

THE HIGH COURT

[2009] No. 10805 P

BETWEEN

BISI ADIGUN

PLAINTIFF

AND

LINDA MCEVOY & PATRICK MORAN practising under the style and title of Moran Solicitors.

DEFENDANTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 6th day of April 2017

1. This is an action alleging negligence and other unlawful conduct against a solicitor. The second named defendant has agreed to answer any liability found against the first named defendant. In view of this the court was not required to resolve an issue as to whether the first named defendant was served with the proceedings. For ease of reference the first named defendant, Ms. McEvoy, is henceforth referred to as "the defendant" in the case.

2. The plaintiff is involved in the world of theatre. He is a founder of Arambe Productions Limited, ("Arambe"), a company limited by guarantee. Further to discussions between the plaintiff and Mr. Roddy Doyle, a well-known writer, Arambe wrote to Mr. Doyle on 14th July, 2005, to invite him to work in collaboration with the plaintiff on an African adaptation of the Playboy of the Western World by JM Synge ("the play") for the centenary of the original play.

3. Connected with this endeavour, an unsigned agreement ("The authors contract") bearing the date of 16th January, 2006, between Mr. Doyle and the plaintiff appoints Mr. John Sutton as the writers' agent, provides that the writers "agree to divide any and all payments due to the Authors under this agreement 50/50" and provides that "Both authors must agree in writing for any post Arambe-productions."

4. Arambe, with monies received from the Arts Council, then formally commissioned the plaintiff and Mr. Doyle to co-write an adaptation of the play. The contract by which Arambe commissioned the authors to write the play is dated 6th February, 2006 ("Author/Arambe contract"). It grants Arambe an exclusive licence to produce and perform the play onstage in the English speaking world. The Authors agree to write the play by a certain date and "shall be the sole owners of the copyright." Clause 8 provides:-

"If [Arambe] produces the Play or causes the same to be produced in Ireland within the period specified, the Authors hereby grant(s) to [Arambe] an exclusive licence of the dramatic rights of the Play in the English language on the stage for a period of three years from the date of the last performance of its premier run"

Clause 16 provides:-

"The rights granted hereunder are granted to [Arambe] solely and [Arambe] shall not transfer such rights in part or in whole to any third party without the prior written consent of the Authors."

5. Both writers were aware of the possibility that the Abbey Theatre might stage the play. Mr. Doyle was aware of contact between the plaintiff and the Abbey exploring this issue. Whilst there was an initial refusal by the Abbey to stage it, a change of heart occurred and the Abbey agreed that it would stage the new play.

6. The Abbey's change of mind was communicated to the Board of Arambe by the plaintiff by email of 12th April, 2007. Discussions commenced between Arambe and the Abbey Theatre concerning the production by the Abbey of the play. A draft licensing agreement was sent by the Abbey to Arambe dated 9th May, 2007.

7. Aware that a draft contract/licensing agreement was under negotiation, Mr. Sutton, on behalf of Mr. Doyle, requested a copy of it. In a letter dated 11th May, 2007, addressed to "Bisi Adigun, Director, Arambe Productions" Mr. Sutton said:-

"I am writing on foot of our meeting today to say that I am deeply concerned and disappointed by your decision not to provide me (the writers representative) with a copy of the proposed contract with the Abbey. As you know under Arambe's existing agreement with the writers you [Arambe] must obtain their written agreement to any sub-licensing of the work and I want to remind you that you do not have this.

In order for me to consider the proposed sub-licence to the Abbey I must be furnished with a copy of the proposed agreement. Once this is done I will consult the writers and revert to you with a considered response.

I trust that you now realise that this is a perfectly reasonable request and that will take the necessary steps not to put at risk the project or the writers relationship with a Arambe." (sic)

8. In an email addressed to Mr. Doyle the following day, the plaintiff seems to suggest that he is willing to show a copy of the agreement to Mr. Sutton but says:-

"what I am not prepared to do... is to give Mr. Sutton a copy of the draft because as far as the new draft is concerned, it is between Arambe Productions and the Abbey".

The initial refusal of the plaintiff to give a copy of the draft contract to Mr. Sutton damaged the relationship between Mr. Doyle and plaintiff, according to Mr. Doyle's evidence.

9. Mr. Doyle wrote back immediately saying that Mr. Sutton was a "very reasonable and conscientious man. I have every confidence that these current difficulties can be resolved." This confidence, as shall be seen, was misplaced.

10. The plaintiff overcame his reluctance to give a copy of the draft contract to Mr. Sutton and by 16th May, 2007, Mr. Sutton had received a copy of the draft contract and then emailed the plaintiff saying he would review the draft. He asked the plaintiff and Mr.

Doyle for their comments on the proposed Arambe/Abbey contract.

11. The plaintiff by email of the 16th of May asked Mr. Sutton to cease acting as his agent and by email of the 17th of May explained why ("because I cannot afford an agent") but nonetheless communicated some comments on the draft contract to Mr. Sutton.

12. Mr. Sutton wrote to Arambe by letter dated 17th May, 2007, confirming that his instructions were from Mr. Doyle alone. He said:-

"The contract, as you know, is a total and complete sub-licence by Arambe to the Abbey and therefore requires the written consent of Roddy Doyle. Because of the nature of the proposed contract a separate agreement now needs to be drafted between Roddy Doyle and Arambe and it needs to be agreed that this new agreement will replace the existing one."

He also said:-

"The first step as I understand it is for Arambe to finalise its contract with the Abbey. Once this is completed to everyone's agreement Roddy will sign his new [] contract with Arambe which may be very short, simply agreeing to the new Abbey and Arambe contract and the terms. This means that the Abbey contract becomes the centre piece of negotiations. We get this right all else will follow."

Then he said:-

"I assume that Arambe's lawyers have considered the simpler option of having the two writers sign direct with the Abbey and that Arambe negotiate its own contract with the Abbey. I also assume that you have chosen not to take this path."

Finally he said:-

"I also believe that legally all parties should sign Abbey/Arambe contract and would recommend that a lawyer experienced in the relevant contract law be consulted for an opinion".

He then made numerous comments on the draft Arambe/Abbey contract. The final line, ominously as things turned out, said "I look forward to the second draft." Neither Mr. Doyle, nor his agent Mr. Sutton ever received another draft contract or, indeed, a copy of the executed contract between Arambe and the Abbey.

13. On Friday the 18th May, 2007, the Abbey sent a revised draft contract to Arambe saying "I look forward to hearing you on Monday" and the plaintiff replied on Monday 21st May, 2008. Some suggestions for alterations were made, including alterations to clause 1. As originally proposed by the Abbey, the contract with Arambe was to state that Arambe "is the owner of the full copyright in the Play." The plaintiff pointed out, (as had been explained by Mr. Sutton) that the writers owned the copyright, not Arambe. The Abbey responded on Monday 21st May saying:-

"The Abbey can only make the contract with Arambe if Arambe can rightfully claim to be the holder of the copyright. If Arambe cannot then we have to make the contract with whoever is the copyright holder (in this case Bisi Adigun and Roddy Doyle) This is the fundamental point on which we have based our entire negotiation. Therefore I cannot alter the clause in this way"

In the event, clause 1 was altered slightly at the plaintiff's request. The wording sought by the plaintiff in his email of 21st May was:-

"[Arambe] hereby warrants that being the Commissioner of the said play he has the exclusive right to enter into this agreement and that the said play whose copyright is owned by Bisi Adigun and Roddy Doyle is wholly original and does not infringe any rights of copyright vested in other parties..."

In response, the Abbey agreed to a new clause 1 as requested.

14. The Arambe/Abbey contract was signed by the plaintiff on behalf of Arambe and by Mr. Fiach Mac Conghail on behalf of the Abbey on 22nd May, 2007.

15. On 30th May, 2007, eight days later, the plaintiff wrote to Mr. Doyle saying that:-

"Dear Roddy,

It is with great pleasure that I, on behalf of Arambe Productions, write to formally inform you that the Abbey has agreed to stage the Playboy, which Arambe Productions commissioned you and myself to co-write last year. With the promise of a down payment of €5000, Arambe has entered into an agreement that allows The Abbey to present the world premiere on the Abbey main stage, for a seven week-run during the forthcoming Dublin Theatre Festival in October."

16. On 1st June, 2007, Mr. Sutton on behalf of Mr. Doyle wrote to the plaintiff as follows:-

"I am writing to acknowledge receipt of your letter May 30th addressed to Roddy Doyle, which he has passed on to me. You[r] letter addresses none of the issues raised in my letter dated May 17th and it seems to confirm that Arambe have finalised an agreement with the Abbey. Because of your refusal to discuss and negotiate in good faith with me I am left with no option but to conclude that Arambe have knowingly and deliberately entered into a sub-licence agreement with the Abbey. I base this on the Draft Licence Agreement you gave me dated May 9th and other correspondence that has come into my possession.

I have repeatedly stressed to you that Arambe require the writers written agreement for any rights transfer - see clause 16 in the agreement dated February 6th 2006 between Arambe and Roddy Doyle and Bisi Adigun. I now consider Arambe to be in breach of our agreement and that the contract is therefore open to challenge by me. Assuming this challenge is successful any sub licence agreements they Arambe may have signed will be challenged. Any third parties that Arambe have attempted to transfer rights to will be notified and all rights transfers will be challenged. Again because of your refusal to discuss and negotiate with me I am left with no alternative but to hand the matter over to our solicitor. They will be taking matters forward with Arambe from now on and will seek compensation for what appears to be the deliberate breaking of the agreement.

I will be taking matters forward with the Abbey and other parties that Arambe may have attempted to sub-licence rights to.

Finally, I want to state that while Arambe's behaviour in this matter is extremely confrontational and mystifying, it is still not too late to act reasonably. Arambe could very easily choose to clarify the situation and therefore possibly resolve matters to all parties' satisfaction. To continue to obstruct and therefore engage in a legal challenge is to act very foolishly and serves no purpose other than to damage the project and the relationships between the parties.

I hope you will decide to act reasonably.

Yours sincerely,

John Sutton

Director"

17. Notwithstanding this letter, plans to stage the play went ahead in the winter of 2007, and on 5th June the Director of the Abbey confirmed to the plaintiff that rehearsals would begin on 27th August, 2007, and that opening night would be on 3rd October, 2007.

18. Mr. Doyle was aware of the background legal problems but he wrote to the plaintiff in the following friendly terms by email of 7th June, 2007:-

"...The writing of the play was an extraordinary experience for me; I don't regret one second of it.

I think we should try and get this contractual formality out of the way as quickly as possible so that we can concentrate on what we have done and both enjoy the experience of watching and participating in the production of our play. I want to sit side by side with you during rehearsals; I want us to work together. I want us to be able to take pride in our work, together, on the opening night.

I write these words with great affection and respect. I regret the distance and discomfort that the contractual business has thrown between us. Let's start again, and concentrate on what it is that we're good at, writing. This is a great opportunity for us - let's enjoy it, together, as friends.

All the best

Roddy"

19. The plaintiff sent Mr. Doyle a letter dated 11th June saying:-

"Dear Roddy,

Further to the decision of the board of Arambe Productions at its board meeting held yesterday the 10th of May 2007 [the plaintiff meant 10th June, 2007], please find enclosed the **draft** copy of the contractual agreement between the Abbey and Arambe Productions regarding the forthcoming production, at the Abbey, of the *Playboy of the Western World* co-written by you and myself." [emphasis added]

(It is difficult to comprehend why the plaintiff sent a copy of the *draft* of the Arambe/Abbey contract to Mr. Doyle on 11th June, 2007, because the plaintiff had in his possession a copy of the executed contract - not a mere draft - since 22nd May, 2007. Attempts by the plaintiff to explain to the court why he only sent a draft contract to Mr. Doyle were not helpful.)

