

**THE HIGH COURT**

**[2006 No. 309 SP]**

**IN THE MATTER OF PART XI OF THE PENSIONS ACT, 1990 (AS INSERTED BY SECTION 5 OF THE PENSIONS (AMENDMENT) ACT, 2002) AND  
IN THE MATTER OF THE IRISH AIRLINES (GENERAL EMPLOYEES) SUPERANNUATION SCHEME**

**BETWEEN**

**WILLIAM JAMES MURRAY**

**PLAINTIFF**

**AND**

**THE TRUSTEES AND ADMINISTRATORS OF THE IRISH AIRLINES (GENERAL EMPLOYEES) SUPERANNUATION SCHEME**

**DEFENDANTS**

**AND**

**THE PENSIONS OMBUDSMAN**

**NOTICE PARTY**

**Judgment of Mr. Justice Kelly delivered on the 25th day of January, 2007**

**Background**

1. The plaintiff (Mr. Murray) retired from FLS Aviation Services (FLS) on 31st March, 2001. He was then 61 years of age and had been in the employment of Aer Lingus/FLS for 40 years.

2. On retirement he received a gratuity and pension benefits based on the average of his basic salary received in the 12 months up to the date of retirement.

3. Mr. Murray believes that his retirement benefits should be based on the basic rate of pay applicable on his date of retirement rather than on an average salary figure for the preceding 12 months.

4. He complained to the defendants (the trustees), who are the trustees of the relevant superannuation scheme, about this. He did not get a satisfactory response and so he approached the notice party (the Ombudsman).

**Complaint to the Ombudsman**

5. In August, 2003, Mr. Murray wrote to the Ombudsman explaining that he was in dispute with the trustees concerning the definition of "final retiring salary" under the superannuation scheme. He quoted the definition of "final retiring salary" which was contained in a 1974 amendment to the relevant trust deed. It is defined as:-

"The annual basic salary of a member at the date of his retirement or of his death in service except that, where a special increase in salary or a personal promotion is effected within the last three years before normal or early retirement, 'final salary' shall mean the annual average salary in respect of those last three years."

6. Mr. Murray complained that the trustees had interpreted final retiring salary to mean the average of his basic earnings in the 12 months prior to his retirement. He understood it to mean the annual rate of salary that he was receiving at the point of retirement. He argued that that latter approach is the one used under the main Civil Service Superannuation Scheme. He told the Ombudsman that the trustees had advised him in a letter of 28th September, 2001, that:-

"Current practice is based on the advice of the scheme's solicitors and the constraints of the Revenue Commissioners when the current rules governing pension calculations were introduced."

7. The trustees did not provide him with copies of those advices or details of the Revenue constraints despite requests from him. In that same letter of 28th September, 2001, the trustees undertook to discuss the matter of pension calculation at their October, 2001, meeting. Despite writing and requesting details of the outcome of that meeting Mr. Murray complained that he received no information concerning it.

8. The Ombudsman wrote to Mr. Murray in August, 2003 and again in September, 2003, explaining that before he could investigate the complaint Mr. Murray would have to complete a formal complaint form and that the internal dispute resolution procedure under the superannuation scheme would have to be satisfied. On 17th December, 2004, a completed complaint form and notes were submitted to the Ombudsman by Mr. Murray's solicitors. The response which had been furnished by the trustees to Mr. Murray was not in a format which complied with the Ombudsman regulations of 2003. The Ombudsman wrote to the trustees on 23rd December, 2004, requesting a determination in proper form from them. That was received on 29th March, 2005, thus enabling the investigation of the Ombudsman to proceed.

**The Ombudsman's Investigation**

9. This judgment is not concerned with the substantive merits of Mr. Murray's case. Consequently it is not necessary to consider in detail all of the steps taken by the Ombudsman in the course of his investigation or the final conclusions reached by him. Nevertheless, a number of matters which are of relevance ought to be mentioned.

10. The investigation was conducted exclusively by reference to written submissions and documents provided by both sides to the dispute. The legislation governing the Ombudsman permits him to conduct oral hearings. He has power inter alia to require the attendance of a person before him and has all the powers, rights and privileges vested in the High Court in respect of the examination of witnesses. It is not every case that requires an oral hearing. The Ombudsman has a well publicised policy on the topic. He will only hold an oral hearing in the following cases:-

(a) Where there are differing accounts of a particular event and the credibility of witnesses needs to be tested,

(b) Where the integrity or honesty of one of the parties has been questioned, and that person has asked for an oral hearing,

(c) Where there is a dispute about basic facts that cannot be resolved from the papers uncovered by the investigation on their own.

