

BETWEEN

ADELINO FERNANDES DA CRUZIER, ANTONIO LUIS REDELO DOS SANTOS, SERGIO PAULO JESUS MIRALDO, ANTONIO FERNANDO NOGUEIRA NEVADO, ARMINDO BATISTA, CARLOS MANUEL DA COSTA SILVA, ANTONIO FERREIRA NOGUEIRA, JOAQUIN MANUEL BAPTISTA, PAULO GORGE MAURIS BATISTA, RAUL ALBERTO DA SILVA

PLAINTIFFS

AND

ROSAS CONSTRUTORES S.A., CONSTRUÇOES GABRIEL A.S. COUTO S.A. AND EMPRESA DECONSTRUÇOES AMANDIO CARVALHO S.A. ALL TRADING UNDER THE STYLE AND TITLE OF RAC CONTRACTORS AND RAC EIRE PARTNERSHIP

DEFENDANTS

JUDGMENT of Mr. Justice Tony O'Connor delivered on the 10th day of May, 2017.

Context

1. This judgment concerns the power of the Master of the High Court ("**the Master**") and the actual exercise of that power in these proceedings to issue an Enforcement Certificate pursuant to EC Regulation 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims ("**the 2004 EEO Regulation**"). The said European Enforcement Order Certificate dated 25th November, 2015, ("**the 2015 EEOC**") was sent on behalf of the plaintiffs for enforcement in Portugal.

2. The Council of the European Union ("**The EU Council**") in December 1998 adopted an action plan to implement the provisions of the Treaty of Amsterdam (1997) on freedom, security and justice. In October 1999 the EU Council "*endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area*". On 30th November, 2000, the EU "*Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters*" which included "*in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims*" ("**EEO**").

Background

3. The plaintiffs are Portuguese workers who came to Ireland in or around 2007/2008 to work on the completion of the Nenagh to Limerick motorway. The defendants who employed the plaintiffs are three Portuguese companies who formed a partnership "RAC Eire Partnership" for the purpose of completing their contract in respect of the motorway project.

4. The plaintiffs claimed *inter alia* underpayment of wages and unlawful deductions from wages.

5. On 29th April, 2015, the proceedings were listed for hearing and the proceedings were compromised between the parties on that day. On 1st July, 2015, Gilligan J. made an order by consent that the costs of the plaintiffs to include all reserved costs be taxed and that the defendants pay those costs when taxed and ascertained in default of agreement.

6. A certificate of taxation in the sum of €113,655.27 was issued on 30th July, 2015. There was an adjudication of the costs for a sum less than the sum sought on behalf of the plaintiffs. No review occurred because none of the parties delivered any objections pursuant to Order 99 (38) of the Rules of the Superior Courts ("**the RSC**"). Solicitors for the defendants by letter dated 8th October, 2015, stated that they had "*no instructions in relation to the payment of costs*".

7. Following an ex parte application to the Master for an order pursuant to Order 42B (4) (2) of the RSC on 25th November, 2015, the 2015 EEOC was issued. By letter dated 18th January, 2016, the defendants' solicitors were given a copy of the 2015 EEOC which was "*in the process of being executed in Portugal*" along with details available to the plaintiffs' solicitors about a "*special process of revitalisation in the Portuguese courts*" for the first named defendant and a poor credit rating for another defendant.

8. It took until 22nd June, 2016, for the defendants' solicitors to file an "*application for the rectification or withdrawal of the*" 2015 EEOC which came before the Master on 22nd July, 2016. No issue arises about that delay. The order of the Master refusing that application was perfected on 27th July, 2016, which lead the defendants' solicitors to file a Notice of Motion on 28th July, 2016, seeking an order from this Court setting aside that order together with an order withdrawing the 2015 EEOC.