20. I accept the evidence given by Mr. Doyle and his solicitor, Mr. Gleeson, that at no stage did Arambe or the plaintiff ever give a copy of the contract signed between the Abbey and Arambe to Mr. Doyle or his solicitor. Both Mr. Sutton and Mr. Doyle pleaded with the plaintiff to be reasonable and to solve the problem which, in their view had arisen. They, quite reasonably, wanted to see the executed contract. I also accept that Mr. Doyle co-operated fully with the Abbey and with the plaintiff in preparations for the staging of the play in its first run in the winter of 2007. In my view, this indicated that Mr. Doyle agreed in principle that the Abbey would produce the play. A desire to see the executed contract, or indeed to participate in the drafting, is not inconsistent with being in agreement in principle that the Abbey should produce the play.

21. By letter of 27th of September, 2007, Arthur O'Hagan, solicitors on behalf of Mr. Doyle, wrote to Arambe via the plaintiff in the following terms:-

"You were reminded in a letter dated 1st June last from Mr. Sutton that the Agreement dated 6th February 2006 between Arambe Productions, Mr. Doyle and yourself prohibits Arambe from transferring in whole or in part the rights thereby granted without prior written consent of both authors. You were apprised by Mr. Sutton of this prohibition. You had sought and obtained Mr. Sutton's comments on a draft contract with the Abbey Theatre. Thereafter, you decide to bypass Mr. Sutton and corresponded directly with Mr. Doyle by letters dated 11th June and 23rd August 2007. Mr. Doyle remains in the dark as to the final terms upon which the Abbey production has been arranged. Although your letter of 11th June last provided a draft contract, it did not confirm that a contract had been formally executed. The draft contract, if executed would have constituted a transfer of the rights granted by you and Mr. Doyle to Arambe. Thus, it would have required Mr. Doyle's consent, which was neither sort nor given. Although the Abbey Theatre has been made aware that Mr. Doyle did not consent to a transfer of rights, Mr. Doyle resolved not to require that the Abbey production, which had already been scheduled, be halted. His decision in this regard was informed by the inevitable economic and other unhappy consequences which would have followed the cancellation of the production. He has therefore given his cooperation to the Abbey Theatre during rehearsals and will continue to do so for the duration of the scheduled run. Your letter of 23rd August to Mr. Doyle purports to normalise contractual relations between Arambe and Mr. Doyle in circumstances where there would appear to have been a fundamental breach of contract on the part of Arambe in transferring rights in *The Playboy of the Western World* to the Abbey Theatre without Mr. Doyle's consent. We have advised Mr. Doyle that such a breach would give rise to an entitlement on his part to terminate the Agreement with Arambe. As already stated, Mr. Doyle has never consented to a transfer of rights by Arambe to the Abbey Theatre. We are instructed to request that you deliver forthwith to us a copy of such agreement as has been entered by Arambe with the Abbey Theatre. Pending receipt of same, and saving the current scheduled run at the Abbey Theatre, please note

that Mr. Doyle objects to any exploitation by Arambe of the rights granted under the Agreement of 6th February 2006. We reserve all rights and entitlements of our client accruing by virtue of the Agreement of 6th February 2006 and any violation thereof."

The only request made in this letter was that a copy of the agreement between Arambe and the Abbey be delivered. Neither the plaintiff nor Arambe replied to this letter. A reminder was written on 17th October, 2007, saying "... You have failed to deliver a copy of the agreement entered by Arambe with the Abbey Theatre". No reply was received. The plaintiff has never explained in these proceedings why he refused to give a copy of the contract to Mr. Doyle or his representatives.

22. By letter of 1st November, 2007, Mr Doyle's solicitors wrote to the company secretary of Arambe saying that no reply had been received to the letters. The letter concluded saying:-

"Our client has now instructed us to give notice to Arambe Productions Limited that he repudiates the said Agreement for the foregoing reason with immediate effect. Our client reserves all rights and entitlements accruing by virtue of the said Agreement and the fundamental breach thereof by Arambe Productions Limited."

23. On the 3rd of November, Mr. Doyle wrote to Arambe saying he wished to cease being a patron of Arambe and that Arambe "arrange to have my name in that capacity removed from the company website and from all other company literature and stationary."

24. The plaintiff wrote a long, personal letter to Mr. Doyle on 14th November suggesting that he, not Mr. Doyle, had been unfairly treated. He enclosed a cheque for €12,637.39 being Mr. Doyle's share of the royalties which Arambe had received from the Abbey for the performances of the play from September 29th to 3rd November.

25. Mr. Doyle's solicitors replied to the plaintiff returning the cheque (and another smaller one) because Mr. Doyle had not consented to the Arambe/Abbey contract. The solicitors also asked the plaintiff not to communicate with Mr. Doyle at his home address and that correspondence about the play be directed to the solicitor's offices. The letter indicates that they have requested the Abbey to withhold further royalty payments from Arambe "pending determination of Mr Doyle's entitlements."

26. Solicitors on behalf of the Abbey Theatre then wrote to Arambe by letter of the 26th of November, 2007, and notified them as follows:-

"Our client was most surprised to recently receive correspondence from solicitors for Roddy Doyle. It is evident from this correspondence that Arambe Productions has failed to secure the necessary consent of Mr. Doyle to the agreement. We further understand that Mr. Doyle has terminated his agreement with Arambe Productions and is pursuing Arambe for damages. We have been requested by solicitors for Mr. Doyle to desist from forwarding further payments on account of royalties to Arambe pending determination of their client's entitlement. Our client has also been requested to preserve records relating to box office receipts and to undertake not to seek to exploit further any purported rights pursuant to the Agreement.

...our client is withholding the final payment of royalties due under the Agreement. This sum (€20,860.50) which would otherwise be due for payment in four weeks pursuant to Clause 8 of the Agreement, is being withheld on the basis that Arambe Productions appears to have no entitlement to same. This is without prejudice to our client's rights to pursue Arambe Productions Limited for breach of contract, for the recovery of sums previously paid and to set off sums due under the indemnity should this prove necessary. Upon resolution of the dispute between Mr. Doyle and Arambe Productions Limited, our client will be happy to release the final royalty payment (plus interest accrued but less costs incurred) in the manner agreed by the parties"

27. At this point Arambe had been notified by Mr. Doyle of his view that Arambe had acted unlawfully in transferring rights without his written consent and of Mr. Doyle's repudiation of the authors/Arambe contract. Arambe had been notified by the Abbey that in view of the position adopted by Mr. Doyle, it was withholding royalties due to Arambe. A minor row had now become inflamed. It is regrettable that the plaintiff did not give a copy of the executed agreement to Mr. Doyle as requested.

The plaintiff and the defendant meet

28. In view of the letters received by Arambe from Mr. Doyle's solicitors and from the Abbey's solicitors, legal advice was sought from Linda McEvoy, solicitor. A mutual acquaintance of the parties effected the introduction.

29. The plaintiff met the defendant on the evening of 28th November, 2007, in the Clarion Hotel in Dublin. He showed her certain documents, including the letter from Mr. Doyle's solicitor and from the Abbey's solicitor. The defendant did not take any documents with her that evening but asked that relevant documents be delivered by the plaintiff later. The documents were hand delivered on the 3rd of December, 2007, and included certain contractual documentation, including the author/Arambe contract and the Arambe/Abbey contract. There is some dispute about what documents the plaintiff gave to the defendant. I am satisfied that the plaintiff did not give the defendant a copy of the unsigned authors' agreement dated 16th January, 2006, nor did he give her a copy of the communications from Mr. Sutton of May 11th, May 17th or June 1st.

30. The parties agree that Arambe sought legal advice from the defendant via the plaintiff. A dispute exists as to whether the defendant agreed to represent the plaintiff personally. The plaintiff insists that the defendant agreed to represent him personally as well as Arambe Productions but the defendant says that she never agreed to represent any client other than Arambe. The plaintiff goes further and insists that he personally was the main client of the defendant.

Did the defendant agree to represent the plaintiff?

31. Shortly after the plaintiff and the defendant met in the Clarion Hotel, the plaintiff wrote an email to the defendant entitled "one more document", dated 4th December, 2007. The email asserts the difference between Arambe's position and the personal circumstances of the plaintiff and suggests that the plaintiff's need for legal representation relates to his rights to demand that the Abbey pay outstanding royalties. The plaintiff says at the end of this email:-

"That is why I was asking if it was a better idea that I get another solicitor to represent me because sooner rather than later, I will have to express my disappointment to Roddy officially, in my capacity as the owner of the idea and as a co-writer, that his actions so far are impacting on me negatively as well. I mean I am yet to be paid the balance of my royalty that Arambe owes me. But I am happy if you are comfortable to represent Arambe and myself" (sic)

This email supports the plaintiff's evidence that he raised the possibility of separate legal representation for himself when he first met

the defendant. He also said that the defendant indicated that this would not be necessary. The defendant denies that she ever said any such thing or that she ever agreed to represent the plaintiff. I accept that the plaintiff raised the prospect of separate representation for himself. I find that the only issue in respect of which he ever sought legal representation for himself related to missing royalty payments. However, I also find that the defendant did not agree to represent either Arambe or the plaintiff during the first meeting between the plaintiff and defendant on the 28th of November, 2007. Neither had she agreed to represent the plaintiff or Arambe by the time the plaintiff wrote the email of 4th December, 2007. This is confirmed by the last line of the email which says :-

"Also I remember you said you would be writing me something as regards your willingness to take up this case. I will appreciate it whenever you can send me something in writing so that I can the terms for my records"(sic)

The following day the defendant replied saying:-

"Thank you for your email, I will have a formal response/overview of the case/terms of business going out to you first thing tomorrow morning. I will email to you and also post" .

32. On 7th December, 2007, the defendant telephoned the plaintiff to say that her solicitor's practice would henceforth continue as part of Moran Solicitors - the second named defendant. The defendant indicated that she had not yet written to solicitors for Mr. Doyle and the Abbey but had left messages for them. In my view, at this stage the defendant had decided, in principle, to act for Arambe, subject to the terms of business being formally proposed and formally accepted.

33. The plaintiff has described the instructions he gave to the defendant. His evidence is that he wished her to answer Mr. Doyle's solicitors and solicitors for the Abbey in the strongest terms and to indicate that Mr. Doyle's act of repudiation was unlawful and that the Abbey's withholding of royalties from Arambe was unlawful. He was (and is) adamant that Mr. Doyle had incorrectly asserted that his prior written consent was needed before Arambe could license the play to the Abbey. As I understand it, the basis upon which he says that prior written consent was not needed was because by his conduct, Mr. Doyle had actively consented to the staging of the play by the Abbey and had made comments on the draft Arambe/Abbey contract which the plaintiff had reluctantly given to Mr. Sutton.

34. On 14th December, 2007, the plaintiff sent an email to the defendant "RE: Arambe's case":-

"...to ascertain what stage things are with Roddy and the Abbey's solicitors."

He says that he has informed his board on 5th December, 2007, "that you have agreed to take up the case on behalf of Arambe and myself."

35. The defendant had not yet agreed to act for any party in the matter by 5th December, contrary to what the plaintiff said to the Board of Arambe. In my view, the plaintiff, in good faith, believed that the defendant had agreed to act for both Arambe and the plaintiff personally. At this stage, the only personal consequence for the plaintiff was that he could not be paid royalties due to him by Arambe as long as the Abbey did not pay Arambe.

36. A few hours later the defendant wrote back to the plaintiff "RE: Arambe's case" noting how busy she was before Christmas but saying:-

"I have spoken with both sets of solicitors ... at length by telephone. I have stated your position clearly to both of them. I have requested to Roddy's solicitor that Roddy drop his action against you. I stated that you may initiate a counterclaim against him. They are to revert to me in respect of what Roddy intends to do here. I will definitely get a letter out to you this evening, bear in mind that Christmas is the worst time of the year for solicitors in terms of paperwork"

37. By this letter it is clear that the defendant had agreed in principle to act for Arambe as the defendant said that she had requested Mr. Doyle's solicitor to "drop his action against you". The only person in respect of whom complaint was made by Mr. Doyle's solicitor at this stage was Arambe.