11. Over and above these conditions the Ombudsman reserves an entitlement to hold an oral hearing if he considers that it is right and proper to do so.

12. The only request for an oral hearing that was ever made in the present case was contained in a letter of 25th August, 2005, from Mr. Murray's solicitors. On this topic the letter simply said:-

"We feel that an oral hearing in this matter is merited and would be of assistance. We would be grateful if you would facilitate our request for a hearing in this matter."

13. It is to be noted that no attempt was made in that letter to suggest that the case fell into any of the categories in respect of which an oral hearing might be granted.

14. That request was responded to on 6th September, 2005. Insofar as it is relevant the letter read:-

"I have discussed your request for an oral hearing with the pensions Ombudsman and he has declined this. It is not his intention to hold formal oral hearings as a matter of course. These will be restricted to particularly problematic cases where, for example, there is doubt about the veracity of evidence submitted, there is direct conflict of evidence or the primary facts cannot be uncovered or substantiated."

15. The issue of an oral hearing was not raised again by Mr. Murray or his solicitors and the refusal to hold one is not challenged in these proceedings.

16. The absence of an oral hearing did not restrict the plaintiff in placing before the Ombudsman whatever material he thought appropriate. Such material could include statements of fact, legal submissions and, if he thought it desirable, the opinions of experts. Throughout the Ombudsman's investigation the plaintiff had the benefit of legal advice from his solicitors.

17. On the basis of the information gathered by him, the Ombudsman formed a preliminary view of the matter adverse to Mr. Murray. That view and the reasoning behind it was communicated to both parties to the dispute on 20th January, 2006. Each side was then entitled to make further submissions or place further evidence before the Ombudsman. In a letter of 24th January, 2006, the trustees stated that they had nothing further to add to their previous submissions. Mr. Murray, on the other hand, through his solicitors, by letter on 30th March, 2006, made a submission. Again on 6th April, 2006, he made a further submission in which he placed additional information before the Ombudsman.

18. Having examined those submissions the Ombudsman did not find that they contained any additional information, facts or arguments that swayed him from the preliminary view which he expressed.

19. Accordingly, on 16th June, 2006, the Ombudsman issued a final determination adverse to Mr. Murray's claim. That determination is a fully reasoned one running to some 15 pages.

### **The Appeal**

20. On 3rd July, 2006, the present proceedings were commenced by Mr. Murray against the trustees. They subsequently came before Finnegan P. (as he then was) who gave directions concerning an exchange of pleadings. An application was made by the Ombudsman to be joined in the proceedings, which was opposed by Mr. Murray. The Ombudsman sought to be joined as a defendant but ultimately was joined as a notice party to the proceedings.

21. Mr. Murray then issued a notice of motion seeking the following reliefs:-

"1. Directions, pursuant to Order 38, rule 9 of the Rules of the Superior Courts and to the inherent jurisdiction of this honourable court, as to the mode of the trial of the proceedings herein,

2. An order pursuant to Order 38, rule 8 or the Rules of the Superior Courts directing that the trial of the issues in the proceedings herein proceed on the pleadings to date and on such evidence, including expert evidence, as the parties may wish to adduce orally or by affidavit,

3. In the alternative, an order pursuant to Order 38, rule 9 of the Rules of the Superior Courts adjourning the proceedings herein for plenary hearing as if the proceedings had been originated by plenary summons."

22. That motion came before Johnson P. who referred it to me for hearing. I conducted that hearing on 16th January, 2007.

### **The Hearing of 16th January, 2007**

23. A number of issues were identified and argued at this hearing.

24. The first issue concerned the mode of trial. All parties now agree that the hearing of the case will be on affidavit as is the norm in respect of proceedings which are commenced by special summons. There is no question of a plenary hearing. This was the only area of agreement between the parties. All other issues were the subject of dispute, with the trustees and Ombudsman in agreement with each other in opposition to the contentions of Mr. Murray.

