THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 273

2016 No. 196

Finlay Geoghegan J.
Peart J.
Hogan J.

BETWEEN/

JOHN PLYNN AND BENRAY LIMITED

PLAINTIFFS /

RESPONDENTS

- AND -

BRECCIA

DEFENDANT /

APPELLANT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 30th day of July 2018

1. The basic facts of this dispute have already been set out by Finlay Geoghegan J. in the judgment which she has just delivered dealing with the question of surcharge interest. I gratefully adopt those statements of facts, supplementing them where necessary with specific details particular to the discrete issue of estoppel by conduct with which this judgment is solely concerned.

2. I should add that I have had the opportunity of reading in advance the judgment she has just delivered dealing with the question of surcharge interest. While I entirely agree with her conclusions in that regard, this judgment deals solely with the question of whether even if Breccia was entitled in principle to charge surcharge interest, it is, in any event, estopped from doing so.

3. In the two judgments which he delivered in this matter, *Flynn v. Breccia* [2016] IEHC 68 and *Sheehan v. Breccia* [2016] IEHC 1290 Haughton J. found in both instances that Breccia was estopped from endeavouring to charge surcharge interest prior to the 19th June 2015. This finding was made independently of his conclusions that the surcharge interest was unenforceable as a penalty clause. This particular judgment deals only with the Flynn appeal and I will deliver a separate judgment in the Sheehan appeal.

The general background to the estoppel issue

4. The estoppel issue arises in the following way: in March 2014 the plaintiffs had begun a series of steps regarding the possible purchase of their loans from the National Asset Loan Management Ltd. ("NALM"), itself a subsidiary entity of the National Asset Management Agency ("NAMA"). To that end the plaintiffs both sought and received a redemption figure from NALM in respect of those loans. It is common case that this figure did not include a figure for surcharge interest. The plaintiffs contend that as a result they altered their position in reliance on this representation as to the appropriate redemption figure. In particular, they contend that they entered into arrangements to their detriment with third party capital venture fund with a view to purchasing these loans.

5. As it happens, they were unsuccessful in their respective bids for these loans. They were, in fact, outbid by Breccia. But the plaintiffs say that Breccia as assignee of NALM is bound by these earlier representations and that it would now be unconscionable and inequitable for it now to assert the contrary. While this is the gist of the submissions regarding the estoppel issue, it is first necessary to consider the facts in a little further detail.

The Flynn appeal: background facts to the estoppel claim

6. The plaintiff in the related appeal, Mr. Joseph Sheehan, is a well known consultant surgeon residing in the United States of America. He is one of the founding shareholders of Blackrock Hospital Ltd. ("BHL"). Breccia is a private unlimited company controlled by the well-known businessman, Mr. Lawrence Goodman. Its directors are Mr. Goodman and Ms. Catherine Goodman. In 1983 the British health insurer, BUPA, in conjunction with four doctors, namely, brothers Joseph Sheehan (the plaintiff in the other appeal) and James Sheehan, George Duffy and the late Maurice Neligan, put together an investment package to build and develop the Blackrock Clinic, which in due course became vested in BHL.

7. In 2006 BUPA agreed to sell its shareholding of approximately 56% of BHL to, *inter alia*, the plaintiffs and Breccia. Financing for the purchase of the shares was obtained from Anglo Irish Bank ("Anglo"). As an integral part of the purchase of the BUPA shareholding the parties, including all existing shareholders and two guarantors, entered into a shareholders' agreement dated the 28th arch 2006. As part of the shareholders' agreement it was agreed that an annual dividend would be declared which would be used to pay the interest on the Anglo loans until they matured, whereupon the entire facility would become immediately due and payable.

8. Benray and Breccia are shareholders in Blackrock Hospital Limited ("BHL"), the operating company of the Blackrock Clinic. Benray's shareholding is 8.02%, and the defendant's holding is 28.08%. Benray (which is controlled by Mr. John Flynn) had financed the purchase of its shares in BHL by way of a loan provided by Anglo pursuant to a loan agreement dated 28 March 2006 ("the 2006 facility") secured by way of a mortgage of shares dated 28 March 2006 and a guarantee and indemnity also dated 28 March 2006 from Mr. Flynn. Benray entered into a further loan facility with Anglo on 19 February 2008 ("the 2008 facility") secured in the same way.