38. The extent of the plaintiff's misapprehension is further evident in an email he sent to the defendant on the 17th of December, 2007. Grievances attributable to both Arambe and to the plaintiff personally, are aired. The plaintiff said:-

"Dear Linda,

Hope you are well.

I write to firstly let you know that I did not get your letter today as I had anticipated. I recall you indicated in your email sent on Friday that you were going to get a letter out to me.

The second thing then is that I would appreciate it if you can help me write to The Abbey by Wednesday that if they refuse to pay Arambe's balance by the 27th of December, they will be in breach of the contract they have agreed with Arambe. The fact is that they were meant to pay Arambe weekly so already they had reneged on that agreement. Whatever misunderstanding Roddy has with Arambe should be between Arambe and Roddy. As it stands, I strongly believe that The Abbey is in collusion with Roddy to deny Arambe our rights and if they refuse to send Arambe the balance plus interest accrued by the 27th of this month, Arambe shall be left with no alternative to take a case of discrimination and breach of contract against The Abbey.

Thirdly, as a writer I would like you to help me inform Roddy Doyle's representative that I have thought about things and being the originator of the idea of modernising The Playboy, I have decided that henceforth whatever royalties accrued from the production of The Playboy would be split between Bisi Adigun and Roddy Doyle 70/30 respectively.

Linda I am aware you are very busy and it is coming to Christmas and that is why I would like to strongly suggest that you should ensure that both sets of solicitors know in writing before they close for Christmas precisely where Arambe and Bisi Adigun stand on these issues.

I thank you for your time and I look forward to hearing from you soon.

Best regards,

Bisi Adigun.”

A further email was sent by the plaintiff later that day suggesting that “the Abbey is in collusion with Roddy Doyle to deny Arambe and Bisi Adigun our rights.”

39. On Thursday December 18th the defendant sent the plaintiff a s.68 (s. 68 of the Solicitors (Amendment) Act 1994) letter addressed to his home address entitled “Re: Arambe Production Limited Production of ‘Playboy of the Western World.’” (The plaintiff’s home address is also the address of Arambe)

40. The letter is, in relevant part, as follows:-

“ Dear Bisi,

Thank you for your instructions in connection with the above matter. We would be pleased to act for you in respect of the issue that has arisen between Arambe Productions Limited and Mr. Roddy Doyle in respect of the Arambe/Abbey Theatre production of ‘The Playboy of the Western World.’

...

We have reviewed the documentation that you furnished to us. It is clear that the particular matter at hand is a complex one. At the outset it will be necessary to obtain the advices of an experienced barrister to review all contracts signed and all correspondence between you, Arambe, Mr. Roddy Doyle, the Abbey Theatre and any and all other parties appurtenant to the matter at hand. We will write to you under separate cover in respect of the details of the actual matter at hand.

If you are happy to proceed on this basis, we would be grateful to receive your written instruction in respect of same.”

The letter set out terms of business including a request that a retainer fee of €1200 plus VAT be paid. Later that day the defendant sent a further email to the plaintiff “RE Your Case” saying “If you wish us to act for you we will need formal acceptance in writing.”

41. My view is that the s. 68 letter and the further email from the defendant of the same date are items of evidence which indicate that the defendant intended to act only for Arambe. However, given that the plaintiff had repeatedly stated his belief in writing that the defendant would act for Arambe and for himself personally, it is regrettable that the defendant did not explain clearly that she would be representing Arambe only.

42. The following day, in response to the s.68 letter, the plaintiff says that “I will be happy to discuss the terms with my board.”

43. In response, by email dated the 19th December, the defendant said:-

“The terms of business would need to be accepted by Arambe’s board or by you on Arambe’s behalf before we proceed further in terms of time expended, other than the letters that you requested in your emails be sent today.”

In this email, the defendant expresses a clear intention to act for Arambe and requires Arambe to accept the terms of business set out in the s. 68 letter. It is further evidence that the defendant’s client was Arambe and not the plaintiff. The defendant does not ask the plaintiff to accept any terms of business because, in my view, no terms of business were ever offered by the defendant to the plaintiff, notwithstanding his repeated requests and/or belief that the defendant would represent him personally.

44. By email of the 20th of December, 2007, the plaintiff replies, in terms which offer further evidence of the defendant’s decision to act for Arambe only. The plaintiff says:-

“I had looked at the terms of business and I had informed my board about it and we are happy to let you handle the case for us.”

The plaintiff wrote to the Board of Arambe on the same day agreeing that the defendant had agreed “to handle the Arambe case”.

45. The plaintiff produced in evidence a cheque payable to the defendant, dated 12th February, 2008, drawn on an account in the name of Arambe Productions but never presented to the defendant. The plaintiff said he intended to use this cheque to pay the retainer of €1200 plus VAT required by the defendant in the s.68 letter. This is evidence that the plaintiff believed Arambe to be responsible for paying the defendant’s professional fees and supports the defendant’s view of who her client was. Implausible suggestions were made by the plaintiff (on day three of the hearing) as to why no inference should be drawn from the fact that he had prepared an Arambe cheque to pay the defendant’s retainer.

46. The plaintiff invites the court to draw an inference from the use of the letters “ADI” in the reference section of the correspondence addressed by the defendant to the plaintiff, as well as the use of the plaintiff’s name and home address in the same correspondence, that the plaintiff was the defendant’s client. I have not found these facts to be persuasive. They are neutral as to the question of the identity of the defendant’s client.

47. My decision is that the defendant agreed to act for Arambe and not for the plaintiff. The plaintiff was not the defendant’s client. Therefore, this action must fail. However, in view of the amount of evidence I have heard and the failure of the defendant to explain to the plaintiff in express terms that she was not acting for him personally, though he was under the opposite impression, and lest my decision on who her client was is wrong, I shall proceed to decide the plaintiff’s case as though he were the defendant’s client and, therefore, entitled to maintain these proceedings against her.

The Defendant’s False Statements

48. By email of the 20th of December with attached letter the defendant thanked the plaintiff for instructions. The defendant said:-

“I have reviewed the documentation you furnished, however I have also forwarded same to a barrister in order to obtain her expert opinion on the points of law at issue. When High Court proceedings are threatened it is essential that this step be taken from the beginning. I will inform you when I have received her opinion which should be early in January. Notwithstanding same, I have reviewed all documentation you forwarded me. With respect to the Memorandum of Agreement entered into between you and Roddy Doyle of the one part and Arambe Productions of the other part dated

6th February 2006, it is clear that Mr. Doyle's written consent to transfer of rights was required before the rights could be transferred in whole or in part to a third party (clause 16). However, this clause somewhat conflicts with the provisions of clause 8 which transfers a licence of the dramatic rights to Arambe if it 'causes (the play) to be produced.' It is a point of law as to whether or not Arambe causing the play to be produced would automatically entitle Arambe to transfer performance rights without any need for written consent."

The letter then says that:-

"...we should seek to rely on his email of Thursday 7 June 2007 in which he states 'we should try to get this contractual formality out of the way as quickly as possible' Although he was not in possession of a copy of the draft Contract with the Abbey Theatre at that stage, we would be seeking to rely on this email as consent to transfer performance rights to the Abbey in order that the production would progress.

I confirm that I have written to both Arthur O'Hagan Solicitors as representative for Mr. Doyle and Arthur Cox Solicitors as representatives for the Abbey Theatre firmly stating our defence to the letters that you have received from them, and also advised that it is your intention to assert a counterclaim for failure to pay royalties under the terms of the Licence Agreement with the Abbey Theatre as you have instructed me. I have not yet received a response and I do not anticipate receiving anything until early in the New Year as the Christmas break is imminent. Furthermore, it is not exactly clear at this point what relief Mr. Doyle seeks against you and I have requested his solicitor to revert to me as a matter of urgency."

49. The defendant admits that she had not sent papers to a barrister. She also admits that she had not written to the solicitors at all. (The defendant says that she wrote this letter with the knowledge that the plaintiff was about to embark on a reasonably lengthy trip away from Ireland. It was her intention to write the letters and to brief counsel while the plaintiff was away.) This letter and these admissions are at the heart of the plaintiff's claim against the defendant. The plaintiff attributes the losses he allegedly suffered to these failures.

Events from January 2008

50. Christmas intervened and the next communication of note was an email from the defendant to the plaintiff of the 23rd of January, 2008, saying the defendant spoke to Mr. Edward Gleeson, solicitor for Mr. Doyle, on 20th December 2007.

51. The defendant received a phone call in the 2nd week of January from Mr. Gleeson, asking for a meeting. The defendant arranged to meet him on Thursday 24th January and informed the plaintiff by email of the 23rd of January that:-

"...I am presently in active discussions with Roddy Doyle's lawyers - I will be able to brief you in full by Friday this week as to whether or not we can reach agreement on this without the necessity of Court. Please bear with me until then."

I accept the defendant's evidence that Mr. Gleeson informed her why Mr. Doyle had repudiated the author/Arambe contact. The letters from Mr. Sutton (quoted at paras. 7, 12 and 16 above) were seen by the defendant for the first time at this meeting. (It is recalled that Mr. Sutton had reminded the plaintiff that Mr. Doyle's written consent was required by Arambe before agreeing to licence a production of the play for the Abbey.) The defendant felt, having seen these letters, that she could not write the letter she had intended to write before Christmas. Mr. Gleeson explained that Mr. Doyle wanted a new Arambe/Abbey contract to replace the one for which he had not given his consent. The defendant understood that Mr. Doyle via Mr. Gleeson was offering an olive branch to Arambe/the plaintiff. The failure to obtain consent would be forgiven and a new agreement between Arambe and the Abbey would be made which would govern any further production of the play by the Abbey. It is clear that this offer arose at about the time the Abbey had decided to do a second run of the play because the first run had been such an outstanding success. Mr. Doyle sought a new Arambe/Abbey contract for the second run of the play.

52. The defendant's recollection was that the meeting took about two hours. Mr. Gleeson's recollection is of a much shorter meeting of between 15 minutes and half an hour. He did not recall proposing a new Arambe/Abbey contract. My view is that the defendant's recollection of this meeting is more reliable because her recollection is supported by the chain of emails from 21st January to 7th February, 2008, between Mr. Gleeson and the defendant. These emails demonstrate that Mr. Gleeson sought the meeting with the defendant, made a proposal to be communicated to the plaintiff, and then actively followed up with the defendant to see had she presented the proposal to the plaintiff and what his reaction had been.

53. The defendant arranged to meet the plaintiff on the 12th February to explain what had transpired at her meeting with Mr. Gleeson on the 24th of January. (The defendant had tried unsuccessfully to arrange an earlier meeting). In view of the proposal that Arambe and the Abbey enter a new contract for future productions of the play, the defendant went through the existing contract and invited the plaintiff to comment, clause by clause, on the existing contract to ascertain which of the clauses might be retained and which might be changed.

54. Both the plaintiff and defendant made handwritten notes at this meeting which were in evidence. The defendant wrote the words "Proposed changes to Abbey agreement" on her notes and the plaintiff wrote the words "Contract to be renegotiated with the Abbey" on his notes. The plaintiff, according to the defendant, seemed amenable to this solution - nodding his head and seeming to understand the proposal. I accept plaintiff's evidence that he never said that he agreed with the idea during the course of the meeting. The plaintiff (ultimately) agreed that the defendant had indeed informed him that Mr. Doyle's lawyer had proposed that the Abbey/Arambe contract be renegotiated. The defendant informed plaintiff that the Abbey was seeking to do a second run of the play in the winter of 2008 at the meeting of the 12th of February. Mr. Gleeson had informed the defendant of this fact by email of the 7th of February 2008.

55. The plaintiff, in his evidence and submissions, appeared to disavow the evidence he gave on affidavit (to the Solicitors Disciplinary Tribunal) that the defendant had informed the plaintiff that the authors would enter a new contract directly with the Abbey, bypassing Arambe.