25. Two issues fall for adjudication. The first relates to the alleged entitlement of Mr. Murray to mount a claim for declaratory relief as to the correct meaning of the definition "final retiring salary" contained in the rules of the superannuation scheme. He has purported to include such claims in the present proceedings over and above the statutory appeal from the determination of the Ombudsman pursuant to s. 140 of the Pensions Act, 1990, as inserted by s. 5 of the Pensions (Amendment) Act, 2002.

26. The second issue relates to his entitlement to adduce expert evidence as to the true meaning of the definition of "final retiring salary" having failed to adduce such evidence when the matter was before the Ombudsman.

27. I will deal with each of these issues in turn.

### **The First Issue**

28. When Mr. Murray became dissatisfied with the pension awarded to him he could have done one of three things. He could have accepted the trustees' views and put up with what he got. Secondly, he could have sued the trustees for a declaration as to the true meaning of "final retiring salary" as contained in the deed. Or he could do what he in fact did, namely, complain to the

Ombudsman.

29. Having gone through the Ombudsman's procedures to finality it is argued that it is not now open to Mr. Murray to seek to launch what is in effect a collateral attack on his determination. He may of course appeal that determination pursuant to the statutory provisions but may do no more than that, say the trustees and the Ombudsman.

30. Mr. Murray contends otherwise. He argues that he was always entitled to issue proceedings by way of special summons under Order 3, rule 15 for the determination of the true construction of the definition of "final retiring salary" in the pension scheme. Rather than have two sets of proceedings he contends that he has sought such reliefs at paras. 2, 3, 4 and 5 of the existing proceedings.

31. I set out as an appendix to this judgment the full special indorsement of claim in the instant proceedings.

32. I must confess that when I read the special summons in its entirety I took the view that it was no more than an exercise of the statutory right of appeal by Mr. Murray and that the reliefs sought over and above those at number 1 on the indorsement were really ancillary to it. My view in that regard was shared by counsel for the trustees and the Ombudsman. Counsel on behalf of Mr. Murray, however, in the course of his submissions made it clear that that was not so. Claim number 1 arises on foot of the statutory appeal and the other claims arise as a result of a purported entitlement by Mr. Murray to seek the determination of the court on the true construction of the pension scheme regardless of the Ombudsman's determination or the appeal which is contained at claim number 1 of the summons.

33. The trustees and the Ombudsman argue that having elected to avail himself of the Ombudsman's investigation and determination Mr. Murray's only entitlement, if dissatisfied with such determination, is to appeal against it to this court. He may not, they say, launch a collateral attack upon it by in addition seeking substantive declaratory relief. They make that submission by reference to the doctrine of *res judicata*. In particular they rely upon the observations of Lord Bridge in *Thrasivoulou v. The Secretary of State for the Environment and Others* [1990] 2 AC 273. There his Lordship said:-

"In relation to adjudication subject to a comprehensive self-contained statutory code, the presumption, in my opinion, must be that where the statute has created a specific jurisdiction for the determination of any issue which establishes the existence of a legal right, the principle of *res judicata* applies to give finality to that determination unless an intention to exclude that principle can properly be inferred as a matter of construction of the relevant statutory provisions."

34. This statement was accepted as correctly stating the law in this jurisdiction by the Supreme Court in *Ashbourne Holdings Ltd. v. An Bord Pleanála* [2003] IESC 18.

35. In order to test the validity of the trustees and Ombudsman's submissions in this regard it is necessary to look at the statutory code under which the Ombudsman operates and which was invoked by Mr. Murray in the present case.

#### **The Act**

36. Section 131(1) of the Act provides that the Ombudsman is to be independent in the performance of his functions.

37. Subsection 2 allows him to investigate and determine three different types of complaints and disputes. The first is in respect of an allegation of financial loss occasioned by an act of maladministration done by or on behalf of a person responsible for the management of a pension scheme. The second allows him to investigate any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of a scheme once such is referred to him by or on behalf of the actual or potential beneficiary. The third category of complaint or dispute has no relevance to the present case.

38. Section 131, subs. 4 provides a time bar in respect of complaints or references to the Ombudsman.

39. Section 131(8) deals with the situation where a question arises as to whether the Ombudsman has jurisdiction to investigate a complaint or dispute. The question of his jurisdiction is to be determined by the Ombudsman whose decision in that regard is final.