9. A solicitor for the defendants in a replying affidavit sought to correct any impression which he thought might be taken from references to the prosecution of the defendants in the District Court and on appeal to Nenagh Circuit Court on 18th May, 2012, by emphasising that the provisions of the Probation Act, 1907 were applied to the defendants by the Circuit Court judge. The said replying affidavit explained the effect and the appeals from the judgments of Keane J. in proceedings against the defendants. Those proceedings, according to the Court Service public record, involved many days of hearing ending in February 2015 and ultimately to the following judgments having neutral citations:

1. 2016 IEHC 152 and
2. 2016 IEHC 195 concerning costs

which now have Court of Appeal Record No. 2016 271.

Lest there be any doubt, those prosecutions, proceedings and the judgments of Keane J do not have any impact or influence on the reasoning in this judgment.

What is Now Outstanding?

10. Following the dispatch of the 2015 EEOC to Portugal, the enforcement agent there collected the sum of €126,397.50, according to the replying affidavit of a solicitor for the plaintiffs sworn on 12th July, 2016, broken down as follows:

1. The amount due to the enforcement agent at that stage was €6,128.29
2. The legal costs as taxed by the Taxing Master amounting to €113,655.27

3. Interest due until 30th March, 2016, amounting to €6,468.84
4. The expenses on the enforcement order amounting to €145.10.

It was further explained that the defendants have lodged a challenge in Portugal which has prevented the enforcement agent from paying sums in his possession to discharge the taxed costs while that challenge is different to the application before this Court.

11. It may assist an understanding to note at this stage, the submission of counsel for the defendants that this Court need not concern itself with the purpose of the defendants for making this application to withdraw the 2015 EEOC and that the defendants are relying on the precise confinement of the 2004 EEO Regulation to "*uncontested claims*" as defined in Article 3 and as more identified in Article 3 (1) (a) of the 2004 EEO Regulation.

Grounds for this Application

12. In effect, this is an application to withdraw the 2015 EEOC. The grounds relied upon on behalf of the defendants that the 2015 EEOC was wrongly granted may be summarised as follows:-

1. The certificate of taxation for the costs of the plaintiff of 30th June, 2015, ("**the certificate of taxation**") was not an "*uncontested claim*" within the meaning of Article 3 of the 2004 EEO Regulation and
2. The hearing of the application leading to the 2015 EEOC was not considered by a lawfully appointed judge under European Union law.

Joining the Attorney General

13. The application of the defendants first came before this Court on 24th November, 2016, when I directed the defendants to put the Attorney General on notice of same given that she might wish to advance views to this Court with regard to the second ground concerning the status of the Master. Following confirmation that the Attorney General wished to be heard, directions were given for the completion of submissions with a view to completing the hearing of the application which occurred on 28th February, 2017.

Structure of the Judgment

14. The cascade type effect of the second ground relied upon by the defendants, prompts the Court to determine the grounds in reverse order to that posed. It is more efficient to postpone the determination of the first ground (about whether there is an "*uncontested claim*" by the plaintiffs for taxed costs) until after this Court makes a decision on the second ground (the power of the Master).

Article 267 of the Treaty on the Functioning of the European Union

15. Article 267 of the Treaty on the Functioning of the European Union ("**TFEU**") concerns the right of "*any Court or Tribunal of a member state*" to refer a question for a preliminary ruling to the Court of Justice of the European Union ("**CJEU**"). The submissions for the defendants asked whether or not the Master is a Judge, as that term is used by the CJEU for the purpose of Article 267 TFEU. It was accepted by all of the parties before this Court that the Master must fall within the meaning of that term to exercise the relevant power to determine the application leading to the 2015 EEOC.

"Court or Tribunal"

16. According to the seminal judgment in *Dorsch Consult Ingenieurgesellschaft mbH v. Bundesbaugesellschaft Berlin mbH* Case C-54/96 (17 September 1997) [1997] ECR I-496 (at para. 23 particularly) "*Court or Tribunal*" in Article 267 TFEU is any judicial body which exercises judicial functions i.e. a body that displays the following features:-

- (a) is permanent;
- (b) has jurisdiction which is compulsory;
- (c) whose procedure is *inter partes*;
- (d) was established by law;
- (e) applies rules of law and
- (f) acts independently.