56. The plaintiff insisted that the defendant had informed him at the meeting that a precondition to any new contract between Arambe and the Abbey would be an express admission by Arambe that it had failed to obtain Mr. Doyle's consent for the agreement between Arambe and the Abbey of the 22nd of May, 2007. The defendant denies this and says that Mr. Gleeson made no such demand and that his approach had been conciliatory. My view is that plaintiff's memory of this is unreliable. I accept that the defendant never said that any new contract would need to be preceded by an express admission of wrongdoing by Arambe and or the plaintiff. It would make no sense for Mr. Doyle to seek to humiliate Arambe or the plaintiff in the manner suggested by the plaintiff's recollection. The context in which the offer of a new contract was made is important to consider: the Abbey wished to do a second

run of the play which had been so artistically and financially successful in the first run. It was in everybody's interest to sort out the problem with the Arambe/Abbey contract.

57. The plaintiff wrote to the defendant the next day. The letter is as follows:-

"Wednesday, 13th February 2008

Dear Linda,

Thanks for your time yesterday evening and also for your good counsel. It was indeed a pleasure to see you again.

You may find me a bit odd but between you and me, I have to admit that I am somewhat disappointed that you think this matter will not be taken to court. I am not wishing for an unavoidable court case and I may be totally naïve about Irish legal system but I was hoping that if Roddy Doyle had dragged Arambe to court I would have at least had the chance to prove to him that all my sweat and blood for the past three years and all the sacrifices Arambe had made to ensure that the Playboy he agreed to co-write premiered on the most coveted Abbey stage were all for his sake and in his own interest. I mean let's assume Arambe had produced this play for a two week run in The Project Arts Centre, firstly, it would have been impossible for a start to misinform the public by hailing this the print and electronic media as Roddy Doyle's version; secondly Arambe's name as the initiator, facilitator and commissioner of the modern version would have not have disappeared into oblivion as was the case with The Abbey production; secondly, it would, undoubtedly, have been on a much smaller scale compared to the Abbey production, nevertheless it would still have been another important feather on Arambe's cap; and lastly I definitely would not have had to deal with the harassment, bullying and discrimination that I had thus far been subjected to.

But the main reason I am writing you this letter is to formally ask you in your capacity as Arambe's Solicitor to contact the Abbey in order to express Arambe's wish to terminate the agreement dated 18th of May 2006, which we entered with them as regards Arambe's new version of The Playboy of the Western World by Bisi Adigun and Roddy Doyle. Our reasons are as follows.

1) I would like to argue that The Abbey's ludicrous suggestion to pay Arambe a lump sum after the seven week run of the premiere was a calculated plan and a worked out strategy to facilitate Roddy Doyle's intended request to the Abbey to withhold whatever money Arambe was due after the success of the production must have been ascertained. If I knew then that the Abbey have all along been in collusion with Roddy, I would have rejected the proposed idea of payment Arambe in two instalments to which I agreed, at the time in order only to keep the peace. Nonetheless by withholding Arambe's balance, that had been made possible by not paying Arambe weekly, on the request of Roddy Doyle the Abbey is in breach of our agreement for according to Clause 8 of the aforesaid agreement:

The Licensor shall be given access at all reasonable times to the box office accounts and the Licensee shall furnish the licensor with certified nightly returns of box office receipts from all performances and the returns and all sums due to the Licensor thereunder shall be sent to the Licensor not later than every four weeks **after the week** to which the returns refer.

2) Once I was in Fiach Mc Conghail's and he told me that although it was with Arambe that the Abbey had entered into agreement, his loyalty lies with the writers. In his words: "I will be honest with you, I do not give a f*** about Arambe". I must admit that statement did hurt me badly more so because I was in his office at the time to appeal to him to reconsider his earlier decision not to put Rupert Murray's picture on a page no matter how small, in the programme note for Arambe to honour his blessed memory. Fiach eventually said no and it was a result of his decision that I had no alternative than to dedicate my biog. Space to Rupert. However Joan O'Hara's, (may her soul rest in peace) occupied the space I had imagined for Rupert. I am not suggesting that Ms O'Hara's picture was undeserving but Arambe would have agreed to pay a fee for half of the space 101 Restaurant had been given, for a fee or for free in the programme note to deservedly honour Rupert's memory.

3) I was made to be aware from the onset that the Abbey production was not a co-production between the Abbey and Arambe Productions and in order to ensure that the production went as planned, I agreed reluctantly to Abbey's decision not put Arambe's name or logo in any printed publicity materials (another sacrifice Arambe made for Roddy's sake) to publicise the show. I however did not know that it was The Abbey's intention to obliterate Arambe's name completely in order to either give the impression that the idea of The Playboy literally just appeared from no where in particular or was Roddy Doyle's.

I recall that a couple of weeks before rehearsal commenced, Aideen Howard Abbey's Literary Director), Roddy Doyle and I had a meeting to put finishing touches to the script we would like The Abbey to use for the proposed production. Since we wrote the play at Roddy's he agreed to email a copy of the finalised script to Aideen. But when I asked him to ensure that he sent the cover page acknowledging Arambe as the Commissioner and The Arts Council as the funder with it as we did with the previous two drafts, I could sense his unwillingness so I said I would send it myself. All efforts to send the page by email proved futile so I decided to drop it myself. I dropped two copies at the Abbey on Monday August the 13th if I am not mistaken. One for Aideen Howard, and the other for Aoife, Aideen's assistant because I was aware that Aideen was going to be away the week before the commencement of rehearsals on the 27th of August, and it was very important I thought that whatever script was eventually handed out to the cast and crew will later become a souvenir therefore it was necessary that it carried the page which appropriate acknowledges both Arambe who initiated and facilitated the idea of the new version and the Arts Council that gave us the grant to commission the writers. But when I saw Aideen on the first day of rehearsal the first thing she told me was just in case I noticed that some scripts do not have the page I sent in, I should understand because they had already distributed most of the scripts before they received the page I left for her and Aoife.

It is all making sense to me now, the Abbey is interested in the brilliant idea that Arambe initiated facilitated and acquainted them with but they do not want to be seen fraternising with a young company founded by a black man. Actually this brings to mind *chichidoodoo*, the strange bird that *Ayi Akwe Amar*, in his novel *The Beautiful Ones Are Not Yet Born* claims likes to feed on maggots but dislikes faeces. I mean credit where credit's due. I know I am a Nigerian, I know I am a black man, I know I do not belong here, I know Arambe is not Rough Magic, I know I am not Selina Catmel, I know my wife is not friendly with any one in the Abbey, I know The Abbey is the bastion of Irishness, I know the Arts Council can decide to stop funding Arambe at the click of a finger despite all our hard work and achievement. But I am proud of

who I am, I am proud of my BA and MA in Drama and MA in film and Television, I am proud of all the talents and foresight with which God has blessed me, I am proud of my passion for the art and more importantly I am proud to say that Bisi Adigun is the founder and artistic director of the seemingly insignificant African theatre company that has done to the history of Irish theatre what John Osborne did to the history of British Theatre in 1956 with the production of his play *Look Back in Anger*.

Apparently the Abbey is not proud of Arambe and Bisi Adigun, otherwise they would not have entertained Roddy Doyle's unreasonable demand not to pay Arambe what we are owed. I challenge Fiach to show me if there was any other production in the history of his tenure that made him a 100% box office return. Someone actually told me that he had never seen anything like *The Playboy* since he started working in the Abbey about twenty years ago. And my understanding is that about a quarter of a million was budgeted for the production so with a box office return in excess of half a million for The Abbey, if I were to be a white boy, with my passion, imagination and qualification, I would not be writing this email. And this is precisely the reason why I believe The Abbey has proven that there are no longer deserving of Arambe's new version of *The Playboy*.

As regards to Roddy, please kindly help me inform his legal team that I genuinely regret ever allowing the Abbey to produce the new version which Arambe commissioned us both to co-write. Also help me convey the fact that I am deeply saddened that such a wonderful idea that we worked well together on have turned out this way. The only reason why I agreed to the offer of five years by the Abbey was because Roddy said five years is better than three years and seven years is too long that with "The Abbey, our play is in good hands". Left to me the Abbey would have been given the chance to produce it once. Up until the day the Abbey said they were going to finally produce this play, the whole idea of modernising the *Playboy* had been a pleasant one for me but had I known it would turn out this way I would have so opted for a small scale production of Arambe. However Roddy Doyle should not worry anymore, I am working on ensuring that Arambe disallows further production of our play by The Abbey.

In the meantime I would like to seize this opportunity to implore Mr. Roddy Doyle to temper justice with mercy and use this influence as one of Ireland's famous writers and the spouse of the friend of Abbey's literary director (now on leave) to instruct Fiach the director of the Abbey to release Arambe's balance by the 24th of this month (February). Otherwise Arambe would not hesitate to settle Bisi Adigun, who came up with the idea of modernising the *Playboy* and co-wrote it what he is owed. Also we have outstanding administrative bills associated with the facilitation of the unappreciated Abbey production, to settle. I thank you for your time.

Best Regards

Bisi Adigun (Arambe's Artistic Director)"

58. The second sentence of the letter ("You may find me a bit odd but between you and me, I have to admit that I am somewhat disappointed that you think this matter will not be taken to court") corroborates the testimony of the defendant that whatever the content of the meeting of the 12th of February, the plaintiff understood the defendant to have communicated to him that Mr. Doyle was adopting a non-combative attitude and matters would not be litigated by Mr. Doyle. The defendant understood the plaintiff's letter of the 13th of February to be an outright rejection of the olive branch proposal. The defendant was very disappointed that the plaintiff would not accept the offer.

59. Mr. Gleeson telephoned the defendant to see how the plaintiff had reacted to the proposal. The defendant informed Mr. Gleeson of the content of the plaintiff's letter of the 13th of February and of the plaintiff's new instructions.

60. Mr. Gleeson, in view of this news, wrote to the plaintiff as follows:-

"21st February 2008

Mr. Bisi Adigun

Artistic Director

Arambe Productions Limited

2 Moorefield Cottages

Roebuck Road

Dublin 14

Re: Our Client – Roddy Doyle (Mr. Doyle)

Dear Mr. Adigun,

We refer to our letters of September 27th, October 17th and November 6th addressed to you in your capacity as Artistic Director of Arambe Productions Ltd. (Arambe). We note that Arambe has not responded to our correspondence and in the absence of such response our client is now gravely concerned that Arambe intends again to violate the copyright, of which Mr. Doyle is co-owner with you, in the adaptation of the play "The Playboy of the Western World".

Our client seeks an undertaking from Arambe that it will not infringe the copyright, of which Mr. Doyle is co-owner, in the adaptation of the said play "The Playboy of the Western World" including (strictly without prejudice to the generality of the foregoing) by performing, or authorising the performance by others, of the play.

We are instructed further to require that Arambe renders an account of the profits which have accrued to it by reason of the infringement of Mr. Doyle's copyright.

In the absence of such undertaking being received together with reasonable proposals for the compensation of Mr. Doyle in respect of the infringement of his copyright within seven days hereof we are instructed to institute High Court proceedings against Arambe which will claim as follows:

1. An injunction restraining Arambe from infringing the copyright, of which Mr. Doyle is co-owner, in the adaptation of the play "The Playboy of the Western World", including (strictly without prejudice to the generality of the foregoing) by performing, or authorising the performance by others, of the play.
2. An account of the profits of Arambe by reason of its infringement of Mr. Doyle's copyright.
3. In the alternative damages for infringement of copyright contrary to the Copyright and Related Rights Act, 2000.
4. Damages for breach of contract.
5. An award of aggravated and/or exemplary damages, pursuant to the Copyright and Related Rights Act, 2000 for infringement of copyright.
6. Interest under the Courts Act 1981.
7. Costs of proceedings.

We await hearing from you within the time allowed and in the absence of such response you might kindly advise whether you wish to nominate solicitors to accept service of the High Court proceedings adverted to herein. This letter together with our previous correspondence will be offered to the Court in support of our client's application for reliefs including legal costs.

