or conduct the existing proceedings (*The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*) to the Second Named Defendant.

14. A declaration that the said acts of the First Named Defendant were acts done by an organ of the State in breach of the Plaintiff's Convention rights as defined by the European Convention on Human Rights Act 2003, including his rights under Articles 6, 13 and 14 of the European Convention on Human Rights and under Article 1 of the First Protocol thereof.

15. A declaration the acts of the First Named and Second Named Defendants, in preventing and/or in failing to afford proper and effective access by the Court and the Plaintiff to the terms of the said loan sale agreement consistent with the prior Order of the Court and with the requirements of the Constitution,

(i) constituted an abuse of the judicial process, and

(ii) breached the Plaintiff's constitutional rights, including his right to litigate, his right of access to the courts and his right to equal treatment.

16. A declaration that the acts of the First Named and Second Named Defendants, in seeking to have the Second Named Defendant substituted as Plaintiff in the aforesaid proceedings (entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*), without having disclosed to the Court the true nature and full terms of the said loan sale agreement

(i) constituted an abuse of the judicial process, and

(ii) breached the Plaintiff's constitutional rights, including his right to litigate, his right of access to the courts and his right to equal treatment.

17. An Order dismissing or, in the alternative, permanently staying the said proceedings entitled *The Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM*).

18. A declaration that Clause 18.2 of the General Conditions and terms of Sale which accompanied the facility to the Plaintiff dated 2nd February 2009, did not authorise the First Named Defendant and/or the Special Liquidators, the Fourth and Firth Named Defendants, to transfer and/or assign the loan and/or facility to the Second Named Defendant and/or the purported transfer/assignment pursuant to such Clause is void and/or of no effect.

19. A declaration that Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013 failed to satisfy the mandatory requirement of section 7(8) of the 2013 Act insofar as it failed to provide in the Special Liquidation Order whether any act by the Companies Acts, as they apply to IBRC, required or authorised to be done by the special liquidator is to be done by all or any one or more of the persons appointed.

20. Without prejudice to the foregoing, a declaration that insofar as the purported deed of transfer of the 11th July 2014 was only executed by the Third Named Defendant and not jointly by both special liquidator, the purported deed of transfer was not effective to transfer the facilities/loans and/or associated rights relating to Plaintiff loans to the Second Named Defendant.

21. A declaration that insofar as the committees and/or authorities (including the senior management committee) was established as part of the corporate governance of the First Named Defendant following its entry into special liquidation,

(i) There was no authority to establish such committees and/or authorities.

(ii) The establishment of the same and conferring on such committees and/or authorities of decision making powers constitutes an unlawful delegation and/or abdication of statutory duties and power by the Third and Fourth Named Defendants.

(iii) Insofar as the Senior Management Meeting decided and/or authorised and/or approved the loan sale process including the relevant criteria, the same was unlawful insofar as such decision was no made solely by the Third and Fourth Named Defendants.

(iv) Insofar as the Senior Management Meeting and/or any other committee or authority decided and/or authorised and/or approved the sale of the Plaintiffs loans to the Second Named Defendant, the same was unlawful insofar as such decision was not made solely by the Third and Fourth Named Defendants.

22. An Order against the First Named and Second Named Defendants for damages (including exemplary and aggravated damages) for the torts of maintenance, champerty, the causing of economic loss by unlawful means and conspiracy, and for breaches of the Plaintiff's constitutional rights, including his right to litigate, his right of access to the courts and his right to equal treatment.

23. An Order against the First Named and Second Named Defendants for damages (including exemplary and aggravated damages) for the fundamental breach of its terms by Anglo Irish Bank in respect *inter alia* of:-

i. the bank's insolvency at the time of their issue of share on 2nd February 2009,

ii. the bank's intentional unlawful actions in respect of the Share Loans, Quinn Family CFD, Maple 10, Director Loan and Irish Life Deposit transactions, and

iii. the bank's intentional unlawful manipulation of its financial accounts in 2007 and 2008.

24. In the alternative Rescission of the Loan Contract on the basis of the fundamental breach of its terms by Anglo Irish Bank in respect *inter alia* of:-

i. the bank's insolvency at the time of their issue of share on 2nd February 2009,

ii. the bank's intentional unlawful actions in respect of the Share Loans, Quinn Family CFD, Maple 10, Director Loan and Irish Life Deposit transactions, and

iii. the bank's intentional unlawful manipulation of its financial accounts in 2007 and 2008.

25. An Order against the First, Third and/or Fourth Named Defendant for damages under section 3 of the European Convention on Human Rights Act 2003.

26. A declaration that the First, Third and/or Fourth Named Defendants, by virtue of sections 6(5) and 10 of the Irish Bank Resolution Corporation Act 2013 owed a fiduciary duty to the Court (i) in the conduct of the said proceedings and (ii) in respect of the contracts of loan made between it, and its predecessor Anglo Irish Bank, and the Plaintiff.