9. On 28 March 2006 the defendant, and two other parties, Mr. Joseph Sheehan and Dr. George Duffy (who were also shareholders in BHL) also borrowed money from Anglo, on similar terms, to purchase shares in BHL. Benray furnished a further guarantee dated 28 March 2006 in respect of the borrowers' liabilities under those further loans ("the "cross guarantee"). Similar cross guarantees were entered into by the other shareholders concerned, save that Breccia did not enter into a cross guarantee, but instead executed a deed of covenant dated 28 March 2006. The relationship between the shareholders and BHL and the shareholders *inter se* was governed by a shareholders' agreement also dated 28 March 2006 ("the shareholders' agreement").

10. The loan facilities were acquired under the National Asset Management Agency Act 2009, and became vested in its wholly owned subsidiary National Asset Loan Management Limited ("NALM"), and that acquisition was notified to BHL on 28 February 2014.

11. In March/April, 2014 with funding from a third party, Talos LLC ("Talos"), the plaintiffs and Mr. Joseph Sheehan attempted to purchase the Anglo loans of Mr. Joseph Sheehan and Dr. George Duffy from the Special Liquidators of the Irish Bank Resolution Corporation Plc. ("IBRC") (in which such loans were then vested) and to redeem Benray's indebtedness with NALM through the mechanism of a special purpose vehicle. The evidence was that these parties had been looking for third party funding for this purpose at some stage since about December 2013.

12. On 2 March 2014 Mr. Flynn executed an agreement with Talos whereby the latter agreed to provide up to €45m. to re-finance the respective loans of Benray, Mr. Sheehan and Mr. Duffy. Some €9m. of that fund was to be set aside to cover the Benray loan. An indicate term sheet was signed by Mr. Flynn with Talos on 2 March 2014, setting out the terms upon which Mr. Joseph Sheehan and Mr. Flynn or companies on their behalf could borrow up to €45m. in respect of the Talos transaction. This was a non-binding commitment from Talos, save in respect of an "expense deposit", "exclusivity" for 60 days, and "confidentiality". This agreement did not commit Talos to lending, or commit Mr. Sheehan and Mr. Flynn to expenditure beyond Talos' out of pocket expenses. The term sheet indicated that the collateral required would be 56% shareholding in BHL. Haughton J. was satisfied on the evidence that this reference to a 56% holding must have included the 8% shareholding in BHL of Mr. Flynn.

13. This term sheet was signed on 2March 2014 before the spreadsheet was obtained from Mr. Hoey on 13 March 2014 providing the redemption figure. Haughton J. expressly found, however that "the redemption figures sought from NALM and provided by Mr. Hoey were provided in the context of the plaintiffs deciding to commit to the Talos transaction, and before executing any binding documentation." The judge then continued:

> "Some time after Mr. Hoey's spreadsheet came to hand Mr. Flynn executed a guarantee, guaranteeing to Talos the repayment of the deposit lent by Talos to JCS, the special purpose vehicle established to carry out the Talos transaction. The fact of that guarantee was not in issue. I am satisfied that in so doing Mr. Flynn acted to his detriment because deposit monies were drawn down on or about 7th April, 2014 and paid over, to IBRC, and when the transaction ultimately fell through (and the deposit was lost) Talos obtained judgment against Mr. Flynn (and Dr. Joseph Sheehan) for in excess of €2 million."

14. Although some elements of the monies were drawn down by Mr. John Flynn on 7 April 2014 required to fund a deposit, the transaction ("the Talos transaction") nonetheless did not proceed to completion because before it could be completed, Dr. Duffy's debt with IBRC had been redeemed some three days earlier on 3 April 2014 by Tullycorbett Ltd., a company controlled by Dr. Duffy, using funds provided by Breccia. One consequence of the failure of this transaction was that Talos proceeded to obtain judgment against Mr. John Flynn personally for some €2.8m. in respect of his personal guarantee.