Yours faithfully

ARTHUR O'HAGAN"

Mr. Gleeson also wrote in the same vein to the defendant on the same date.

61. The defendant was disappointed by the plaintiff's letter of the 13th of February and attempted to persuade him to change course, by letter of the 29th of February as follows:-

"Strictly Private and Confidential

Mr. Bisi Adigun

2 Moorefield Cottages

Roebuck Road

Clonskeagh

Dublin 14.

29th February 2008

Re: Arambe Productions Limited

Production of "The Playboy of the Western World" ("Play")

Dear Bisi

I refer to previous correspondence in this matter, in particular to our meeting of the 12th of February and your subsequent email of 13th February. Following a full and comprehensive review of all documentation which you forwarded to me, alongside continuous discussions with Edward Gleeson of Arthur O'Hagan Solicitors who represents Roddy Doyle, I am of the opinion that you would in all likelihood be unsuccessful in defending any action taken against you by Roddy Doyle. Whilst the terms of the Agreement between Bisi Adigun, Roddy Doyle and Arambe dated 6th February 2006 somewhat conflict in that they grant to Arambe the dramatic rights in the Play for three years should Arambe cause the Play to be produced, yet simultaneously grant such rights to Arambe solely without any power of assignment, on balance I believe that Mr. Doyle's express consent to the terms of Arambe's granting of a licence to produce and present the Play to the Abbey Theatre was in fact required. I refer in particular to Mr. John Sutton's letter of May 17, 2007 in this respect and I feel that due regard should have been given to the contents of this letter at the time it was furnished to you.

I am in receipt of a letter from Edward Gleeson of Arthur O'Hagan dated 21 February 2008, a copy of which I enclose herewith, and I understand that Mr. Gleeson has also written to you directly. It is my strongest recommendation to you that you agree to participate in an attempt, should Mr. Doyle or his representative agree to same, to revise or terminate the Agreement with the Abbey Theatre dated 18th May 2007 as it stands, in order to rectify the position as it currently stands and release the balance of profits accruing to Arambe in order for Arambe to discharge its outstanding financial liabilities to Mr. Doyle. In the event that the Abbey Theatre are agreeable to such a proposal, this would have to be done with the full consent and participation of Mr. Roddy Doyle in an arbitral context and under no circumstances in an adversarial setting. I believe that this may afford the opportunity of satisfying both your desire at this time to terminate the Agreement with the Abbey and also afford Roddy Doyle the opportunity to reclaim the rights which were erroneously assigned by Arambe. I am asking you to give my proposal serious consideration at this time.

In reference to the contents of your email of the 13th of February 2008, I cannot accept your assertions that Mr. Roddy Doyle and representatives have conspired to deprive Arambe of profits due and owing to it and I will not make representations in this respect on your behalf. Nor can I accept that any racist behaviour whether overt or covert has been conducted towards you or Arambe and I request herein that you immediately cease making such allegations which clearly are unfounded in reality and are totally counterproductive to the resolution of this situation. I will not make any such representations on your behalf in this respect and I would prefer if you sought the services of a lawyer other than myself if you wish to pursue this course of action.

In response to the opening paragraph of your email under no circumstances should you seek to use the Courts as a public "stage" to voice your opinions and/or recount the journey on how the Play was finally caused to be produced; in the event that you lose any action taken against you, as I believe you would, Arambe could be fixed with general and aggravated damages payable to Roddy Doyle and also be fixed with a Court Order to discharge his legal costs, in addition to paying your own. According to the facts of the situation at hand it is in everyone's interests Bisi that this situation be resolved promptly and amicably.

Please note that our retainer of €1,200 which represents four billable hours is still outstanding and according to my timesheet approximately six hours has now been expended. Kindly arrange for our retainer in the sum of €1,200 to be discharged without delay.

I await your written instructions without delay.

Yours sincerely

Linda A. McEvoy

For and on behalf of

MORAN SOLICITORS

Encl."

The letter was accompanied by an invoice for €1200.00 plus VAT. being the amount of the retainer fee which had been sought from Arambe.

62. The plaintiff replied to the defendant as follows on the 7th March, 2008:-

"Linda McEvoy,

Moran Solicitors

2 Westland Square

Dublin 2

Ireland

Re: Arambe Productions The Playboy of the Western World

Dear Linda

I received your letter, dated 29th of February 2008, in the post on Tuesday the 4th. What I intend to do is to convey a board meeting of Arambe as soon as possible to discuss the pertinent points you have raised in your letter as well as the fact that Roddy Doyle's solicitors wrote directly to me. It is after this meeting that I will be in a position to get back to you regarding the steps I think we should take as regards what is best for Arambe concerning the matter at hand.

In order to contextualize the development of this case and also to be able to brief my board accordingly as regards the progress you have made thus far before reaching the views you have articulated in your letter, I would like you to furnish me with all the correspondence between you and both sets of lawyers representing Roddy Doyle and The Abbey respectively, to date. So can you kindly send me the following letters by post as soon as possible please?

1. The letter you wrote to both sets of solicitors to inform them that you were theretofore representing Arambe Productions.
2. The letter in which you informed Roddy Doyle's solicitor that if they did not withdraw this matter, we would take a counter claim against him.
3. The letter you wrote to The Abbey to inform them that if Arambe was not paid our balance by the 24th of December, they were in breach.
4. The letter I asked you to write to Roddy Doyle on my behalf, as the owner of the idea of the playboy and the one who invited him to co-write with me, that I would be paid 70% of whatever royalties Arambe pay us both from any production of The Playboy.
5. The letter you wrote to The Abbey following our last meeting to inform them that for colluding with Roddy Doyle to deny Arambe our proper and deserving acknowledgment as the imitator, Commissioner and enabler of the critically acclaimed "The Playboy of the Western World" that had returned more than half a million in the Box Office for the Abbey and for dancing to Roddy Doyle's tune and obliging his unreasonable demands, despite the fact that it is with Arambe they have an agreement, to withhold Arambe's balance that should have been paid weekly in the first place as stipulated in our agreement, I believe they are undeserving of The Playboy which we commissioned and therefore we are terminating the agreement dated 18th of May but signed on the 22nd of May 2007.

Please kindly furnish me with all these letters, every response to them and all other email contacts you must have made with both sets of lawyers since you took up this case on behalf of Arambe. As soon as I get them, I shall meet with my board and get back to you pronto to inform you of what Arambe plans to do. Please kindly include an Invoice for your fee (+VAT) so far and I will send your cheque along to you as soon as I receive everything.

Thanks a lot.

Regards

Bisi Adigun

Artistic Director"

63. The final letter between the plaintiff and defendant by which relations were terminated is as follows:-

"11th March, 2008

By Registered Post

The Board of Directors

Arambe Productions Limited

2 Moorefield Cottages

Roebuck Road

Clonskeagh

DUBLIN 14

re Arambe Productions Limited

Dispute with Mr. Roddy Doyle and/or the Abbey Theatre

Dear Sirs

We refer to your Artistic Director Ms. Bisi Adigun's correspondence to us of dated 7th March 2008. We also refer to our correspondence dated 18th December 2007 (pursuant to Section 68 of the Solicitors Amendment Act 1994) to Mr. Adigun indicating that a retainer be required in order for us to ascertain the strength and validity, if any, of Arambe's defence against Mr. Roddy Doyle and/or The Abbey Theatre. As we have not received such retainer, we are somewhat puzzled at the inquisitorial tone of Mr. Adigun's correspondence of the 7th inst.

Notwithstanding same, we have extensively consulted with solicitors for Mr. Roddy Doyle and the Abbey Theatre and undertaken a thorough review of all paperwork forwarded to us on Arambe's behalf by Mr. Adigun. We enclosure for your information a copy of correspondence sent to Mr. Adigun as Arambe's representative dated 29th February 2008 which sets out the position as we opine it affects Arambe and which is self-explanatory. We have given what we believe to be the correct legal advice which is a solicitor's duty, even though we have not been formally retained as per our terms of business. We state herein that a firm of solicitors cannot act in any manner which breaches or could be seen to breach a duty of care to Arambe Productions Limited as a corporate entity (with a separate personality in law completely distinct from its Artistic Director Bisi Adigun) by acting on instructions that we believe are contrary to its best interests and in which our professional integrity could be compromised. It is unacceptable to expect us to act in any other manner.

As such, we are powerless to act for Arambe Productions Limited. We will forward our file in its entirety to your new legal representatives as and when you have appointed them and await hearing from you in this regard solely.

Yours faithfully

Moran Solicitors"

64. The plaintiff wrote to the Abbey personally on the 24th of March, 2008. The letter is as follows:-

Fiach Mc Conghail,

The Artistic Director,

The Abbey Theatre,

26, Lower Abbey Street,

Dublin 1,

Ireland

Dear Fiach,

For the purpose of securing our balance from the Abbey, Arambe Productions, on November 28th 2007, contacted and engaged the services of solicitor Linda McEvoy who said she would need to merge with Moran Solicitors in order to be able to properly handle the case. Arambe has just received a letter from Ms. McEvoy stating she would not be able to continue handling the case. Although her inability to continue to represent. Arambe does not present a problem for us, it is our understanding that she had failed to convey Arambe's position as regards your withholding the balance of royalties we are due exactly four months today after the last performance of the Abbey production of our new version of The Playboy of The Western World which we commissioned Bisi Adigun and Roddy Doyle to write, to the Abbey. I feel it is important to write you this letter so the Abbey will be aware of the following points which should have been conveyed to you by Linda McEvoy.

□ In the Abbey Arambe contract of May 18th and signed on the 22nd of May 2007, Arambe was meant to be paid weekly as stipulated by clause 8. But a couple of days before the opening night I was made-to understand by The Abbey that Arambe would be paid lump sum at the end of the run. Whilst this suggestion was clearly in breach of our agreement, Arambe was obviously powerless and had no option but to agree to the two instalments suggested in order to keep the peace and especially since it would enable us to fulfil our agreement of paying the authors what they were due on a monthly basis. Now we realize that the whole reason why you had to breach our contract was to facilitate Roddy Doyle's unreasonable demand not to pay Arambe what we are owed.

□ The Abbey was aware of Mr. Doyle's agents' animosity towards Arambe as regards the above said contract. Before I eventually signed the contract on behalf of Arambe I asked the Abbey to help me clarify same points so as to be absolutely certain that whatever Arambe said yes to in the agreement we were entering into with the Abbey did not contravene the existing contract we already have with the Authors. Indeed we did not hesitate to furnish you with a copy of the said agreement to let you know what our terms are with the authors. As far as we understand you did not have any problem entering the agreement with Arambe and carrying on with the production. And as far as we can recall, it was Mr. Doyle who ensured the script that was agreed for the Abbey premiere production got delivered to the Abbey by all possible means few days before the commencement of rehearsals. Furthermore, by participating in all the production meetings that took place after Arambe had entered into agreement with the Abbey, Mr. Doyle had demonstrated his unequivocal support for the Abbey production which would not have gone ahead if Arambe had not entered into agreement with the Abbey. Thus by not releasing the balance of royalties you are owing us at the behest of Mr. Doyle, by the 24th of December 2007, meant the Abbey had breached the contract which we signed on the 22nd of May 2007, yet again.

□ Another important point then is that for reasons only you can explain The Abbey seems to be on a mission to obliterate Arambe's name as the commissioning company who paid both authors to write this new version, the production of which had earned The Abbey well over half a million euro in box office returns not to mention the unprecedented revenue on sales of alcohol beverages and programme notes.

Fiach, perhaps you are not made aware but Arambe Productions agreed to go ahead with signing the contract, despite the futility of my efforts to get Arambe to be acknowledged as commissioner of the new version in publicity materials for the premiere, simply to deliver the promise of putting this play on the abbey stage which we made to Mr. Doyle, when we contacted him in 2005 to co-write the play with Bisi Adigun. Remember you said you don't give a f*** when I came into your office to beg you to reconsider your decision not to provide Arambe a space, any space at all, in the programme note, to dedicate the planned premiere to the blessed memory of Rupert Murray who, in 2005, suggested Arambe should contact Roddy Doyle to co-write the new version with Bisi Adigun; who reminded us that the centenary of the first production of The Playboy was two years away; and who despite going through lots of pain from the cancer he was suffering ensured that the contract between the Authors and Arambe benefits Arambe on the long run.

