

Between:

PROMONTORIA (ARAN) LIMITED**PLAINTIFF**

– AND –

JOHN ARCHBOLD & GERRY WALSH**DEFENDANTS****JUDGMENT of Mr Justice Max Barrett delivered on 5th March, 2019.**

1. Promontoria seeks an order under O.31, r.18 RSC directing the defendants to produce for inspection certain documents relied upon in, but not exhibited to, an affidavit sworn for the defendants in these proceedings (the 'Affidavit'). As Barron J. observes in *Holloway v. Belenos Publications Ltd (No 2)* [1988] IR 494, 496, "[T]he essence of an order for inspection is knowledge of the existence of the documents to be inspected". That is a high threshold: supposition/inference does not suffice; actual knowledge of actual existence is necessary for an inspection order to issue. The defendants claim that if one looks to the Affidavit and brings *Holloway* to bear, the plaintiff does not meet the threshold for the order now sought. In the table below, the court lists the documents sought, identifies the paragraphs in the Affidavit in which the document is said to be relied upon, and applies the *Holloway* standard. Thereafter the court brings O.31, r.18(2) to bear.

	Documents Sought	Para.	Conclusion
A	Data access documents.	3	Existence expressly averred to.
B	Report summarising issues affecting title.	5	Averred that report would be sought. That does not mean it was sought.
C	Loan settlement proposal.	6	Written elements of same identified in affidavit.
D	Sworn Statements of Affairs.		Existence expressly averred to.
E	Title Report.	7	As above,
F	Deed of Assurance.	9	As above.
G	UB valuation report or recommendations.		No indication that valuer prepared a written report.
H	Summary of attendance &/o minutes of meeting of 1.7.14.		No indication that attendance &/o minutes exist.
I	Letter of 14.10.14 re. €2m settlement of funds.	10	Existence expressly averred to.
J	Summary of attendance &/o minutes of meeting of 14.10.14.		No indication that attendance &/o minutes exist.
K	UB offer of settlement.		No indication that UB terms were in writing.
L	Letter of 14.10.14 re. €2m settlement proposal.		Existence expressly averred to.
M	Letter of 22.10.14 re. settlement of funds within 4 weeks.		As above.
N	Letter &/o correspondence of mid-November 2014.	11	Existence of correspondence expressly averred to.
O	Minutes of telephone conference of mid-November 2014.		No indication that minutes exist.

2. The documents known to be in existence and referred to at A, C, D, E, F, I, L, M and N have been relied upon in, but not exhibited to, the Affidavit. The court, mindful of O.31, r.18(2), is of the opinion that inspection of the said documents is necessary for disposing fairly of the within proceedings. It will therefore grant the order sought in respect of those documents.