40. Subsection 9 provides that the Ombudsman is to have such powers as are necessary for or incidental to the performance of his functions.

41. Section 132 provides for the making of regulations by ministerial order requiring the trustees of a scheme to establish procedures for the internal resolution of disputes.

42. Section 136 deals with the staying of court proceedings where a complaint has been made to or a dispute referred to the Ombudsman. If, subsequent to the referral of such complaint or reference to the Ombudsman, proceedings are commenced in any court against any other party to the complaint or reference in respect of any of the matters which are the subject of that complaint or reference then application can be made to that court to stay the proceedings. The court is obliged to make an order staying the proceedings if it is satisfied that there is no sufficient reason why the matter in respect of which the proceedings have been commenced should not be investigated by the Ombudsman and the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary for the proper conduct of such investigation.

43. Section 137 sets out the powers of the Ombudsman in respect of investigations. He may inter alia require a person to attend before him and to produce documents; exercise the powers, rights and privileges of a High Court judge on the hearing of an action in respect of the examination of witnesses; apply to the Circuit Court in respect of a person who fails to comply with a requirement of his; of his own volition or at the request of a party to a complaint or reference state a case to the High Court on a point of law.

44. Section 138 contains enabling powers for regulations to be made concerning the procedure to be followed by the Ombudsman in the conduct of investigations. It also sets out procedures which he must follow so as to ensure that parties to an investigation have the opportunity to comment on any allegations contained in the complaint or reference.

45. Section 139 obliges the Ombudsman to make a determination in relation to a complaint or dispute referred to him. In that determination he may give to the parties concerned such directions as he considers necessary or expedient for the satisfaction of the complaint or the resolution of the dispute. Under subs. 2 he cannot require either an amendment of the rules of a scheme or the substitution of the decision of the Ombudsman for that of the trustees of the scheme in relation to the exercise by them of a discretionary power under the rules of the scheme. He may also order redress, including financial redress, to be made to a party. The amount of such redress is to be that which the Ombudsman deems just and equitable having regard to all of the circumstances but is not to exceed any actual loss of benefit under the scheme.

46. Under subs. 5 the determination of the Ombudsman is required to be in writing and communicated by him to the parties.

47. Under subs. 7 the publication by the Ombudsman of any report is to be absolutely privileged.

48. Section 140 provides that a party to an investigation before the Ombudsman may appeal to this court from such determination within 21 days of it. This court, on the hearing of an appeal, may annul, confirm or confirm with modifications, the determination of the Ombudsman.

49. Section 141 deals with the enforcement of determinations of the Ombudsman. Redress can be had to the Circuit Court in that regard.

50. From this short survey of the relevant statutory provisions it is clear that they contain a self-contained statutory code. They invest the Ombudsman with a wide jurisdiction, powers akin to that of this court in many respects and the ability to make a binding determination which establishes a legal right. That legal right is capable of enforcement in the manner prescribed by the Act. I am satisfied, applying the dictum of Lord Bridge already quoted, that the Pensions Act has created a specific jurisdiction for the determination of issues which establish the existence of a legal right and that there cannot be inferred from these provisions an intention to exclude the principle of *res judicata* in respect of such determinations.

51. In my view it would be contrary to the policy of the legislature as gleaned from the relevant statutory provisions that it should be open to a party to avail himself of the statutory machinery but when dissatisfied with the result seek, not merely to exercise the statutory right of appeal, but also to commence in this court proceedings of a substantive nature which seek to, in effect, set aside the determination of the Ombudsman.

52. A party, such as Mr. Murray, who is aggrieved with the determination of the trustees' may, at his option, avail himself of the services of the Ombudsman or bring proceedings in an appropriate court for declaratory or other relief. He may not do the latter when in receipt of an adverse determination from the Ombudsman. That is so because the determination of the Ombudsman is *res judicata* of the dispute in question, subject only to the right of appeal.

53. In these circumstances I am satisfied that insofar as the reliefs at paras. 2, 3, 4 and 5 of the special indorsement of claim are concerned, they may not be further prosecuted.

54. I am also satisfied that the claims at paras. 7, 8, 9, 10 and 11 are impermissible. Mr. Murray's claim is limited to redress for the fiscal loss sustained by him in the event that the trustees were wrong in the conclusion which they reached. Insofar as he attempts to allege an entitlement to general damages such is not open to him in the form of proceedings which he has chosen, namely special summons.