15. In the wake of the collapse of the Talos transaction, Breccia offered to purchase Benray's loan from NALM and that offer was accepted in the following month. By loan sale deed and deed of transfer, both dated 23 May 2014, Breccia purchased Benray's indebtedness under the loan facilities together with the associated security.

16. On the 27th May, 2015 the plaintiffs' solicitors, Downes, wrote to the defendant's solicitors, Matheson, seeking the redemption figure in respect of the loan facilities as at close of business on 29 May 2015. Matheson responded on 9 June 2015 stating that the total amount due and owing to the defendant was €13,074,142.78, and that interest continued to accrue at a daily rate of €1,730.75. As this was considerably more than the figure of some €8m. that had been demanded by the defendant on 8 August 2014, the plaintiffs' solicitors by a letter dated 9 June 2015 sought a breakdown of this new figure.

17. This breakdown was furnished by Matheson by letter dated 19 June, 2015. This letter recited the loan facilities and the amounts advanced, and referred to clause 5 of the general terms and conditions which it was claimed entitled the defendant to add a surcharge interest at a rate of 4% from the due date. In addition, the defendant pursuant to clause 6.2 of the General Terms and Conditions sought to recover the costs of enforcement. The letter stated:

> "The amount of €9,104,616.41, excluding surcharge interest, was due and owing from Benray under the Facility Letters (the "Loans") as of the date of acquisition of the Loans by our client. Our client has calculated the amount of surcharge interest which accrues on the loans from 31 December 2010 to the date of acquisition of the loans to be €1,312,933.62 in accordance with Clause 5 of the General Terms. Accordingly, as at the date of the acquisition of the loans, the amount required to be paid in order to redeem the loans was €10,417,550.04.
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> Interest continued to accrue and capitalise on the loans from the date of acquisition such that the amount due in respect of the loans as of the end of the most recent interest period, i.e., 31 March 2015 was €10,952,208 (inclusive of principal and interest). Additional interest in the amount of €119,422 accrued between 31 March 2015 and 8 June 2015. Interest is currently accruing on the amount due and owing at a daily rate of €1,730.75.
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> Pursuant to Clause 6.2 of the General Terms Benray must pay all costs, charges and expenses (including, but not limited to, legal and other professional fees and expenses) incurred in connection with the enforcement of the Facility Letters and the General Terms and the security comprised in the Security Documents (as defined in the General Terms) are payable by Benray. Our client has incurred relevant costs and expenses of, not less than, €2,002,512.43 since the date of acquisition of the Loans up to 8 June 2015."

18. The plaintiffs joined issue with the claims in this letter and these proceedings were commenced.

The dealings between Mr. Flynn and NALM

19. As I have just indicated, at some stage in early March 2014 Mr. James Flynn made contact with the official responsible for the Benray account in NALM, Mr. Michael Hoey, inquiring what the redemption figures in respect of these loans were. Mr. Hoey replied on 13 March 2014 enclosing the relevant figures. The total redemption figure (including figures for interest) came to €8,065,774, with a

daily accrual rate of some €511 for interest. There was, however, nothing in this communication which suggested that surcharge interest was included or might be included at some later date. The entire tenor of the communication was that this was the figure which, as of that date, would have been sufficient to redeem the loan.

20. It is true that the spreadsheet supplied by Mr. Hoey did not expressly state that NALM was abandoning its contractual right to apply surcharge interest on the defaulting loan on a permanent basis. While Mr Hoey did say in evidence that "no assurance had been given to the plaintiffs that surcharge interest would not be applied" and that there had been "no conscious decision made by NALM not to apply surcharge interest", he also expressly acknowledged that the figures supplied would have been sufficient to redeem the loan. Indeed, he pointed out that in a column headed "default interest unpaid accrued" the figure underneath was zero, so that "at that point in time no default interest had been applied to these loans."

