Neutral Citation: 2012 [IEHC] 424

THE HIGH COURT

Commercial

[2012 No. 7293P]

Between

The Governor and Company of the Bank of Ireland

Plaintiff

And

Blake O'Donnell, Bruce O'Donnell, Brian O'Donnell and Mary Patricia O'Donnell

Defendants

Judgment of Mr. Justice Charleton delivered on the 26th day of October 2012.

1.0 This is an application by the defendants that the High Court decline jurisdiction in favour of a prior assumption of jurisdiction by the courts of England and Wales. That application is misplaced.

1.1 The plaintiff is a bank. The defendants are a family. Mary Patricia O'Donnell and Brian O'Donnell are the mother and father. Blake O'Donnell and Bruce O'Donnell are their sons. Bruce O'Donnell is domiciled and has his main centre of interest in Ireland. That much is clear because he is a student in his late twenties and enrolled in university. Brian O'Donnell is a distinguished solicitor. He is also a property developer with interests in Ireland and England and elsewhere. He does not have a practising certificate from the Law Society of Ireland for 2012 because earlier in this year he withdrew his application to renew that entitlement. He had previously held that certificate for decades. Blake O'Donnell is also a distinguished solicitor; he continues to hold the necessary practising certificate from the Law Society of Ireland. Mary Patricia O'Donnell was, firstly, a psychiatrist and, most recently together with her husband, worked as a property developer.

1.2 Except for Bruce O'Donnell, studying here, the O'Donnells claim to have moved their centre of main interest from Dublin to London. Their interaction with the plaintiff bank is the origin of the issues before this Court. Over close to a decade the plaintiff bank lent Brian O'Donnell and Mary Patricia O'Donnell colossal sums of money for building projects. In the context of the national economic crisis from 2008 and the collapse in property prices in Ireland to about one third of their 2006/7 level and with the price of development land falling even more sharply, the O'Donnells found themselves financially embarrassed. The plaintiff bank issued proceedings when they could not repay on time and then obtained a judgment against them. It is from that judgment that this issue arises. A brief chronology will put the application into an appropriate context.

Chronology

2.0 The starting point is the default by Brian O'Donnell and Mary Patricia O'Donnell in their loan obligations to the plaintiff bank. In December 2010, the plaintiff bank commenced summary proceedings against them. In an action against only Brian O'Donnell and Mary Patricia O'Donnell, record number 2010 6100S, the bank sought the recovery of these loans. On 4 March 2011, a settlement agreement was concluded among these parties; this involved the preservation of their assets and the repayment of debts by instalments. A formal statement of those assets was drawn up on 18 March 2011 and furnished to the plaintiff bank. Controversy now arises in relation to two of those assets, which are situated in England.

2.1 Number 17 Columbus Courtyard, Canary Wharf, in London is a substantial office building which at one stage was valued at £124.5 million. The building is managed under a form of agreement by Kennor Advisory Limited, an entity registered in the British Virgin Islands. Though Brian O'Donnell and Mary Patricia O'Donnell are the apparent shareholders in the company, they claim that through a trust deed dated 15 December 2010 beneficial interest now rests with their son Blake O'Donnell. The company is in receipt of annual income of close to £0.5 million from that apparent work and the servicing of another building not material to these proceedings. The actual office building at Columbus Courtyard is owned by a company called Havergate Investments Limited; another British Virgin Islands registered entity. The plaintiff bank claims that this company owns a United Kingdom registered entity called Fourteen Ninety Two Limited through which ownership of the building is established. The relevant shares held by Brian O'Donnell and Mary Patricia O'Donnell are again apparently the subject of a trust dated 20 September 2005 in favour of their son Blake O'Donnell. The second asset is a substantial office building at 15 Westferry Circus, Canary Wharf, in London. Through a company registered in England called Hibernia 2005 Limited, a single share in which is registered to Brian O'Donnell and Mary Patricia O'Donnell, another company called Gort Limited is owned and, in turn, it apparently owns the building. Again it is claimed that there is a trust by these parties in favour of their son Blake O'Donnell, this one dated 25 May 2005. The value of this building was supposed at one stage to be £130 million.

2.2 These substantial real property assets, the plaintiff bank alleges, were included in the statement of assets on 18 March 2011 as being in the ownership of Brian O'Donnell and Mary Patricia O'Donnell in the context of the summary proceedings in Ireland for the repayment of debt.