55. Insofar as the limitations on the Ombudsman under s. 139, subs. 2 are concerned they have no relevance to this case. A finding by the Ombudsman in Mr. Murray's favour could not have required a rule change of the scheme. The case does not involve the exercise of a discretionary power by the trustees.

56. It follows that the only matter with which this court will be concerned in the substantive hearing of this case will be the appeal under s. 140 of the Act.

## **The Second Issue**

57. The question which falls for decision here is whether the court, on dealing with the appeal under s. 140, is confined to the material which was placed before the Ombudsman or may admit further evidence. The further evidence which is sought to be admitted by Mr. Murray is an actuary's report from Joseph G. Byrne & Sons, Consulting Actuaries. I have had the opportunity of seeing this report which deals with their view as to the definition of the term "final retiring salary" under the superannuation scheme.

58. Having regard to the statutory framework and the judgment of Finnegan P. in *Ulster Bank Investment Funds Ltd. v. Financial Services Ombudsman* [2006] IEHC 323, I am of opinion that, as a general rule, this court, in hearing an appeal under s. 140 of the Act, is confined to the material which was before the Ombudsman. If that were not so, then parties would be at large as to what material they could put before the court by way of affidavit and the hearing in this court would be an appeal in name only.

59. The general rule which I have enunciated is of course is open to exceptions. In my view, in exceptional cases, there would be an entitlement to adduce evidence which was not before the Ombudsman when making his determination. Such circumstances are in my view those which are identified by the Supreme Court in *Murphy v. Minister for Defence* [1991] 2 I.R. 161 subject to the modification identified by Finnegan P. in the *Ulster Bank* case.

60. In *Murphy's* case the Supreme Court set out the general principles which are applicable in relation to the admission of additional evidence. Three conditions must be met. They are:-

1. The evidence sought to be adduced must have been in existence at the time of the trial and must have been such that it could not have been obtained with reasonable diligence for use at the trial;
2. The evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive;
3. The evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, though it need not be incontrovertible.

61. I am satisfied that the evidence from Messrs. Byrne & Sons could, with reasonable diligence, have been obtained by Mr. Murray and placed before the Ombudsman when the complaint was being considered by him. No fetter was placed upon Mr. Murray's ability to adduce that evidence before the Ombudsman. Indeed it has to be said that the procedures followed by the Ombudsman are such that he apprised Mr. Murray of his preliminary views and afforded him an opportunity to place further material before him in advance of his final determination. Mr. Murray availed himself of that opportunity and two further communications were sent by his solicitors prior to the final determination. Neither of them contained Messrs. Byrne's evidence nor sought to do so.

62. No explanation is given as to why Messrs. Byrnes' evidence was not put before the Ombudsman. No special circumstances have been identified which would justify the admission of such evidence at this stage. I am therefore satisfied that the first of the three conditions identified in *Murphy's* case have not been met.

63. I have had the opportunity of reading Messrs. Byrnes' report which really deals with legal rather than actuarial matters. I am not satisfied that it would probably have an important influence on the results of the case. Consequently it fails to satisfy the second condition set forth by the Supreme Court in *Murphy's* case.

64. Mr. Murray argued through counsel that *Murphy's* case is not the last word on this topic. He did so by reference to the decision of Finnegan P. in *Ulster Bank Investment Funds Limited v. Financial Services Ombudsman* [2006] IEHC 323. That decision concerned the scope of an appeal from a finding of the Financial Services Ombudsman. The judge took the view that the case should proceed on the basis of the materials which were before that Ombudsman and no other. He did, however, point out that the court has a discretion to permit further evidence where it is satisfied that this is necessary or appropriate in the interests of justice. Having referred to *Murphy's* case and a number of High Court decisions he said:-

"However in the interests of justice regard should be had to the nature of the deciding body whose decision is being appealed: the proceedings before that body may well lack much of the formality which will attend a hearing before the High Court with which the Supreme Court will principally be concerned. An issue may arise on appeal which could not arise at a hearing, for example an issue as to the extent of expertise of the deciding body. Thus a more flexible approach than that adopted by the Supreme Court on the admission of further evidence will be required."