Undoubtedly it was a very good idea that you felt it appropriate to pay tribute to late Joan O'Hara in the programme note of the premiere of the Playboy but it was rather perplexing that you did not have any qualms with Bisi Adigun, who came up with the idea and co-wrote the new version, sacrificing his biog space to honour the memory of an irreplaceable board member of Arambe. We genuinely wonder how much advertisers such as 1-01 Restaurant paid for the space they got in the programme note because if you had informed Arambe that we could purchase an advert space in the programme note Arambe would have paid ten times what 101 Restaurant had given you to fulfil our wish to dedicate the first production of The Playboy to the memory of Rupert Murray.

It is in the light of all of the above that Arambe had come to the conclusion that The Abbey, under the directorship of Mr. Fiach Me Conghail it needs to be stressed, is no more deserving of Arambe's The Playboy of the Western World in a new version by Bisi Adigun and Roddy Doyle. So you should consider the Abbey and Arambe's contract dated May 18th and which we both signed on behalf of the Abbey and Arambe respectively, on May 22nd 2007, terminated.

The last thing then is that it has come to our notice that you have contacted Mr. Doyle to inform him of your intention to run the play, which Arambe allowed you to produce last year, again this coming December. We also understand that Bisi Adigun the owner of the copyright of the original idea and the co-writer of the play has not been contacted. We would like to seize this opportunity to assure you that despite the fact that it is very apparent that Arambe cannot afford the kind of legal representation available to the Abbey, Arambe will rigorously defend itself because as an African proverb goes: 'the needle may be tiny, it is not an object for a hen to swallow.'

P. S. If Arambe's balance of €20,860.50 is not paid within the next fourteen days, we will be left with no option but to take this matter up with the esteemed members of The Board of Directors of The Abbey Theatre.

We thank you for your time and we hope you accord this matter the urgency it requires.

Best regards,

Bisi Adigun

Artistic Director

65. This letter indicates that the defendant was no longer acting for Arambe and had failed to convey Arambe's position regarding the withholding of royalties. The plaintiff says the purpose of the letter is to convey the points which the defendant ought to have conveyed to the Abbey. I find that the plaintiff took this opportunity to make any point he wished to protect his interests and the interests of Arambe. It is significant that it had no effect. The Abbey did not alter its stance. The plaintiff has suggested that the letter did not have the desired effect because it was not written by a solicitor. The Abbey gave the letter to its solicitor. The Abbey's solicitor, called under subpoena by the plaintiff, refuted the suggestion that had it been written by a solicitor, some other outcome would have been achieved. Mr. Cantwell, on behalf of the Abbey, gave similar evidence.

66. The Abbey's response was contained in a letter dated 16th April, 2008, from Arthur Cox Solicitors which complained that it had not received a response to their letter of the 26th November, 2007. It reiterated its position that Arambe had not obtained the necessary consent from Mr. Doyle before permitting the Abbey to stage the first production. It suggested that a second run of the

play be produced at the end of 2008 whereby the Abbey would deal directly with Mr. Doyle. The letter was as follows:-

"Arambe Productions Limited

2 Moorefield Cottages

Roebuck Road

Clonskeagh

Dublin 14

BY REGISTERED POST

Re: Our Client: The Abbey Theatre

Agreement of IS May 2007

Dear Sirs,

We refer to our letter of 26 November 2007 a copy of which is enclosed for ease of reference.

We have not received a response to our letter but we note the contents of a letter incorrectly dated 24 May 2008 but which was sent on 24 March 2008 from your artistic director, Mr. Bisi Adigun to the Artistic Director of our client, Mr. Fiach MacConghail. Our client is disappointed to note that the serious matters raised in our letter of 26 November 2007 relating to Arambe's breach of contract have not been addressed in this latest letter from Mr. Adigun. Instead, this latest letter seems intent only on making unfounded allegations and casting slurs against our client and Mr. MacConghail all of which, for the avoidance of doubt, are utterly rejected.

Our client now finds itself in the invidious position of having become embroiled in a dispute between Arambe Productions Limited and Mr. Roddy Doyle arising from Arambe's breach of its 18 May 2007 agreement with our client. In light of the claims made by solicitors for Mr. Roddy Doyle and having noted the contents of Mr. Adigun's letter to Mr. Mac Conghail, the following has become clear:

(i) that Arambe Productions, in breach of its warranty to our client, and-also in breach of its agreement of 6 February 2006 with Mr. Doyle and Mr. Adigun, failed to obtain the necessary consents and/or copyright assignments from Mr. Doyle for the original production of the Playboy of the Western World A New Version (the "Production");

(ii) that Arambe Production has (illegible) in respect of the Production;

(iii) that Mr. Doyle is holding our client responsible for the royalties due to him in respect of the Production; and

(iv) that the retained royalties of €20,860.50 currently held by our client arising from the Production will be insufficient to meet the damages, costs, expenses, losses and liabilities which will arise from Arambe's breach of contract.

Given the above, our client has therefore decided to adopt the following position:

1. Our client intends to host a further run of the Production at the end of this year;
2. Our client will contract directly with Mr. Doyle to ensure the necessary consents and copyright clearances are in place;
3. In consideration of the granting by Mr. Doyle of the sole and exclusive rights to the Production to our client, our client will divide 10% of the gross box office receipts (less card commissions, agency commissions and VAT if any) received from the next run of the Production between Arambe Productions (5%) and Mr. Doyle (5%); As you are aware, our client already enjoys a five year licence from Arambe under Clause 12 of the May 2006 agreement subject only to payment of €2,750 to Arambe in the circumstances set out therein;
4. Subject to receipt of satisfactory evidence from Mr. Doyle's solicitors as to the sum owing to their client by Arambe, our client will distribute the €20,860.50 currently held by it directly to Mr. Doyle in partial settlement of the unpaid royalties owed to him by Arambe in respect of the original Production;
5. As the sum of €20,860.50 is insufficient to meet the full amount owed to Mr. Doyle by Arambe in respect of the original Production, our client will distribute the balance to Mr Doyle from the initial gross box office receipts received for the forthcoming Production prior to the distribution of royalties under paragraph 3 above.
6. The legal costs incurred by our client and by Mr. Doyle will also be deducted from the royalties payable to Arambe under paragraph 3 above.
7. Future runs of the Production during the 5 year term will follow the 5%/5% split outlined above.

The above position has been adopted in an effort to finally resolve the issues in a sensible manner while allowing our client to mitigate the losses arising from Arambe's breach of contract.

Given that we have not received a response to our letter of 26 November 2007 and that Arambe has chosen not to engage legal representation in this matter, we are copying this letter to each of the Board members of Arambe.

Yours faithfully

ARTHUR COX"

67. A second successful run of the play took place in the winter of 2008. Apparently, the Abbey secured direct consent from Mr.

Doyle for the second run. The plaintiff did not expressly consent to the second run but, though he threatened to seek injunctive relief to stop the play, he was advised by his lawyers not to seek an injunction. (When asked by the court why he had taken no steps to prevent the second run of the play from proceeding in accordance with his objections, the plaintiff said he could not take action because he did not have a lawyer at the time. His wife's evidence was that lawyers were retained at the time and they advised against seeking injunction. I prefer the plaintiff's wife's evidence on this issue).

History of other litigation/complaints by the plaintiff

68. Arambe Productions issued proceedings bearing record no. [2008] 10729 P by plenary summons dated 15th December, 2008, against the Abbey Theatre and Roddy Doyle. A statement of claim was delivered on 19th May, 2009. These proceedings allege that the second run of the play, which commenced in December 2008, was staged without Arambe's consent and unlawfully altered the script. Arambe was represented by Kevin Tunney Solicitors and counsel drafted proceedings. Unpaid royalties were demanded. The proceedings were preceded by a letter to solicitors for the Abbey of the 6th of October, 2008, which rehearsed the reason it was alleged that the Abbey was acting unlawfully which was met by a reply on behalf of the Abbey which rehearsed its previous position. (The breach of copyright and unpaid royalties connected with the second run of the play did not feature in the correspondence or the plenary summons as the second run of the play had not yet commenced when these issued). The plaintiff called the solicitor in the practice as a witness, Mr. Mudah, and suggested that Mr. Mudah did what the defendant failed to do - wrote a letter before action, retained counsel and issued proceedings.

69. The second set of proceedings is entitled *Bisi Adigun v. Abbey Theatre, Jimmy Faye and Roddy Doyle*, bearing record no. [2009] 6922 P and makes complaint about alterations to the script in respect of the second run of the play and about the failure to obtain the plaintiff's consent for the second run. The plaintiff alleged that the first run of the play by the Abbey had occurred following due consultation with Mr. Doyle, and Mr. Doyle denied this in his defence. The plaintiff was initially represented by solicitor and counsel.

70. The third set of proceedings is entitled "*Bisi Adigun v. Roddy Doyle and John Sutton*", record no. [2009] No 10716 P. The plenary summons is dated 26th November, 2009. GM Solicitors came on record for the plaintiff in September 2010. The proceedings are signed by the plaintiff personally and seek damages for unlawful repudiation of contract, *inter alia*. A statement of claim was delivered on 1st April, 2010, and the plaintiff set out a very detailed case as to why Mr. Doyle had unlawfully repudiated the agreement of the 6th of February, 2006, and why Mr. Doyle's written consent was not required in order for Arambe to sub-license production rights of the play to the Abbey. The defence alleges that Arambe acted unlawfully in failing to get Mr. Doyle's consent before transferring production rights to the Abbey.

71. These three sets of proceedings were settled by agreement on 29th January, 2013, between Arambe Production Ltd, the plaintiff herein, the Abbey Theatre, Jimmy Fay, Roddy Doyle, and John Sutton. The plaintiff was represented by solicitors and counsel. The agreement recites the parties agree terms:-

"in full and final settlement of [the three sets of proceedings] and all claims whether in contract, tort, intellectual property or by any other cause of action of any description no matter how so ever arising".

The Abbey paid €200,000 to the plaintiff's solicitors. €100,000 was in respect of breach of copyright, connected to alterations to the script in the second run of the play, €40,000 was in respect of royalties due to Arambe and €60,000 was paid to the plaintiff's lawyers in costs. Neither Mr. Doyle nor Mr. Sutton nor Mr. Fay made any financial contribution to the settlement. Mr. Doyle transferred his copyright in the play to the plaintiff. It is significant that Mr. Doyle never conceded that he had acted unlawfully in repudiating the authors/Arambe contract. The plaintiff's proceedings against Mr. Doyle failed. According to the plaintiff, the transfer of Mr. Doyle's rights in the play to the plaintiff has impaired the value of the play and the plaintiff has been unable to exploit the play since that time.

72. The plaintiff made complaint alleging racial discrimination against the Abbey on 28th March, 2008, under the Employment Equality Act. His claim was dismissed and decisions of the High Court and the Supreme Court upheld that dismissal. The plaintiff has now pursued this matter to the European Court of Human Rights.

73. Mediation of the dispute with the Abbey and Mr. Doyle was attempted in April 2008. It was unsuccessful. The plaintiff explained to his Board that the mediation failed because of Mr. Doyle's intransigence, i.e. Mr. Doyle insisted that he had acted within his rights in repudiating the author/Arambe contract and had maintained that Arambe had unlawfully failed to obtain his consent. The plaintiff eventually accepted in evidence that the mediation did afford him an opportunity to explain via the mediator to Mr. Doyle why Mr. Doyle's position was wrong. The plaintiff attempted to argue in court that the mediation failed because the mediator was biased and because the plaintiff had not been given an opportunity to put his case across. I reject this explanation and say that the reason the mediation failed was the reason given by the plaintiff to his Board - Mr. Doyle was not for turning.