2.3 In July 2011 the settlement broke down because instalment payments on the loans were not met. On 12 December 2011, the commercial division of this Court granted summary judgment against Brian O'Donnell and Mary Patricia O'Donnell in the sum of €71,575,991. It is to be noted that the entitlement of the plaintiff bank to that judgment was not contested.

2.4 In respect of one of the buildings in London, namely 15 Westferry Circus, the plaintiff bank under Council Regulation E.C./805/2004 of 21 April, 2004 creating a European Enforcement Order for uncontested claims, O.J. L 143/15 30.4.2004 (the 'Enforcement Regulations'), sought before Chief Master Winegarten in London to impose a charge on the judgment debtors' shareholding in Hibernia 2005 Limited. On 6 February 2012, this application was granted. Meanwhile, in Ireland, a revised statement of affairs was filed by those judgment debtors in the ongoing summary proceedings in Ireland. The proceedings continued notwithstanding judgment because the plaintiff bank sought examination before the High Court in aid of enforcement. In that context, for the first time, it is claimed, an altered position on ownership was revealed whereby the beneficial interest in the relevant shares in both buildings was now alleged to

be held on trust by Brian O'Donnell and Mary Patricia O'Donnell for the judgment debtors' son Blake O'Donnell. On 13 March 2012 in London, this question having been mentioned, Blake O'Donnell announced that he did not wish to be a party to the application to charge the relevant share in 15 Westferry Circus; this notwithstanding his claim of ownership. Chief Master Winegarten had now been told of the alleged trust and the Chief Master's order records that there appeared to be "an issue to be tried, namely, whether the defendants [Brian O'Donnell and Mary Patricia O'Donnell] have a beneficial interest in the one ordinary share held by them in Hibernia 2005 Limited".

2.5 Shortly thereafter on 27 March 2012, these defendants Brian O'Donnell and Mary Patricia O'Donnell filed for bankruptcy before the courts of England and Wales. In Ireland, the plaintiff bank over a number of days that April had the judgment debtors examined on oath before Kelly J in the High Court. On 27 April 2012, Chief Master Winegarten stayed the share charging judgment enforcement application pending the determination of the bankruptcy proceedings in England and Wales. Once Brian O'Donnell and Mary Patricia O'Donnell had applied to be made bankrupt, the ownership of the relevant asset, by them or by their sons, became a matter for the Trustee in Bankruptcy; should the Bankruptcy Court of England and Wales accept jurisdiction over them and order that they be made bankrupt. On 25 May 2012 in Ireland, a petition was issued by the plaintiff bank to make Brian O'Donnell bankrupt. Another similar petition was issued in Ireland against Mary Patricia O'Donnell on 2 June 2012. A further day of examination before Kelly J of Brian O'Donnell in aid of enforcement of the judgment debt took place on 5 July 2012. Then on 25 July 2012, the plaintiff bank issued the within proceedings against these defendants, mother father and two sons.

2.6 I make no comment on the merit or lack of merit of the case made in these proceedings by the plaintiff bank: it is not yet heard and is unproven. I will, however, concisely outline the allegations made against the defendants.

This action
3.0 In this case the plaintiff bank alleges that Brian O'Donnell and Mary Patricia O'Donnell have deceived it as to their assets; that they have hived off those assets under a fraudulent scheme in favour of their sons; that all the defendants have conspired together to illegally damage the interests of the plaintiff bank; that the trust deeds as to ownership of both buildings in Canary Wharf, London, are inoperative or are part of the deceit; and that orders by way of declaration and damages should follow. Any reasonable reading of the chronology set out above will show that the action now before the High Court in Ireland directly arises out of the debt proceedings in which a judgment was granted summarily in Ireland; that the application in England and Wales is with a view to enforcing that judgment in another European Union country; and that every step relevant to the loan, the default, and the declarations as to assets took place in Ireland.

3.1 I do not wish to unnecessarily comment on any issue as to where is the main centre of interest of any defendant apart from Bruce O'Donnell, who as earlier stated is admitted to be domiciled in Ireland. That is a matter of contest before the bankruptcy division of the High Court of England and Wales and I do not know what the relevant timescale might be in that application. Insofar as there has been affidavit evidence exchanged on that issue, I decline to be drawn into that controversy beyond what I am required to decide in this application according to the timeframe relevant to the issues before me.