65. Whilst the procedures of the Ombudsman are undoubtedly less formal than those of a court, that, of itself, would not justify the admission of this additional evidence. There is no question of an issue arising on this appeal which could not have arisen before the Ombudsman. Indeed, the issue on the appeal is precisely that which was placed before the Ombudsman for determination. Moreover, the parties to the matter before the Ombudsman obtained an opportunity which is never given in proceedings before the court. They were apprised of the preliminary determination of the Ombudsman and were given an opportunity to both make submissions and call further evidence with a view to persuading him that that preliminary view was incorrect. Mr. Murray availed himself of that opportunity on two occasions but never sought to adduce this additional evidence.

66. This case does not exhibit any of the factors which would involve the court adopting the flexible approach identified by Finnegan P. in the *Ulster Bank* Case.

67. Over and above all of the foregoing, I have come to the conclusion that the evidence of Mr. Byrne is, in any event, inadmissible. The principal issue which the court is going to have to deal with on the substantive appeal is the true construction to be given to the definition of "final retiring salary". That is a question of law. Legal opinion is not normally admissible on such a question. Non-legal opinion is not admissible either. The question of construction is exclusively a matter for the judge. There is no suggestion that "final retiring salary" is a term of art which might justify factual evidence as to its particular meaning in a particular discipline or profession being required.

68. In these circumstances I rule that the case should proceed on the basis of the material which was before the Ombudsman and that Messrs. Byrne's evidence should not be admitted.

#### **Curial Deference**

69. During the course of the hearing reference was made to the standard of review which the court ought to apply on the hearing of the appeal in suit.

70. There is a good deal of case law on this topic which was not opened or argued and I am of opinion that it would be inappropriate for me to express a view at this juncture on the topic. In any event to do so, in the absence of a specific relief being sought in the notice of motion in that regard and full argument being made, would be inadvisable. I do not wish to trespass upon a matter which, on one view, is properly that of the trial judge who will hear the substantive appeal. Consequently I express no view on this topic.

#### **Conclusion**

71. My conclusions are as follows:-

1. It is not open to Mr. Murray to do other than prosecute his appeal as provided for in s. 140 of the Act. He may not seek the substantive reliefs which are claimed at paras. 2 through 12 (save 6) of the special indorsement of claim. If successful, he may qualify for financial redress pursuant to s. 139(3) of the Act.
2. It is not open to Mr. Murray to adduce evidence from Messrs. Byrne & Sons, Consultant Actuaries on the hearing of his appeal.

### **APPENDIX**

#### **SPECIAL INDORSEMENT OF CLAIM**

The Plaintiff's claim is for:-

1. An Order pursuant to Section 140 of the Pensions Act, 1990 (as inserted by Section 5 of the Pensions (Amendment) Act, 2002) annulling the determination of the Pensions Ombudsman made on the 16th day of June 2006 in the matter of William J. Murray, Complainant, and the Scheme Administrators and Trustees of the Irish Airlines (General Employees) Superannuation Scheme, Respondents
2. A declaration that the term "annual basic salary of a member at the date of his retirement" contained within the definition of the term "Final Retiring Salary" in the Rules of the Irish Airlines (General Employees) Superannuation Scheme means the annual basic salary of that member prevailing at the date of the member's retirement
3. A declaration that the interpretation of the aforementioned term to mean the average basic earnings of the employee in the 12 months up to the member's retirement date is not a valid interpretation thereof
4. A declaration that use of the aforesaid interpretation and the administration of the said Scheme in accordance therewith constitutes a breach of the duties of the Trustees and Administrators of the Scheme to administer the Scheme in accordance with the Rules thereof

5. All necessary consequential Orders and reliefs

6. An Order directing the Defendants to cause such payments to be made to the Plaintiff from the Superannuation Fund of the said Scheme as would properly and fully compensate him for the shortfall in payments, received in the past and to be received in the future by him, resulting from the invalid interpretation by the Defendants of the term "annual basic salary of a member at the date of his retirement" contained within the definition of the term "Final Retiring Salary" in the Rules of the Scheme

7. All necessary accounts and inquiries

8. Damages for breach of contract

9. Damages for breach of trust

10. Damages for negligence

11. Interest

12. Further or other Order

13. Costs

**John Hennessy B.L**