21. The next development was that on 4 April 2014, NALM sent the plaintiffs' solicitors a second letter setting out the redemption amount. Counsel for Breccia, Mr. O'Moore S.C., drew our attention to the fact that this letter contained an express reservation of rights clause, the language of which – he submitted - made it perfectly clear that *all* of NALM's rights were reserved ("… NALM expressly reserves *all of its rights*" …). This reservation included both future rights and rights that had already accrued ("… arising now or subsequently …") and it also stated nothing in the letter or in previous discussions (including, for example, the email which had been sent by Mr. Hoey three weeks earlier) would waive or amend the terms of the loan agreements ("… neither the issue of this letter *nor any discussions leading to the issue of this letter* constitute a waiver …"). All of this is true, but it nonetheless also has to be seen in its proper context. At this stage NALM understood that the Benray loans were to be redeemed on 9 April 2014 and immediately before the reservation of rights the letter had stated that "NALM will confirm to Benray when it has received cleared funds and all of the outstanding amounts have been repaid."

22. Indeed, the letter-writer, Mr. Molloy, followed up this letter by sending an email later on the same day: "NAMA have now provided me with redemption figures for full redemption on the 9th April 2014. Insofar as the two loan facilities are concerned, the redemption figure as at that date (including accrued interest up to and including that date) are €7,377,088 and €1,703,699. Interest is currently accruing at a daily rate of €418.46 (on the larger facility) and €97.16 (on the smaller facility)."

23. It is accordingly, perfectly clear that NALM fully understood and accepted that the redemption figure would not include a figure for surcharge interest.

Whether there was a representation by NALM

24. The first question, therefore, to be considered in the context of a claim for estoppel is whether the correspondence and emails from NALM amounted to a representation affecting legal relations between the parties which was intended to be acted on. In his judgment in the High Court Haughton J. said of this correspondence that:

> "It was a representation as to existing fact. If the plaintiffs had immediately tendered €9,065,784.28 plus the appropriate daily interest, NALM could not have declined to redeem the loans. It was also clearly intended to be the basis for redemption - that is to say, it was intended to affect legal relations by setting out the figure which, if paid, would redeem the loan facilities."

25. The judge then added:

> "The figures given in this email broadly reflected the figures provided by Mr. Hoey in his spreadsheet of 13th March 2014, and I find that as a matter of probability they did not include any surcharge interest. I do not accept that this emailed letter of 4th April, 2014 could retrospectively have had the effect of rendering conditional or subject to reservation of rights the information provided unconditionally by Mr. Hoey in the spreadsheet provided by him on 13th March, 2014. The representations in that spreadsheet as to the redemption figures were clear and unequivocal, and represented that no default interest was due or owing at that point in time."

26. For my part, I agree entirely with this reasoning and conclusion. It is clear that the effect of the emails and the correspondence was that NALM was representing to the Flynn/Benray interests that the payment of this sum (which did not include surcharge interest) would be sufficient to redeem the loans. A redemption of the loans would, of course, have affected the legal relations between the parties. It is equally clear that this representation was intended to be acted on by the persons to whom the communication was addressed.

27. The reservation of rights contained in the letter was a purely formal reservation of those rights, a fact which Mr. Hoey himself readily conceded in evidence. When viewed in this context and the circumstances in which the letter was written, this reservation of rights could not reasonably be regarded as a qualification in any of the representation(s) which NALM had already made to Mr. Flynn and Benray regarding the redemption figure.

28. On any view, therefore, these representations amount to a "clear and unambiguous promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly": see *Doran v. Thompson Ltd*. [1978] I.R. 223, 230, per Griffin J. As I just indicated, these requirements are satisfied in that:

> i. the NALM representations were clear and unambiguous;
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> ii. they affected the legal relationships between the parties, because they indicated the figures necessary to redeem the loans, thus ending the relationship of debtor and creditor between these parties;
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> iii. it was supplied in the understanding that it would be acted on by Mr. Flynn and Benray.