74. The plaintiff made complaint to the Solicitors Disciplinary Tribunal concerning the conduct of the defendant. The Tribunal, by decision of 17th July, 2009, after extensive exchange between the plaintiff and defendant herein covering much of the material described in this judgment, found that:-

"there is no prima facie case of misconduct on the part of the respondent solicitor for inquiry in respect of each of the allegations [by Bisi Adigun.]"

The plaintiff appealed that decision to the High Court alleging bias against the Chairperson of the Tribunal. The appeal was dismissed.

The plaintiff's case.

75. The case advanced by the plaintiff is that he instructed the defendant to write to solicitors for Mr. Doyle and the Abbey in response to their letters to say that Arambe had acted lawfully in contracting with the Abbey, that Mr. Doyle had consented to the play being produced by the Abbey and that there would be a "counterclaim" unless the royalties were paid by the Abbey. The plaintiff says that the defendant failed to carry out this instruction. He says that the defendant ought, in addition to writing the letters, to have retained counsel to advise. The plaintiff says that a properly instructed counsel would have discovered the existence of the authors' agreement of the 16th of January, 2006, and could have made good use of the legal consequences of that agreement. The plaintiff says that because of the defendant's failures, the situation escalated, requiring the plaintiff to issue multiple sets of proceedings (described above at para. 68 et seq.). He says that his copyright in the play was breached during the second run of the play in that many changes to the text were made without his consent. He says that the plaintiff must bear responsibility for this because if she had done her job correctly, the changes to the text would not have happened without his consent. The plaintiff says he was defamed in an article in a newspaper, and eventually he secured an award of damages in an undefended defamation action (the newspaper in question was no longer in business at the time of the trial of the action). This would not have happened but for the failures of the defendant, according to the plaintiff. The plaintiff says that but for the defendant's failures he and Mr. Doyle would

have restored their friendship and working relationship. The play, he says, would have toured nationally and internationally. (I accept the plaintiff's evidence of international interest in the play which was stymied because of the dispute with Mr. Doyle) Instead, the play has become worthless as Mr. Doyle has transferred his copyright in the play to the plaintiff and wants nothing more to do with it. The plaintiff says that he has endured years of stress pursuing remedies against various parties and, in addition, his doctoral thesis was greatly delayed as he was focused on the consequences of the dispute.

76. The court invited the plaintiff to state what the defendant ought to have set out in the correspondence which was never sent. The plaintiff indicated that the letter ought to have been something like this:-

"Bisi Adigun and Arambe Productions will assert a counterclaim for the failure to pay royalties and for interference with rights and for interference with and for tortious interference in circumstances where Arambe:

(1) Did not need the consent of Bisi Adigun and Mr. Doyle to license the play to the Abbey as it was the reason we commissioned them to write the play.

(2) Prior to Arambe agreeing to the five year clause, I, Bisi Adigun, gave my consent, and Mr. Doyle's consent was obtained orally and by his agent's email of the 17th May, 2007

... Bisi Adigun as co-author is in complete support of the Arambe's authors agreement of the 6th February, 2006 and the Arambe's authors agreement and furthermore we want to assert that there was an agreement, dated 16th January, 2006 between Dr. Bisi Adigun and Roddy Doyle ... furthermore Dr. Adigun will be take a case of discrimination because he feels he is not being treated properly by the Abbey."

77. The plaintiff says that Mr. Doyle (and the Abbey) should have been informed by the defendant that Mr. Doyle had no right to repudiate his contract with Arambe because:-

(1) He had by his conduct consented to the Abbey producing the new play;

(2) Arambe had commissioned the play from him and from the plaintiff for the purpose of having it produced in the Abbey and when he co-wrote it he co-wrote it with that in mind; and

(3) Mr Sutton's comments on the draft Arambe/Abbey contract indicated that Mr Doyle had consented.

In addition, the plaintiff says that Mr. Doyle and/or the Abbey should have been told that Mr. John Sutton, Mr. Doyle's agent, in insisting that Mr. Doyle's consent was required, acted in bad faith because he was embarrassed or ashamed that the writer's contract of 16th January, 2006, had not been signed by the writers and was annoyed that the plaintiff had dismissed him as the plaintiff's agent and that Mr. Sutton somehow had negative views about the plaintiff's racial origins. (The plaintiff accepts that he did not mention the agreement of January 16th to the defendant but he insists that had she done her job correctly and had she retained counsel, this unsigned agreement would have been discovered and it could somehow have been deployed to the advantage of the plaintiff).

78. Whether these propositions, which the plaintiff says ought to have been put in writing to the solicitors on the other side of the dispute, are meritorious or sustainable or even stateable are not in issue in these proceedings, though the plaintiff has energetically attempted to establish, by submissions, by evidence and by questions addressed to witnesses, the merit of these ideas. The plaintiff has sought to use these proceedings to establish that he was right and that Mr. Doyle was wrong. I regarded this as an abuse of process.

79. The issues in these proceedings are, inter alia, whether the failure of the defendant to make these arguments/proposals/responses in writing to her opposite numbers constituted a breach of duty and whether, this failure, if that is what it is, caused loss and injury to the plaintiff. (The plaintiff also says that the false statements made by the defendant in her letter of the 20th of December, 2007, are breaches of a duty of care *per se*.) The plaintiff submitted that had these arguments/proposals/responses been expressed in writing, as a matter of probability, this would have produced positive results for the plaintiff. In other words, these representations would have worked, to adopt the plaintiff's own phrase, as a magic wand in the dispute with Mr. Doyle and all would have been resolved. The plaintiff maintains that the defendant failed to defend his position and did not act on his instructions. The failure to send the letter as instructed and the failure to identify possible defences to the claims being made against him by Mr. Doyle and the Abbey constitutes, he says, professional negligence. At the heart of his case is a claim that had the letters been written in late 2007, the difficulty with the Abbey Theatre and with Mr. Doyle would have been resolved at about that time. Instead, he says the difficulty went from bad to worse and led to years of litigation and ultimately to the loss of his career.

The evidence of Mr. Roddy Doyle

80. The plaintiff called Mr. Doyle under subpoena. Listening to his evidence, it is clear to the court that he was extremely hurt and annoyed that his co-writer concluded a contract between Arambe and the Abbey without seeking his written consent. He said, and I accept his evidence in this regard, that he had very few quibbles with the contract between Arambe and the Abbey but what annoyed him was that the plaintiff, knowing full well that his written consent was required, would not give him a copy of the draft contract without enormous persuasion and then would not give him a copy of the final draft or a copy of the contract signed although it transferred rights belonging to Mr. Doyle to a third party.

81. Mr. Doyle said that he received a letter during the course of these events from the plaintiff which he regarded as highly abusive. He said he had never received any such letter in his life. It is clear to me from observing Mr. Doyle and listening to his evidence that the relationship between these men has been permanently ruptured. Mr. Doyle was asked whether a letter from the defendant, as described earlier in this judgment, would have persuaded him to reverse his position. His clear answer was that such a letter would have made no difference.

82. Mr. Doyle was also asked what his reaction would have been if he had received the letter at para. 76 in late December 2007 in response to his solicitor's letter which made complaint about the failure to seek his prior written consent to the Arambe/Abbey contract. His clear evidence, which I fully accept, is that it would have made no difference to the position that he adopted which was that Bisi Adigun had unlawfully arranged for Arambe to license work to the Abbey without his prior written consent. He would have forcefully rejected the arguments made on behalf of the plaintiff that his consent was not required. To this day he believes that his consent ought to have been sought. This evidence is consistent with the defendant's account of what happened at the meeting with

Mr. Doyle's solicitor on January 24th where it was proposed that a new Arambe/Abbey contract be negotiated. Though Mr. Doyle was offering an olive branch on that occasion, he was not reversing his position that the contract with the Abbey had been procured without his consent. That he sought a new Arambe/Abbey contract is consistent with his view that the Arambe/Abbey contract of the 22nd of May was invalid because it been procured without his consent in writing. My view is Mr. Doyle's evidence was fatal to the plaintiff's claim of professional negligence against the defendant because it establishes that had the defendant written the letters it would have made no difference as Mr. Doyle – rightly or wrongly - was not for turning.

83. The plaintiff argues that if the defendant had written the letter/letters which he says he instructed her to do, the dispute would have resolved and friendly relations between all of the parties would have resumed. In support of this proposition, the plaintiff has asked witnesses on behalf of the Abbey Theatre what they would have done if they had received a letter from the plaintiff in terms similar to that set out at para. 76 above. None of the answers given aided the plaintiff's case that the dispute would have resolved. Mr. Cantwell was asked what would have happened if the Abbey had received the letter at para. 76 in late December 2007 and his evidence was that he would have given it to his solicitors. His solicitor, Mr. Corbett, has also given evidence and he was asked what would have happened if a letter such as that at para. 76 had been received in late 2007, and his evidence is that it would have led to the letter which was eventually sent on 16th April, 2008, on behalf of the Abbey to Arambe.

84. Having discovered that the letter he requested to be written was never in fact written, the plaintiff wrote a version of the letter himself on 24th March, 2008. That letter was sent to Fiach Mac Conghail of the Abbey who sent it to Arthur Cox, the Abbey's solicitors.

85. Both Mr. Cantwell and Mr. Corbett have given evidence that the fact that the letter of 24th March did not come from a solicitor made no difference. The clear evidence from the Abbey Theatre is that it made no difference to the attitude they adopted to the underlying dispute between Mr. Doyle and Arambe/the plaintiff as to whether or not Arambe/the plaintiff had a solicitor.

86. Mr. Doyle's solicitor, Mr. Edward Gleeson, has given evidence and his clear view of the matter was that had a letter such as that at para. 76 been written it would have made no difference to the instructions of his client. He has informed the court that he obtained counsel's opinion on the matter and this advice was to the effect that Mr. Doyle's prior consent ought to have been sought and received before Arambe could license the Abbey to produce the play.

87. My view is that Mr. Doyle was deeply annoyed with the plaintiff because of his conduct and wished to communicate in the strongest terms that trust had been breached between them and that he was repudiating his agreement with Arambe. However, he did not wish to prevent the play being staged in the Abbey and never sought injunctive relief to stop the play proceeding. I regard Mr. Doyle's attitude as borne out of anger and frustration at the plaintiff but it was nonetheless a relatively benign response, given that he never stopped the Abbey from producing the play during that first run. In fact his only request of the plaintiff was that he deliver a copy of the signed contract between Arambe and the Abbey to Mr Doyle's lawyers. And of course, the ultimately benign attitude of Mr. Doyle is evidenced by the olive branch he offered the plaintiff on January 24th.

88. I asked Mr. Gleeson what would have happened if the defendant had been instructed to apologise to Mr. Doyle for having forced the contract through without his written consent. Mr. Gleeson had no hesitation in saying that such action would have resolved the dispute in an instant. Having observed the demeanour of Mr. Doyle and considered the content of his correspondence with the plaintiff, I accept that that is probably what would have happened.

Conclusions

89. The defendant ought to have replied in writing to the letters from Arthur O'Hagan on behalf of Mr. Doyle, and Arthur Cox on behalf of the Abbey. She failed to do this. Notwithstanding this failure, I am satisfied that by 20th December, 2007, the defendant had communicated the plaintiff's instructions to the two sets of solicitors by telephone. They were aware that Arambe had engaged a solicitor and were aware of what Arambe's/the plaintiff's views were. Both solicitors, called by the plaintiff under subpoena (Mr. Gleeson for Mr. Doyle and Mr. Corbett for the Abbey) have confirmed this in their evidence. I accept that she communicated the plaintiff's and Arambe's position orally by phone calls on 7th and 20th December, 2007, and in addition at a meeting with Mr. Gleeson on 24th January, 2008. I cannot see that writing letters would have made any difference or would have caused Mr. Doyle and The Abbey to change course.