27. An Order declaring that the First, Third and/or Fourth Named Defendants breached its and/or their said duty by

(i) Entering into an agreement with the Second Named Defendant that was unlawful and an abuse of the judicial process,

(ii) Breaching the Orders made by the Court in the said proceedings regarding disclosure of the terms of the said agreement,

(iii) Misrepresenting and/or failing to disclose to the Court the true nature of the said terms.

28. A declaration that, so far as section 12(1) of the Irish Bank Resolution Corporation Act 2013 provides that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, the same:

(i) does not apply and/or extend to the purported transfer, sale and/or assignment of the power/right of the special liquidators to prosecute, conduct and/or continue legal proceedings,

(ii) more particularly, does not apply and/or extend to the right to prosecute, conduct and/or continue as Plaintiff in the proceedings entitled Irish Bank Resolution Corporation (In Special liquidation) v John Morrissey Record No. 2011/1548 S/2011/86 COM

(iii) does not have the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a right of action that, apart from the said subsection,(a) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process and/ or breaches the constitutional rights of a Defendant in such action.

29. If necessary, in the alternative, an Order declaring that, so far as section 12(1) of the Irish Bank Resolution Corporation Act 2013, in providing that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, has the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a right to prosecute and/or conduct proceedings that, the same:

(i) Breaches public policy, the integrity of liquidation process and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process or

(iii) breaches the constitutional rights of a Defendant in such action and

(iv) breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

the said subsection is invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

30. An Order declaring that, insofar as sections 12(1) and/or 12(5) authorises the First, Third and/or Fourth Named Defendants to sell or transfer a cause of action, on such terms and conditions as the special liquidators thinks fit, notwithstanding any enactment or rule of law, and purports to have the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of the right of a liquidator to prosecute and/or conduct and/or continue proceedings that, the same:

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation and/or

(ii) interferes with the integrity of the litigation process or the administration of justice by constituting maintenance, champerty or an abuse of the judicial process and/or

(iii) breaches the constitutional rights of a Defendant in such action, including the right to litigate and/or

(iv) breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

and the said subsection is invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

31. If necessary, in the alternative, an Order declaring that, insofar as sections 12(1) and/or 12(5) of the Irish Bank Resolution Corporation Act 2013, authorises the First, Third and/or Fourth Named Defendants to sell or transfer an asset, on such terms and conditions as they thinks fit, notwithstanding any enactment or rule of law, and has the effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of an asset which would not otherwise be effective and/or lawful, the same, breaches the Plaintiff's property rights including in any existing contractual or other arrangement and/or fair procedures;

and the said subsections are invalid having regard to the provisions of the Constitution, including Articles 34, 40(1), 40(2), 40(3), 41, 42 and 43.

32. An Order declaring that, so far as section 12(1) of the Irish Bank Resolution Corporation Act 2013, in providing that the sale or transfer of an asset or the assumption of an obligation or liability relating to such sale or transfer shall take effect notwithstanding any provision of any enactment, rule of law, contract or agreement prohibiting that sale or transfer or any other legal or equitable restriction, inability or incapacity, has the intended effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of a power/right of a liquidator to prosecute and/or conduct and/or continue proceedings that, apart from the said subsection;

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or

(iii) breaches the rights of a Defendant (including the right to litigate, fair procedures and/or property rights) in such action that are protected by the Charter on Fundamental Rights of the European Union, the said subsection violates Articles 15, 16, 17, 20 and 47 of the said Charter.

33. An Order declaring that, so far as section 12(5) of the Irish Bank Resolution Corporation Act 2013, in authorising the special liquidators to sell or transfer an asset and/or a cause of action, on such terms and conditions as the special liquidators thinks fit, notwithstanding any enactment or rule of law, has the intended effect of conferring lawful validity and legal effectiveness to a purported sale, transfer or assignment of an asset and/or a right of action that, apart from the said subsection,

(i) Breaches public policy and the fiduciary duty of a liquidator in the conduct of a liquidation

(ii) interferes with the integrity of the litigation process or

(iii) breaches the rights of a Defendant in such action that are protected by the Charter on Fundamental Rights of the European Union, the said subsection violates Articles 15, 16, 17, 20 and 47 of the said Charter.

34. If necessary (and/or where applicable) an order for extension of time.

35. Further and other relief.

36. Costs.

STEPHEN DODD BL

WILLIAM BINCHY BL

BRIAN DEMPSEY SC

1. See also *Carroll v. Ryan* [2003] 1 I.R. 309.

2. Day 1, p. 24 of the Transcript.

13 Day 1, p. 130 of the Transcript.