29. The first limb of the test required to satisfy the requirements of estoppel by conduct is therefore fully satisfied. In *Doran* Griffin J. proceeded to articulate what was required in respect of the second limb of the test (1978) I.R. 223, 230):

> "….and the other party has acted on [the promise or assurance] to his detriment, it is well settled that the one who gave the promise or assurance cannot afterwards be revert to their previous legal relation as if no such assurance or promise had been made by him, and that he may be restrained in equity from acting inconsistently with such promise or assurance."

30. The next question, therefore, is whether Mr. Flynn and Benray acted to their detriment on foot of these representations such that it would now be inequitable for Breccia as assignee of NALM to go back on these assurances.

Whether Mr. Flynn and Benray acted to their detriment

31. I turn now to the issue of whether Mr. Flynn and Benray relied to their detriment on the representation given by NALM as to the redemption figure. In essence, the argument here advanced by Breccia is that neither Mr. Flynn or Benray changed their position in reliance on these representations, since they were going to have to re-finance these loans in any event. Moreover, as the relevant witness for the plaintiffs on this issue was Mr. James Flynn (who is the son of Mr. John Flynn), Breccia submits that James Flynn cannot give evidence of what John Flynn had in his mind at the time he entered into the guarantee in question. It was further contended that as the Talos transaction had been agreed before 13 March 2014 (i.e, the date on which Mr. Hoey on behalf of NALM issued the spreadsheet containing the redemption figures), there was no detrimental reliance on these figures.

32. It was argued that Benray assumed no liabilities under the Term Sheet, and the Talos transaction was, to use counsel's word, 'neutral' as far as Benray was concerned because the end result would be that Benray would simply owe the same money to another funder. It was thus submitted that in entering into the contractual arrangements in the Talos transaction there was no evidence that the plaintiffs actually relied on the par figure of €9,065,784.28 provided by Mr. Hoey, or that they would have acted any differently if a redemption figure of something over €10 million that included surcharge interest had been provided.