90. The plaintiff has failed to prove that if the letter proposed at para. 76 or a similar letter or letters had been written, the difficulty he has experienced in his life personally and professionally would never have occurred. I accept the evidence of Mr. Doyle, Mr. Gleeson, Mr. Cantwell and Mr. Corbett that had the defendant written letters setting out the plaintiff's instructions, robustly defending his position, in late December 2007, no outcome other than that indicated in the letter on behalf of the Abbey of the 16th April, 2010, would have resulted. My firm view is that no different outcome would have been achieved if the defendant had actually written the letters she unwisely claimed to have written.

91. I find that the plaintiff has failed to establish that the false statement by the defendant in her letter to the plaintiff of the 20th of December that she had written to Mr. Doyle's solicitors and the Abbey's solicitors, and her failure ever to write letters in accordance with the plaintiff's instructions, constitutes a breach of duty. I do not regard her false statement and failure to write letters to the solicitors on the opposite side of the dispute to constitute a breach of the duty of care. The defendant communicated the plaintiff's instructions and made proper representations to the solicitors opposite orally and in a meeting with Mr. Doyle's solicitor. She dutifully put the resolution of the problem as proposed by Mr. Doyle's solicitor to the plaintiff and sought to persuade him to accept that solution after he rejected the proposal in his letter of the 13th of February, 2008. There was nothing more she could do for the plaintiff.

92. The plaintiff has failed to establish that the false statement by the defendant that she had retained counsel was a breach of duty. In addition, the plaintiff has failed to establish that the failure to retain counsel was a breach of duty. In order to sustain this plea, the plaintiff should have produced a professional witness to give expert evidence in support of the claim that counsel should have been retained and, in addition, to say what counsel would have advised had he or she been retained. (The plaintiff has referred to the opinion of counsel retained in the first set of proceedings described at paragraph 68 et seq. above as an example of what the defendant ought to have done for the plaintiff. The opinion of counsel was not evidence in this case being hearsay and in any event, that opinion was drafted without reference to the Author/Arambe contract which required Mr. Doyle's written consent.)

93. Lest the court be wrong in finding that no breach of duty was established by the plaintiff and assuming that the false statements and failures alleged of the defendant are breaches of duty, can it be said that the breaches caused loss to the plaintiff? In my view the unequivocal answer is "no". As previously noted, though the letters were not written, oral representations were made. Mr. Doyle has given evidence of what his reaction would have been had the letters been sent and has confirmed that they would have had no effect on him. (He flatly rejected the proposition that the play had been commissioned for the production in the Abbey and that,

therefore, his consent had not been required). In addition, the plaintiff himself sent a letter on 24th March, 2008, clearly expressing his views as to why the Abbey and Mr. Doyle were acting unlawfully. The letter had no effect other than to produce the proposal of the Abbey of the 16th of April as to how the second run of the play should proceed. Further, the plaintiff personally communicated the points the defendant failed to communicate in writing during the course of a mediation in April 2008. His entreaties at that mediation fell on deaf ears because Mr. Doyle would not alter his views. A few months later, the plaintiff issued proceedings against Mr. Doyle alleging that his repudiation of the Author/Arambe contract was unlawful. Not only did this produce no result, it arguably damaged the plaintiff's rights as Mr. Doyle transferred his copyright in the play to the plaintiff as part of the settlement of those proceedings and according to the plaintiff this has impaired the value of his copyright in the play. As a matter of probability, had the defendant written the letters, the losses the plaintiff alleged to have suffered from the actions of Mr. Doyle and the Abbey would have happened anyway.

94. My view is that no lawyer could ever have persuaded Mr. Doyle that Arambe had acted lawfully in licensing the Abbey production without Mr Doyle's prior written consent. No lawyer could ever have persuaded Mr. Doyle that his consent was either not required or had already been given. With Mr. Doyle remaining steadfast, no lawyer could have persuaded the Abbey to alter course. The plaintiff's action proceeds on a theory that Mr. Doyle would have reversed his position if asked forcefully by a skilled lawyer. The plaintiff's action fails not least because all the evidence adduced in support of this proposition by the plaintiff shows the opposite. The plaintiff's own witnesses- all called under subpoena- have testified that letters from the defendant expressing the plaintiff's instructions would have altered nothing. There is no causal link between the defendant's failure to write the letters and the plaintiff's alleged losses. There is no causal between the failure to retain counsel and the alleged losses.

95. Lest I am in error in so finding, my view is that all the losses and injury the plaintiff claims to have suffered have been litigated in the proceedings described at paras. 68 et seq. above and have been settled by the plaintiff. The issues in respect of which the defendant was engaged were comprehensively settled by the plaintiff who agreed to the compensation offered. The plaintiff is not entitled to seek damages for losses in proceedings where these losses have been litigated to conclusion by way of settlement in earlier proceedings. The fact that the defendant was not a party to those earlier proceedings is irrelevant. Equally, the fact that the plaintiff was dissatisfied with the settlement achieved is irrelevant. I accept that the defendant is entitled to rely on ss. 16 and 17 of the Civil Liability Act 1961 in this regard. The defendant has correctly referred to the rule in *Henderson v Henderson* (1843) 3 Hare 100 as preventing the plaintiff from litigating the issues raised in these proceedings, having regard to the matters pursued in the earlier proceedings.

96. The plaintiff has also alleged that the defendant acted unlawfully by failing to carry out his instructions in his email/letter of the 13th of February, 2008. A solicitor is not required to carry out every instruction given by a client. A solicitor, to state the obvious, is entitled to refuse to act, as happened here. In particular, no illegality of any kind attaches to the instant circumstances because the defendant explained why she would not carry out the instruction and, thereafter, the relationship sundered.

Other allegations against the defendant

97. The plaintiff has accused the defendant of having a pecuniary interest in deliberately harming him. The clear suggestion is that she was taking money from the persons in dispute with the plaintiff. This scandalous unsubstantiated allegation was eventually withdrawn and the court pointed out how mischievous it was. At the prompting of the court, the plea was withdrawn and the plaintiff apologised to Ms. McEvoy.

98. However, the plaintiff maintained his claim that the plaintiff "messed him up" when she allegedly gave deliberately misleading information to Mr. Duncan Grehan, solicitor. Mr. Grehan was sought to be retained by Mr. Adigun after the relationship with the defendant ended. The plaintiff says that the defendant informed Mr. Grehan that proceedings had issued against the plaintiff and Arambe. The plaintiff alleges that Mr. Grehan was annoyed to learn this from the defendant and not from the plaintiff and for that reason refused to represent him further.

99. Mr. Grehan gave evidence to the court and explained that that was not the reason he discontinued his professional involvement with the plaintiff. His evidence was that the principal reason he discontinued his relationship was because trust broke down between them when Mr. Adigun attempted to tape record meetings with Mr. Grehan. It is hardly a surprise that the relationship sundered. I accept that the relationship between the plaintiff and Mr. Grehan broke down for reasons unconnected with any statement made by the defendant to Mr. Grehan. (Mr. Grehan also gave evidence that the plaintiff told him that he had "unintentionally sold the play to the Abbey without Roddy Doyle's consent and this led to a dispute...". The plaintiff sought to cross examine his own witness about this matter. The application to treat Mr. Grehan as a hostile witness was refused.)

100. The plaintiff has alleged that the defendant in various ways sought to interfere with the plaintiff's attempts to retain solicitors to replace her. Each such solicitor (Mr. Mudah, Mr. Joyce and Mr. Grehan) was called by the plaintiff and none of them gave evidence in support of the plaintiff's accusation against the defendant. I find that the defendant never sought to interfere with the plaintiff's attempts to retain new solicitors.

101. The plaintiff has made false and scandalous allegations in his pleadings against Ms. Jenny Haughton, a former member of the board of Arambe. He has suggested that she conspired with the defendant to harm him and "masterminded" the April 2008 mediation for the benefit of Mr. Doyle. Ms. Haughton, called under subpoena by the plaintiff, gave evidence and I have no hesitation in accepting her strong denial of the plaintiff's paranoid allegations against her. It was particularly insidious of the plaintiff to attack Ms. Haughton given her history of trying to help the plaintiff and Arambe.

102. Had professional lawyers made outrageous and unsubstantiated allegations in the course of proceedings such as those pursued by the plaintiff (described in paragraphs 97 to 101 supra), a court could have access to their regulatory body to seek appropriate sanction or could order that the lawyer be personally responsible for the costs of pursuing such matters. However, the plaintiff, being a lay litigant, is not subject to such sanction. In an appropriate case, a court might decline to continue hearing a case where the manner of its presentation constitutes litigation misconduct, notwithstanding the interference with the right of access to the court thereby occasioned. Access to the court is not a licence for the case to be conducted any way a litigant sees fit. Though I was of the opinion that the plaintiff engaged in litigation misconduct by pursuing scandalous allegations against the defendant and Ms. Haughton, and by his often aggressive form of interacting with the court and with witnesses, I decided to let the hearing run its full course, not only in view of the plaintiff's constitutional right of access to the court but also to vindicate the defendant's right to have finality to many years of being pursued by the plaintiff.

103. The plaintiff has attempted in these proceedings to litigate complaints which are irrelevant to the question of whether the defendant was negligent. He has sought to maintain that Mr. Doyle acted unlawfully in maintaining the position he did and that the Abbey treated the plaintiff unfairly. I have not permitted him to pursue questions or to make submissions in respect of these matters because it could have no bearing upon the issue of whether or not the defendant was negligent. The plaintiff is a man who has very

keenly occupied his day in court but he has attempted to extend the parameters of this case to address grievances he has with persons other than the defendant. I regard this to have been an abuse of process. This is particularly so in view of the fact that the complaints he sought to maintain by his questioning of witnesses are matters which were the subject-matter of the proceedings mentioned at paras. 68 et seq. and the settlement thereof. Re-litigation of these matters in this case is impermissible.

104. The plaintiff was probably on the verge of great professional success with the play he co-wrote with Mr. Doyle. The prospect of success turned to dust when Mr. Doyle felt betrayed by the plaintiff. The plaintiff decided to reject the offer of a solution proposed by Mr. Doyle which was dutifully communicated to the plaintiff by the defendant on 12th February, 2008. Since that time, the plaintiff has blamed many people for his lack of success professionally. Apart from maintaining these negligence proceedings against the defendant for the past eight years or so, he has also accused her of secretly acting for the opposing parties in the underlying dispute, accused the Abbey of racism, accused the mediator of bias, accused a member of the Solicitors Tribunal of bias, and he has, in the course of these proceedings, accused the senior counsel who negotiated the settlement of the proceedings described above of serious professional misconduct. He has unsuccessfully sued Mr. Doyle, Mr. Sutton, and Mr. Fay. He has blamed many people for the failure of his career but he has never blamed himself.

105. By the time the plaintiff and the defendant met (for the second and last time) on the 12th of February, 2008, the plaintiff had suffered no disadvantage or harm arising from the fact that the defendant had not written letters to the solicitors opposite or had not retained counsel. Although Mr. Doyle's lawyers had not received anything in writing from the defendant, Mr. Doyle had nonetheless offered the plaintiff an olive branch on 24th January, 2008, when his solicitor met the defendant. Mr. Doyle was willing to consent to a new Arambe/Abbey contract to replace the agreement he regarded as having violated his rights. Having carefully observed the evidence of Mr. Mac Conghail and Mr. Cantwell from the Abbey, I have no doubt but that if Mr. Doyle's proposal for a new Arambe/Abbey contract has been accepted by the plaintiff, the Abbey would have enthusiastically joined the initiative to ensure a successful second run of the play. The plaintiff's decision to reject this offer and instead to seek to terminate the Arambe/Abbey agreement was unfortunate, to put it mildly. He cannot blame the defendant for that decision. She tried to dissuade him from this reckless course of action. He has only himself to blame for the consequences of his decision to reject Mr Doyle's proposal. It is, in my view, high time the plaintiff took personal responsibility for own his actions.

106. None of the torts or unlawful conduct alleged against the defendant have been made out. The plaintiff's claim is dismissed.