Enforcement
4.0 Complex arguments have been addressed to the court on Council Regulation E.C./44/2001 of 22 December, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, O.J. L 012/1 16.1.2001; commonly called the 'Brussels I Regulation'. I do not believe that this law, as brought into force in Ireland by the European Communities (Civil and Commercial Judgment) Regulations 2002 (S.I. No. 52 of 2002), governs the present application. There are two reasons.

4.1 Firstly, the Enforcement Regulations govern this matter. These are the Regulations recited in the relevant order of Chief Master Winegarten. A judgment was issued in Ireland in an uncontested claim. That judgment is enforceable in any European Union country under those regulations because of the verified absence of any dispute by the debtor as to the nature or extent of the pecuniary claim. Once the fundamental rules of civil procedure as to notice, as opposed to a legal fiction of notice, are observed, then, as recital 18 of the Regulations makes clear, mutual trust in the administration of justice within the European Union provides for enforcement; and this without any review of the judicial standards applicable. The Enforcement Regulations apply to civil and commercial matters by virtue of article 2. Once the judgment does not conflict with the Brussels I Regulation and fair procedures are observed, making an uncontested judgment certifiable under article 6, the enforcement procedure under article 20 is enabled. Under article 21(2) neither the judgment nor its certification can be reviewed as to its substance when enforced in another member state. Article 27 of those regulations does not affect the possibility of seeking recognition and enforcement under the Brussels I Regulation of a court settlement or a court order based upon an uncontested claim. Enforcement is to be in accordance with the law of the enforcing member state. In aid of enforcement the plaintiff bank sought to obtain a charge on a share in a company in England and Wales. An issue has been raised in the context of that enforcement as to whether the judgment debtors have full legal and beneficial ownership of the share. That is a matter of defence. In raising that defence, it is clear that the judgment debtors are seeking to raise an issue as to the validity of what are claimed to be pre-existing trusts. In the summary proceedings in Ireland that culminated in the uncontested judgment, that asset consisting of that share had been listed, by the judgment debtors themselves and prior to any application to enforce an uncontested judgment in England and Wales, as their unencumbered property. Whether that was a breach of any representation to the High Court in Ireland, or any illegality was effected in order to alter the enforceability of the judgment, is an issue properly to be raised in Ireland. Furthermore, as will be seen, under the Brussels I Regulation, a matter of defence does not alter the nature and substance of a claim.

4.2 Secondly, the Brussels I Regulation is specifically designed in order to attain the objective of free movement of goods and services through the recognition and enforcement of judgments in civil and commercial matters throughout the European Union by the application of rules pursuant to the obligation of judicial co-operation in civil matters; see recitals 2, 3, 6, 10 and 11. Irreconcilable judgments on contested issues are not to be given in two or more member states; recital 15, 16 and 17. By virtue of the last recital, enforcement is to be made efficient and rapid and should become virtually automatic upon formal checks on the relevant documents being addressed. In founding the scope of the regulations on civil and commercial matters, a fundamental principle made clear in article 2 is that persons domiciled in a member state may be there sued. Under article 5, special jurisdiction is assumed in relation to contracts in the place where the obligations are to be performed; in relation to maintenance where the creditor is habitually resident; in relation to tort where the harmful event occurred; in relation to civil damages to a victim in criminal proceedings where the trial has taken place; in relation to agency where that branch was established; in relation to a trust where the instrument was created; and in relation to the salvage of a cargo where there is authority by a court over that material. This, in my view, describes forms of civil proceedings and has nothing to do with the enforcement in another member state of an uncontested claim which has resulted in a decree. Once judgment is given, that claim is over except for enforcement. Moreover, under article 38, enforcement is to be by declaration in another member state and is described in article 40 as a procedure. This has nothing to do with civil and commercial actions. In enforcing an uncontested judgment in another member state, a new action is not commenced whereby the clear rules of the Brussels I Regulation must be applied as to jurisdiction as between the entitlements of competing jurisdictions. Rather, absent an issue such as that raised here that relevant property should not be available in enforcement because it is not owned by the judgment

debtor, there is no contest that can ever come before the courts where the uncontested judgment is to be processed. What is involved, rather, in that instance of enforcement of an existing judgment is properly described as a contest as to enforceability.

4.3 In deference to the arguments of counsel on both sides, and in the event that I am wrong in the view I have expressed that the Brussels I Regulation has no applicability to the foreign enforcement of an uncontested judgment debt, I must proceed to consider the competing entitlement of the courts of Ireland and the courts of England and Wales to be the proper forum for the within proceeding.