Status of the Master

17. The submissions for the defendants cited *Society of Lloyds v. Murnaghan* [2004] 1 I.R. 47A (Kelly J.) where the particular issue arising in that case was whether the European Communities (Civil and Commercial Judgments) Regulations 2002 ("**the 2002 Regulations**") properly conferred jurisdiction on the Master to enforce an English commercial court summary judgment under the Brussels 1 Convention. The learned judge outlined the establishment and powers of the office of Master by statute and Rules of Court.

18. The Court, in setting aside the impugned order of the Master, found that the 2002 Regulations were neither a statute nor a Rule of Court and could not be used to confer jurisdiction on the Master. Furthermore, the President of the High Court had not at that stage allocated to the Master under s 25 (1) of the Courts and Court Officers Act 1995, the power to recognize the English judgment.

Order 42 B (4) (2)

19. The defendants rightly accepted that in contrast to the situation in *Society of Lloyds v. Murnaghan*, the RSC did vest in the Master the power to make the order leading to the issue of the 2015 EEOC. It was submitted however that the relevant Rule, O. 42(4) (2) B of RSC :

(2) "*In the case of any domestic judgment of the High Court other than a domestic judgment certified as a European Enforcement Order at the hearing in accordance with sub-rule (1) of this rule, any application to certify that domestic judgment as a European Enforcement Order shall be made ex parte to the Master.*"

failed to recognize the necessity in the process for a judicial act during which the national court is entitled to refer questions to the CJEU for a preliminary ruling.

Alleged Inconsistency

20. It was submitted for the defendants relying on *Costa v. ENEL* Case 6/64 [1964] ECR and *Simmenthal* [1978] ECR 629 that if there is a provision of domestic law which is inconsistent with the provision of European law that is directly effective and applicable, effect should not be given to the domestic provision (here O. 42B (4) (2) of the RSC).

The Office of the Master

21. It is therefore necessary to examine the office of Master. It was created by s. 3 of the Courts Officers Act, 1926. S. 5 set out the powers, duties and functions of the Master as follows:-

"(1) The Master of the High Court shall have the general superintendence and control of such of the offices established by this Part of this Act as are attached to the High Court but shall in the exercise of such superintendence and control be subject to the general direction of the Minister in regard to all matters of general administration and to the directions of the President of the High Court in regard to all matters relating to the conduct of that part of the business of the High Court which is for the time being required by law to be transacted by or before one or more of the Judges of that Court.

(2) In addition to the general superintendence and control aforesaid the Master of the High Court shall also have and exercise such powers and authorities and perform and fulfil such duties and functions as shall be from time to time conferred on or assigned to him by statute or rule of court, and in particular (unless and until otherwise provided by statute or rule of court) shall have and perform all such other powers, authorities, duties and functions as are or become vested in him by virtue of any other provision of this Act."

22. Furthermore s. 14 (3) of the Courts (Supplemental Provisions) Act, 1961 provides that the Rules of Court may authorise the Master to exercise certain powers and functions in proceedings or matters which are not criminal proceedings or related to a person's liberty. Paragraph 4 (2) of the Eighth Schedule of that Act states as follows:-

"(2) The Master of the High Court shall have and exercise such powers and authorities and perform such duties and functions as are from time to time conferred on or assigned to him by statute or rules of court [emphasis added by this Court] and in particular (unless and until otherwise provided by statute or rules of court) shall have and perform all such other powers, authorities, duties and functions as are vested in him by virtue of subsection (3) of section 31 of the Act of 1926."

23. In addition to the foregoing, s. 25 (1) of the Courts and Courts Officers Act, 1995 provides as follows:-

*"(1) Subject to subsection (2) of this section and section 26 of this Act, the Master of the High Court may, in all such applications made ex parte or by motion on notice whether interlocutory or otherwise and in all such applications for judgement by consent or in default of appearance or defence as may from time to time be allocated for hearing by the Master of the High Court by the President of the High Court, **exercise all the functions, powers and jurisdiction which a judge of the High Court exercises from time to time.**" [Emphasis added by this Court]*

Practice Direction

24. The President of the High Court through "Notice and Practice Direction HC41-European Enforcement Orders" directed as follows:-

"Pursuant to section 25(1) of the Courts and Court Officers Act, 1995, I hereby allocate to the Master of the High Court ("the Master") the following functions and powers, exercisable upon application made to the Master in accordance with this Practice Direction:

(a) The issuing of EEO certificates under article 6.1 of the EU Regulation;

(b) The issuing of certificates indicating the lack or limitation of enforceability of a judgment under article 6(2) of the EU Regulation;

(c) The issuing of replacement certificates under Article 6(3) of the EU Regulation."