33. In his judgment Haughton J. addressed these issues thus:

> "Mr. Flynn did not give evidence, but his son Mr. James Flynn, who is a director of Benray Ltd. - a point of significance as he gave evidence on behalf of both plaintiffs - did provide a witness statement and give oral evidence. He accepted that most of the negotiation over Talos was done by Dr. Sheehan and his father, but he confirmed that once he had been emailed the redemption figures by Mr. Hoey "we then went on to process the loan from Talos" (Day 1 p. 142) and "Mr. John Flynn signed guarantees as part of the process" (Day 1 p. 143). He said that the main loan that was to be provided by Talos was never drawn down, but the deposit was - on 7th April, 2014. I accept this evidence, which was not contradicted. Under cross examination he gave evidence that of the €45 million loan referred to in the Term Sheet €35 million was to acquire Dr. Sheehan's and Dr. Duffy's IBRC loans, and he stated "The 35 consisted of nine in relation to Benray" (Day 1 p.153). He said that of the €45 million €10 million was to pay rolled up interest on the loan. This is borne out by the Term Sheet which indicates that:-
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> > "[€35 million] to be drawn to purchase the Existing Facility.
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> > The remaining [€10 million] will be available to be drawn up in amounts of [€1 million] until the fourth (4th) anniversary of the first funding under the Loan. Such amounts may only be used to pay cash interest which would otherwise have become PIK (i.e. in addition to the Cash Dividend Amount)".
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> I am satisfied that although Benray was not an actual party to the Term Sheet, or even expressly mentioned, it was centrally implicated in that its director and shareholder Mr. Flynn was a party. Secondly, that the purpose of the loan was inter alia to enable the redemption of Benray's Loan Facilities. Thirdly, Benray's 8% shareholding in BHL was to be pledged as part of the collateral. The fact that, if the Talos transaction had proceeded successfully, Benray would no longer have owed money on foot of the loan facilities to NALM would have had the obvious advantage that it would no longer be a defaulting borrower. I therefore reject the characterisation of the intended outcome to the Talos transaction as being 'neutral' for Benray. Accordingly, counsel's contention that simply because Mr. Flynn may have acted to his detriment there was no disadvantage to or detriment suffered by Benray, a limited company with separate legal personality, does not stand up to scrutiny. Benray's future debt status would have altered if the Talos transaction had proceeded to completion.
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> So far as Mr. Flynn is concerned, he stood to benefit personally from the Talos transaction. Had it proceeded to a successful conclusion Benray's Loan Facilities would have been redeemed and, firstly, he would have been released from Guarantee, and, secondly, he would no longer have been in the position of a guarantor of loans in default. But, in the events which happened, committing to the Talos transaction proved to be disadvantageous, and he therefore altered his position and acted to his detriment.
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> I am satisfied from Mr. James Flynn's evidence that before receipt of Mr. Hoey's spreadsheet the plaintiffs considered that Benray owed in the order of €9 million on foot of the Loan Facilities, and that the Term Sheet was signed on that understanding. I am satisfied that it was only after receipt of Mr. Hoey's email and spreadsheet of 13th March 2014, and based on its representation as to the redemption figure of a total of about €9,065,784, that Mr. Flynn was induced to enter into binding contractual relations in furtherance of the Talos transaction. This confirmation induced the plaintiffs to proceed.
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> In circumstances where the representation as to the outstanding balance relates to information that any reasonable borrower looking to refinance would require before proceeding, if a general reliance on that information is evident then in my view that will suffice to create an estoppel. I am to that extent satisfied that both plaintiffs did place reliance on this information before the first named plaintiff became contractually committed. In becoming contractually committed (with the backing and support of Benray) by way of guarantee of the deposit Mr. Flynn altered his position, and did so to his detriment. It is not necessary for the plaintiffs to go further and satisfy the court that they would not have proceeded further with the Talos transaction after 13 March, 2014 if Mr. Hoey had represented that Benray owed in excess of €10 million, and/or that default surcharge interest fell to be added to the redemption figure. I therefore do not accept as correct counsel for Benray's submission that the plaintiffs must further prove that the difference between the two potential redemption figures is what led the plaintiffs - or at any rate Mr. Flynn - to proceed further with the Talos transaction. It is sufficient that they acted on the representation made. In any event I regard it as inherently likely that if Mr. Hoey's spreadsheet had included default interest of 4% and given an outstanding balance of over €10 million it would have prompted the plaintiffs to query the figures and reappraise the Talos transaction.
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> Counsel for the defendant then argued that there could have been no reliance on Mr. Hoey's spreadsheet because of the letter from Matheson to Beauchamps emailed on 4th April, 2014, a paragraph of which reserved NALM's rights under the Loan Facilities - some three days before the drawdown was complete. Mr. James Flynn did not recall reading it but he agreed that this letter would have been brought to his notice. That email was closely followed by the email with redemption figures stated to be applicable for 9th April, described in the letter as "the intended repayment date".
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> These emails were provided in the context of the imminent redemption of the Loan Facilities, and the letter contained an express undertaking by NALM on receipt of the 'Outstanding Amounts' (in the amount specified in the second email) to

> "apply such funds in repayment of the Outstanding Amounts", and expressly committed that upon such repayment "...the Guarantors will no longer have any liability under the Guarantees".
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> Notwithstanding the reservation of rights paragraph, NALM and its solicitors must have known and intended that the plaintiffs and their solicitors would rely on this further statement of the outstanding amounts up to and including 9th April, 2014 as forming the basis for redemption on or before that date, and that it would be relied upon in arranging refinancing. I am indeed satisfied that the plaintiffs did rely on the redemption figure so provided in proceeding to draw down the monies, the repayment of which was guaranteed *inter alia* by Mr. Flynn, for use as a deposit in the Talos transaction. NALM cannot have intended that the clear undertaking and commitments in Matheson's letter, stated to prevail up to and on 9th April, 2014, would be contradicted or set at nought by the later part of the letter. I do not consider that the inclusion of the reservation of rights paragraph in that letter could have had the effect of nullifying the fundamental representations made earlier in that letter (and completed in the ensuing email). Nor can it have had the effect of retrospectively cancelling out the unconditional representations made on 13th March by Mr. Hoey. In my view, on reading this letter as a whole it was intended to give unequivocal and binding commitments by reference to the figures to be "provided…very shortly", up to and including 9th April. NALM could not have relied on the reservation of rights to decline redemption on or before 9th April on the basis of the figures provided on 4th April."