Brussels I Regulation
5.0 The object of the Brussels I Regulation is clearly set out in the judgment of the Court of Justice in *Gubisch Maschinenfabrik K.G. v. Palumbo (Case C-144/86*) [1987] E.C.R. 4861 at paragraph 8, addressing the Convention which was its origin:

> According to its preamble, which incorporates in part the terms of Article 220, the Convention seeks in particular to facilitate the recognition and enforcement of judgments of courts or tribunals and to strengthen in the Community the legal protection of persons therein established. Article 21, together with Article 22 on related actions, is contained in Section 8 of Title II of the Convention; that section is intended, in the interests of the proper administration of justice within the Community, to prevent parallel proceedings before the courts of different Contracting States and to avoid conflicts between decisions which might result therefrom. Those rules are therefore designed to preclude, in so far as is possible and from the outset, the possibility of a situation arising such as that referred to in Article 27 (3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in a dispute between the same parties in the State in which recognition is sought.

5.1 It is clear that the purpose of the regulation is that claims of conspiracy and fraud as to the divestment of assets by judgment creditors are not to be tried before the courts of England and Wales and the courts of Ireland with the potential for differing views as to the validity of the trusts that have apparently shifted the ownership of valuable assets within a single family. Article 2(1) provides the general rule that, in principle and subject to the regulations, domicile shall dictate jurisdiction:

> Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

Domicile is defined in article 11 of S.I. No. 52 of 2002 in this way:

> (a) An individual is domiciled in the State or another state (not being a member state) only if he or she is ordinarily resident in the State or that other state,
>
> (b) an individual is domiciled in a place in the State only if he or she is domiciled in the State and is ordinarily resident or carries on any profession, business or occupation in that place, and
>
> (c) a trust is domiciled in the State only if the law of the State is the system of law with which the trust has its closest and most real connection.

5.2 Applying the approach of Costello J in *Deutsche Bank A.G. v. Murtagh* [1995] 2 I.R. 122, the concept of ordinary residence as domicile should be given a commonsense meaning as an ordinary expression. At the relevant time and on the evidence before me, all of the defendants are domiciled in Ireland. There is a substantial family home here; there is a record of commercial and professional engagement here; there are a series of descriptions by the defendants as to where they ordinarily lived in the uncontested summary proceedings; and there is nothing to indicate that movement to an address in London is anything other than a temporary measure by way of residence at place where the defendants have not as yet established themselves as ordinary residents. In so far as the defendants contest this matter, they have put insufficient material before the court to establish a probability in their favour. The result may be otherwise, and the relevant timeframe may be different, in the differing test to be applied in England and Wales for the assumption of jurisdiction as to bankruptcy. I specifically distance this finding from any to be made in that bankruptcy issue. The test in bankruptcy proceedings involves an analysis as to the main centre of interest of an applicant. Whether that test is similar to or different from the test as to domicile (that a person is "ordinarily resident or carries on any profession, business or occupation" in Ireland) just applied is not for me to address.

5.3 Even were I wrong in that regard, article 6(1) of the Brussels I Regulation provides that a person "domiciled in a Member State may also be sued":

> where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided that the claims are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgements resulting from separate proceedings.

5.4 Bruce O'Donnell is a university student in Ireland. Whether the claims of the plaintiff bank are correct or not, the loans leading to the uncontested judgment were made in Ireland, the declarations as to property ownership on the two buildings in Canary Wharf in London were made in Ireland, the claim that gives rise to the allegation of conspiracy and fraud in the within proceedings is alleged to have been organised either in Ireland or so as to affect the enforceability of the judgment within Ireland, two of the defendants are or were, as solicitors, officers of the Superior Courts of Ireland and, most importantly, the evidence whereby the defendants may vindicate their reputation or whereby the plaintiff bank may succeed in proving the grievous torts alleged against them is within the purview and jurisdiction as to compellability of witnesses of the High Court of Ireland.

5.5 It is now conceded, and rightly so, that these proceedings are not concerned with immovable property and the rights as to the realty thereof, but are concerned with personal obligations and with shares in corporations. Article 22 of the regulations therefore has no application.