First Conclusion

25. The office of Master was created by statute. The Master can only exercise powers which are assigned by Statute or the RSC as explained in *Society of Lloyds v. Murnaghan*. The Master is authorised to exercise limited functions of a judicial nature within the scope of Article 37 of the Constitution.

26. Therefore, the Master, as opposed to a Deputy Master or another official providing support to the High Court, has a permanent statutory position with jurisdiction for particular procedures in *inter partes* disputes. The Master is obliged to act with independence and impartiality. Moreover, the Master, like other statutory bodies with powers to adjudicate on issues, may refer a question to the CJEU. Likewise, the Labour Court (the functions of which were enhanced by the Workplace Relations Act 2015), has power within the ambit of its remit to refer questions to the CJEU in relation to the interpretation or application of European Union law.

27. The Master, therefore, falls within the meaning of "any court or tribunal of a Member State" and in those circumstances, the Master when considering the *ex parte* application on 25th November, 2015, and the application for the rectification or withdrawal of the 2015 EEOC on 22nd July, 2016, was in the position of being able to refer a question for a preliminary ruling to the CJEU if the Master so determined. The 2015 EEOC was issued following the *ex parte* application on 25th November, 2015, by the Master. In all of those circumstances, this Court determines that the conferral of jurisdiction on the Master to certify High Court judgments after their delivery as EEOs is compatible with the 2004 EEO Regulation and has the necessary basis under national law.

The 2004 EEO Regulation

28. This Court heard submissions that it should adopt a teleological and purposive approach to the interpretation of the 2004 EEO Regulation having regard to recital (5) and Article 3 of the 2004 EEO Regulation which read as follows:-

"Recital (5) The concept of 'uncontested claims' should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature **or extent** of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument. (Emphasis added by this Court to indicate the words relied upon for the defendants)

"Article 3 (1) Enforcement titles to be certified as a European Enforcement Order" is particularly relevant and I therefore set it out:-

"This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims. A claim shall be regarded as uncontested if:

(a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or

(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or

(c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or

(d) the debtor has expressly agreed to it in an authentic instrument."

Definitions

29. Article 4 of the 2004 EEO Regulation provides for the following definitions:-

"1. 'judgment': any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;

2. 'claim': a claim for payment of a **specific** sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument." (Emphasis added by this Court in order to convey the import of the submissions for the defendants).

Abolition of Exequatur

30. Article 5 of the 2004 EEO Regulation abolished the Roman law procedural type safeguard for review in a Member State where execution is sought. It provides that an EEO shall be recognised and enforced in another Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

Costs Related to Court Proceedings

31. Article 7 of the 2004 EEO Regulation is noteworthy in the context of these proceedings because it touches upon the kernel of the challenge by the defendants:-

"Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin."

Counsel for the defendants suggested that the challenge relying on the necessity for taxation of costs might not be open to the defendants if the costs were regarded as a liquidated sum by reference to a specific scale of costs such as apply to District Court Decrees.

Minimum Standards for Review – Article 19

32. It is opportune at this stage of the judgment to set out also the first paragraph of Article 19 of the 2004 EEO Regulation, since it became the subject of the cases before the CJEU which are relevant to the determination of the issues now before the Court:-

"1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

(a)

(i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and

(ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part; or

(b) the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly."