34. It was never suggested that Haughton J. was not entitled to make these findings of fact. The tenor of that evidence may be summed up by the following extract from Mr. James Flynn's evidence:

> "Well, once I had the figure from NAMA, I could have a meaningful conversation with Talos and we could finalise terms and then I could redeem our indebtedness basically, I could redeem our debt with NAMA. And, you know, I mean the starting point for that was: What was the amount that was due? "

35. In my view, there was abundant evidence to sustain the inference drawn by Haughton J. to the effect that both Mr. John Flynn and Benray had relied to their detriment on the NALM representations. Neither of them had been given any reason to think that any other amount such as surcharge interest would be added to these redemption figures. It is clear from the terms of the letter of the 4 April 2014 from Matheson that NALM knew that these figures were being relied upon by Mr. Flynn and Benray for re-financing purposes. In any event Mr. Hoey gave unchallenged evidence along similar lines.

36. Nothing turns on the fact that the relevant evidence was given by Mr. James Flynn rather than by his father, Mr. John Flynn. The former was centrally involved in the abortive Talos transaction and it was never suggested that he was not in a position to give the relevant evidence as to what occurred in March and April 2014, or that he was not acting otherwise than in cross co-operation with his father. It was, after all, Mr. James Flynn who had liaised in the first instance with Mr. Hoey in relation to securing the appropriate redemption figure from NALM.

37. In arriving at these conclusions, I have not overlooked the argument advanced by Breccia that the plaintiffs were already committed to Talos by early March 2014, i.e., before they had received the NALM spreadsheet on 13 March 2014. While this is true, it is not the complete picture. As Mr. James Flynn explained in evidence, they had to know the NALM redemption figure before the Talos loan could be finalised. It is also significant that, as Haughton J. found, Mr. John Flynn executed the personal guarantee with Talos after receiving the NALM redemption figure. Of course, if the NALM figure had included surcharge interest – with its significant additional liabilities of some €1.3m. – it is obvious that – as Haughton J. again found – the plaintiffs would have had to apply for a different loan from Talos and Mr. John Flynn would have had to give consideration as to whether he would execute a personal guarantee.

38. It is clear that the plaintiffs relied to their detriment on the representations given by NALM as to the true level of the redemption figures, so that, accordingly, the two limbs of the Doran test are thereby satisfied. In these circumstances it would be grossly inequitable and fundamentally deeply unfair if Breccia as the assignee of NALM could now be heard to assert that surcharge interest was now due, thus in effect repudiating the representation(s) which its assignor, NALM, solemnly made to the plaintiffs in March and April 2014.

39. Given my clear conclusions on these issues, I find it unnecessary to address any of the other arguments advanced by the plaintiffs to found the estoppel.

40. In the judgment Haughton J. found that Breccia were estopped from charging surcharge interest at any time prior to the 19th June 2015. The significance of that date is that was the date on which the solicitors for Brecia sent a fresh demand for surcharge interest to the plaintiffs. In their respondents' notice dated 12th May 2016 the plaintiffs did not seek to challenge the correctness of this date as the final operative date of the estoppel. It follows, accordingly, that the finding of estoppel applies only to surcharge intesest purportedly charged by Breccia up to and including 19th June 2015.

Conclusions

41. Summing up, therefore, I am of the view that Breccia as assignee is bound by the representations as to the redemption figure given by its assignor, NALM, to the plaintiffs in March/April 2014 and that the plaintiffs acted on those representation to their detriment. It follows in turn that Breccia is estopped by reason of the conduct of its assignor, NALM, from asserting that surcharge interest is now due on these loans up to and including 19th June 2015.

42. I would accordingly affirm the decision of the High Court on the estoppel issue.