5.6 It may be said that although the administration of enforcement of the uncontested judgment has been stayed in England and Wales pending the outcome of the application in bankruptcy made in that jurisdiction by Brian O'Donnell and Mary Patricia O'Donnell, an issue may eventually arise whereby the Trustee in Bankruptcy in that jurisdiction may choose to contest the availability of one of the two office blocks in Canary Wharf in aid of the creditors. That contingency is, in my view, a long way off. It also depends on a decision to be made in due course by the Trustee in Bankruptcy in England and Wales to contest the ownership of the relevant office block in aid of the creditors. That decision depends on a fair view of the circumstances and it is hard to predict how it might be made. Article 29 of the Brussels I Regulation is not applicable since there is nothing as to the nature of this action which requires exclusive jurisdiction. Were it to be the case, under article 26, that one of these defendants has been sued in another member state, which in my view has not arisen at all, then I would decline jurisdiction absent an entitlement to hear this claim under another article of the

regulation. Similarly, in so far as it might be shown under article 27 that proceedings involving the same cause of action and between the same parties have been brought both in Ireland and before the courts of England and Wales, I would decline jurisdiction in favour of the court first seised. That has not been shown. Article 27 could have some applicability had a case been brought before the courts of England and Wales by some or all of the defendants seeking a declaration in a contest as to ownership of the shares giving rise to an entitlement in property over it or both of the office blocks in Canary Wharf. It cannot be forgotten, however, that any contest on the issue of enforcement is in respect of one of these buildings only and not the other. Jurisdiction otherwise arises in Ireland because of the approach of the Brussels I Regulation to the concept of how a defence impacts on jurisdiction.

5.7 Under Article 27, the enforcement procedure initiated in England and Wales is not a cause of action. It does not make an allegation and it does not seek a remedy in the event that the allegation is upheld. Rather, it seeks to enforce what has already been established before the courts in Ireland, namely the recovery of monies due on foot of an uncontested judgment. I am grateful for the guidance given by Finlay Geoghegan J. in *Popely v. Popely* [2006] IEHC 134, [2006] 4 I.R. 356 on this point. It is necessary only to quote a section of that judgment which deals with the relevance of a defence raised, concluding that the nature of the answer to claim does not alter the object of proceedings or the calls on which they are based. In summary, the nature of a defence raised in proceedings does not alter the nature of a claim for the purpose of its description under the relevant article. I quote pages 363-366 of the report:

> There was substantial agreement as to the legal principles applicable to a consideration as to whether article 27 applies on the facts herein to the Irish and English proceedings. The Court was referred to the relevant portions of *Civil Jurisdiction and Judgments and European Civil Practice* and in particular the decisions of the European Court of Justice in Gubisch Maschinenfabrik K.G. v. Palumbo (Case 144/86) [1987] E.C.R. 4861; The Tatry (*Case C-406/92*) [1994] E.C.R. I-5439 and *Gantner Electronic GmbH v. Basch Expolitatie Maatschappij B.V.* (*Case C-111/01*) [2003] E.C.R. I-4207. The following are the principles which I would derive from those decisions and comments in the texts insofar as relevant to the facts of this application:-
>
> (i) the obligation on a court under article 27 to consider whether it must stay the proceedings before it or decline jurisdiction by reason of alleged prior proceedings with the same cause of action and between the same parties in another jurisdiction continues throughout the proceedings. Neither the entry of the appearance nor any delay in raising the issue alters the obligation on the court as it is obliged to do this "of its own motion";
>
> (ii) the fact that in the Irish proceedings there are additional parties to those in the English proceedings is no bar to the application of article 27. However, article 27 only applies to so much of the claim in the proceedings before the courts secondly seised as is between the same parties to the proceedings before the courts first seised. Article 27 does not prevent the proceedings continuing between the other parties. (See *The Tatry (Case C-406/92*) [1994] E.C.R. I-5439, para. 36);
>
> (iii) the phrase "the same cause of action" in article 27 must be given an autonomous meaning for the purposes of article 27. This must be construed in accordance with all the language versions of the Regulation. In the French and Italian texts the concept of the same cause of action is expressed in a double form. In French, the phrase used is "*le même objet et la même cause*". Notwithstanding that the English language version of article 27 does not distinguish between the "object" and the "cause" of action in the same way as the French, Italian and other language versions, it must be construed in the same manner. The European Court of Justice so held in relation to the German version in *Gubisch Maschinenfabrik K.G. v. Palumbo (Case C-144/86*) [1987] E.C.R. 4861 (para. 14). Accordingly, to constitute the "same cause of action" within the meaning of Article 27 two actions must have the same "cause" and same "object" as defined by the European Court of Justice. In *The Tatry* the European Court stated at para. 39:-
>
> > "For the purposes of article [27] … the 'cause of action' comprises the facts and rule of law relied on as the basis of the action."
>
> Further in the same judgment it also stated:-
>
> > "The 'object of the action' for the purposes of article [27] means the end the action has in view."
>
> (iv) the national court in considering whether the two sets of proceedings have the same cause of action should consider only the claims made by the applicant in each of the relevant proceedings to the exclusion of a defence made by the parties. This issue was considered by the European Court of Justice in *Gantner Electronic GmbH v. Basch Expolitatie Maatschappij B.V. (Case C-111/01)* [2003] E.C.R. I-4207 in relation to article 21 of the Brussels Convention. However, in its reasoning the European Court of Justice relied upon article 30 of Council Regulation E.C./44/2001 which provides the point at time a court is deemed to be seised including certain circumstances when the document instituting the proceedings is lodged. The judgment must be considered to apply equally to article 27 of Council Regulation E.C./44/2001. The European Court of Justice considered the impact on article 21 of the Convention (27 of the Regulation) if the content and nature of claims could be modified by a defence necessarily lodged at a later date than the date upon which the second court is seised and it stated at paras. 30 to 32:
>
> > "Finally, the objective and automatic character of the *lis pendens* mechanism should be stressed. As the United Kingdom Government correctly points out, Article 21 of the Convention [article 27 of Council Regulation E.C./44/2001] adopts a simple method to determine, at the outset of proceedings, which of the courts seised will ultimately hear and determine the dispute. The court seised is required, of its own motion, to stay its proceedings until the jurisdiction of the court first seised is established. Once that has been established, it must decline jurisdiction in favour of the court first seised. The purpose of article 21 of the Convention would be frustrated if the content and nature of the claims could be modified by arguments necessarily submitted at a later date by the defendant. Apart from delays and expense, such a solution could have the result that a court initially designated as having jurisdiction under that article would subsequently have to decline to hear the case.
> >
> > It follows that, in order to determine whether there is *lis pendens* in relation to two disputes, account cannot be taken of the defence submissions, whatever their nature, and in particular of defence submissions alleging set-off, on which a defendant might subsequently rely when the court is definitively seised in accordance with its national law.

> In the light of the foregoing, the answer to the first two questions is that article 21 of the Convention must be construed as meaning that, in order to determine whether two claims brought between the same parties before the courts of different contracting states have the same subject-matter, account should be taken only of the claims of the respective applicants, to the exclusion of the defence submissions raised by a defendant."

5.8 To my mind, that ruling disposes of any argument that the defendants have raised a contest before the courts of England and Wales. The plaintiff bank has not brought an action before the courts of the neighbouring jurisdiction that raises any such issue as a claim by them in litigation. Any such contest, even were I to accept that there is such litigation in London and not simply and enforcement procedure, is on the ownership of the single share that establishes property in 15 Westferry Court in Canary Wharf in London and that is a matter of defence only.

5.9 As to article 28, it is clear that discretion is vested in the courts of Ireland to hear this matter even were it to be the case that somehow the defendants had begun an action contesting the ownership of shares relevant to both of the two office blocks in Canary Wharf before the courts of England and Wales. Article 28 provides:

> 1 Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
>
> 2 Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
>
> 3 For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

5.10 I am unaware as to whether the relevant rules of court in the neighbouring jurisdiction would ever possibly embrace these proceedings so as to incorporate into such an issue the full gamut of the torts now alleged. The probability of such consolidation has not been established. I regard that, further, as improbable. Nor should it be forgotten that the claim of the plaintiff bank is of a conspiracy that allegedly arises out of the uncontested loan repayment proceedings and is alleged to be a method of avoiding the enforcement of that judgment. The plaintiff bank never sought to put a charge on any share that established ownership in the other office block in Canary Wharf. It is difficult to see how any court would regard it as just and convenient that an issue as to share ownership establishing property in that other building and which could never be before it should be transported from the courts of another member state in which all the relevant evidence would be found and before which all or most of the relevant witnesses would be compellable. As will have been noted, I also find it difficult to see, apart from that, how it can be argued that there is an action pending at first instance before the courts of England and Wales. All that is pending there is an enforcement of an action that has been concluded; and that is putting matters at their height.