Imtech

33. The first occasion upon which the CJEU had the opportunity to interpret the provisions of the 2004 EEO Regulation in the context of the procedural safeguards contemplated by that Regulation was in the case of *Imtech Marine Belgium NV v. Radio Hellenic S.A.* (Case C-300/14) ECLI:EU:C:2015:825. In a judgment delivered by the fourth chamber of the CJEU on 17th December, 2015, the Court *inter alia* addressed the question: “*is certification as an EEO for uncontested claims a judicial measure which must be applied for in the document instituting the proceedings? If so, must the judge certify the judgment as an EEO and must the registrar of the court issue the certificate? If that is not the case: can the task of certifying the judgment as an EEO fall to a registrar?*”

Comparison with facts in Imtech

34. On 25th March, 2013, Imtech obtained from the Commercial Court in Antwerp, a judgment for €23,506.99 plus a penalty payment according to a contract along with late payment interest against Radio Hellenic in Greece. Imtech appealed the refusal of the Antwerp Court to certify the judgment as an EEO. The Antwerp Court found that there was not the necessary national legislation in Belgium to make an EEO. The Appeal Court determined that there was a serious question about whether Belgian law complied with the requirements of Article 19 of the 2004 EEO Regulation being the minimum standards for review in exceptional cases. The ability of the Greek debtor to review the Belgian judgment debt was a significant issue in the Imtech case.

35. In the interests of clarity, no such complaint about the absence of a right in Ireland to review the sum in the nature of costs is made or could be made by the defendant corporate entities in these proceedings because they:

- i) Consented through their own legal representatives to the making of the order by Gilligan J on 1st July, 2015, directing the defendants to pay the then unascertained costs to the plaintiffs;
- ii) were aware of the adjudication of costs but had not made any objection to the determination of the costs in July 2015;
- iii) availed of the opportunity in this State to apply for the withdrawal of the 2015 EEOC in July 2016 before the Master and now before this Court.

Imtech First Question for the CJEU

36. The Belgian Appeal Court in Imtech first asked the CJEU whether

“.. the non-application directly of Regulation No 805/2004 constituted a breach of Article 288 TFEU, because:

(a). the Belgian legislature has not transposed that regulation into Belgian legislation, and

(b). although an opposition and an appeal are provided for in Belgian legislation, the Belgian legislature has not introduced a review procedure?”

37. The CJEU decided that Article 19 of the 2004 EEO Regulation read in the light of Article 288 TFEU does not require a Member State to establish a review procedure. As explained there was ample opportunity for the defendants in the proceedings before this Court now to seek review in Ireland. The circumstances of the Greek debtor in *Imtech* were significantly different to those of the defendants. The right to a fair trial and due process was clearly at issue in *Imtech* because the judgment had been delivered in absentia in contrast to the opportunity for review, knowledge and legal assistance clearly available to the Portuguese defendants in Ireland.

Second and Third Question in Imtech

38. The second and third questions referred in *Imtech* led to the CJEU concluding that a national court (such as the Master in this instance):-

“must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision [Article 19 of 2004 EEO Regulation] and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor’s control prevented him from contesting the claim in question.”

39. No complaint is made for the defendants or could be made on the facts disclosed that the “*minimum standards for review*” of the costs which the defendants are obliged to discharge were not available to the defendant. Thus, the CJEU’s determination under the heading of these questions do not avail the defendants.

Fourth and Fifth Questions in Imtech

40. The CJEU described the remaining two questions from the Belgian Appeal Court as asking “*in essence whether Article 6 of Regulation 805/2004 must be interpreted as meaning that the certification of a judgment as a European Enforcement Order is a judicial act, which can therefore be carried out only by a judge, and must be requested in the document initiating the proceedings*”.

41. The CJEU confirmed that certification “requires a judicial examination of the conditions laid down by” the 2004 EEO Regulation and that “the legal qualifications of the judge are essential to the correct assessment”.

Qualifications Required for Master

42. In addition to my first conclusion in this judgment concerning the position and power of the Master to make an EEO, this Court notes the qualifications required for appointment to the office of Master.

43. S17 of the Eight Schedule of The Courts (Supplemental Provisions) Act 1961 provides that no person shall be appointed to be Master unless at the time of his appointment, he is a practising barrister of not less than ten years’ standing.