5.11 In *Gonzalez v. Mayer and Others* [2004] 3 I.R. 326, the approach of Kelly J. to article 28, which was then called article 22, commends itself in the analysis applicable herein. That case concerned an agreement for unionisation in a company in Spain and an action which had already been commenced before the Spanish courts challenging the validity of the arrangements in that jurisdiction. The action in Ireland sought to wind up the company on the just and equitable ground under section 205 of the Companies Act 1963. Kelly J. stayed the action, commenting at pages 333-334:

> In *The Tatry* [1994] E.C.R. I-5439 the European Court of Justice took the view that the concept of related actions should be given an independent interpretation because the term 'related actions' does not have the same meaning in all of the member states. It went on to state at para. 52 of the judgment:-
>
> > "In order to achieve proper administration of justice, that interpretation must be broad and cover all cases where there is a risk of conflicting decisions, even if the judgments can be separately enforced and their legal consequences are not mutually exclusive."
>
> That approach of the European Court of Justice fell to be considered by the House of Lords in the case of Sarrio S.A. v. Kuwait Investment Authority [1999] 1 A.C. 32.
>
> There the House of Lords reversed a decision of the Court of Appeal and restored the original judgment of Mance J. (as he then was) in the Commercial Court. Lord Saville of Newdigate delivering the leading speech in the House of Lords, having carried out a detailed analysis of the wording of article 22, concluded as follows at p. 41:-
>
> > "I am of the view that there should be a broad common sense approach to the question of whether the actions in question are related, bearing in mind the objective of the article, applying the simple wide test set out in Article 22 and refraining from an over-sophisticated analysis of the matter."
>
> It appears to me that that is the approach which I ought to adopt here. The validity of the unionisation agreement is pivotal to the proceedings in Spain and, in my view, to this petition. The Spanish courts were seised of the dispute concerning its validity long before the presentation of the petition. The risk of irreconcilable judgments is patent. The object of the convention would clearly not be achieved if two courts in different member states were asked to consider the same question, namely, the validity of the unionisation agreement, only to come to different conclusions in that regard.
>
> It must be borne in mind that the present application seeks a stay of the proceedings only insofar as they relate to the first named respondent. It is he who is common to the Spanish and the instant proceedings.
>
> In my view the question of the validity of the unionisation agreement is a matter which has to be determined before one can consider whether or not it has been breached. The appropriate place for that to be done is in the court first seised of the dispute namely the courts of Spain.

5.12 My view is that Ireland is the proper forum under European law. It is clear also is that the doctrine of forum non conveniens is not arguable in this case as it has been ousted by the Brussels I Regulation. Were it applicable, it would aid the answer of the plaintiff

bank to this application.

Conclusion
6.0 The application will be dismissed. The application to Chief Master Winegarten in England and Wales by the plaintiff bank is to enforce an uncontested judgment granted by the High Court of Ireland against the defendants Brian O'Donnell and Mary Patricia O'Donnell in the sum of €71,575,991. That enforcement procedure under the Enforcement Regulations is not a 'cause of action' within the meaning of Article 27 of the Brussels I Regulation. Under the relevant case law, even applying the Brussels I regulation, it is not relevant that the defence sought to be established by those defendants in that enforcement procedure is that one of their sons is the beneficial owner of a share in corporation.

6.1 Applying the Brussels I Regulation, on the balance of the evidence put before me and according to the timescale relevant to this application, all the defendants are ordinarily resident in Ireland. If not all of the defendants are ordinarily resident in this jurisdiction, the defendant Bruce O'Donnell is indisputably domiciled here. It is reasonable that the case would be tried here. I can see no countervailing applicable rule. It would not be reasonable for me to predict that the courts of England and Wales would ever consolidate this action in Ireland with that enforcement procedure. That is because this proceeding claims conspiracy and fraud related to an allegation that the defendants have acted unlawfully to make themselves judgment proof as to their assets following an uncontested judgment in Ireland. That issue extends to all of their assets and not simply the single office bloc on which an issue may arise as to enforcement, but only as a matter of defence, in England and Wales.

6.2 Further, as a matter of ordinary sense, under the Brussels I Regulation, the "same cause of action" as is raised in this case is manifestly not now pending before the courts of England and Wales. Finally, no aspect of law requiring an automatic decision as to exclusive jurisdiction has arisen.