Pebros Servizi SRL

44. The CJEU (Third Chamber) in *Pebros Servizi SRL v. Aston Martin Legonda Limited* Case C-511/14 - ECLI:EU:C:2016:448 – delivered on 16th June, 2016, when considering the judicial examination of the conditions laid down by the 2004 EEO Regulation stated at para. 29 of its judgment:-

"Therefore, the procedure for the certification of a court decision as a [EEO] appears, functionally, not as a procedure which is distinct from the earlier judicial procedure, but as the final phase of that procedure, necessary in order to ensure that it is fully effective, by allowing the creditor to proceed with the recovery of his debt."

45. In *Pebros*, the CJEU was primarily dealing with the notion of what is or is not an uncontested claim for the purpose of Article 3 of the 2004 EEO Regulation. At issue was whether the conditions in the case of a judgment by default occurs, fell to be determined autonomously by reference to the 2004 EEO Regulation or whether national concepts were also relevant. The CJEU held that the relevant conditions fell to be assessed autonomously and solely in accordance with the 2004 EEO Regulation. Notably, the CJEU at para. 24, stated that it was *"the court's settled case law"* that a reference under Article 267 TFEU did not require *"an inter partes hearing in the proceedings in the course of which the national court refers the questions for a preliminary ruling, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature"*.

Effect of *Imtech* and *Pebros*

46. This Court's analysis of the judgments delivered by the CJEU in *Imtech* and *Pebros* guides and informs this Court's determination. It is manifest that the defendants have failed to identify an infringement of a right to a fair trial by reason of the EEO made by the Master on 25th November, 2015.

47. Taking account of the *"genuine judicial area"* [Recital (3)] as mentioned at the beginning of this judgment, the promotion of the right to a fair trial [Recital (11) and Article 9] and the specific provision to allow enforcement to be governed by national law [Recital (8) and Article 20], I seek to interpret the 2004 EEO Regulation in a schematic and teleological manner.

48. In this regard, I add that the peculiarity of European legislation is that it is pluralingual in nature and derives from a legal system which is evolving. Mr. Francis Jacobs, an eminent former Advocate General has remarked about the CJEU

"It is well known that the Court often relies on the 'teleological' approach, seeking to give effect to the object and purpose of the measure. It relies often also on the context of the provision, seeking to ensure that the interpretation makes sense in the scheme of the pieces of legislation as a whole, and where necessary in the scheme of European law more generally."

Conclusion

49. No matter which way I look at the case presented for the defendants, I find it contrived to scupper the effective way under the 2004 EEO Regulation to enforce a settlement and orders consequent upon that settlement in Ireland and particularly when one considers the knowledge and advice available to the defendant corporate entities which had legal representatives and advisers throughout. The defendants agreed to a consent judgment and to the ascertainment of costs which is envisaged by Article 7 of the 2004 EEO Regulation. The defendants did not and do not object to their *"obligation to bear such costs in the course of the court proceedings"*. They also did not raise objections to the costs ascertained as they could have done according to the RSC. The distinction between District Court scale costs and costs ascertained on taxation for High Court proceedings in order to advance a liquidated sum argument, does not overcome the view of this Court that Article 3(1) (a) of the 2004 EEO Regulation envisages exactly what was admitted and made the subject of the order of Gilligan J. on 1st July, 2015, following settlement of the proceedings.

50. Bluntly, the attempt on behalf of the defendants to hinder the effect of a consent order by relying on a strained interpretation of the 2004 EEO Regulation without attempting to show any unfairness or absence of any required judicial act, renders the challenge of the defendants ill-founded. Moreover, the primary concern underlying Article 6 and Chapter III of the 2004 EEO Regulation to safeguard the debtor's rights of defence and the right to a fair trial has been properly addressed by the statutory framework, the RSC and the Master in this instance.

51. Therefore, I decline to make an order setting aside the order of the Master made on 22nd July, 2016, which itself refused the withdrawal of the 2015 EEOC.

52. In the interests of clarity, I further refuse the application to withdraw the 2015 EEO because I am satisfied that the requirements for certification in respect of the amounts agreed to be discharged by the plaintiffs following the adjudication by the Taxing Master in his order dated 30th June, 2015, were fulfilled.