

THE HIGH COURT

Record No: [2013/55m].

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

BETWEEN:

S.C.

APPLICANT

-AND-

J.B.

RESPONDENT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 8th day of May, 2015.

Background to the Current Application.

1. The parties were married on the 25th May, 2001. There are three dependent children of the marriage, namely, "S", "T" and "F"
2. During the marriage of the parties, the "B" Trust ("the Trust") was established to hold shares in "AFS" Ltd. The respondent was the settlor of the Trust and the trustees are "FTC" Ltd. The respondent transferred his ten percent shareholding in "AFS" to the Trust. The respondent retained one "AFS" share. In return, the Trust provided a promissory note to the respondent in the sum of €3.5 million. The original beneficiaries of the Trust were the applicant, the respondent and their children.
3. The parties separated in June 2009. At that stage, the family assets were as follows:
 - (a). The "B" Trust.
 - (b). A property in Munster, which was held in the joint names of the parties.
 - (c). A property in Leinster, which was held in the respondent's sole name and was subject to a mortgage.
 - (d). An apartment which the respondent had purchased in a foreign jurisdiction, which had loans related to its purchase.
 - (e). A one-third interest in a property in Leinster as tenants in common, the said interest was held in the respondent's name.
 - (f). A one-sixth interest in a holiday home in Munster, the said interest was held in the respondent's name.
4. On the 3rd December, 2010, the parties executed a deed of separation. The respondent committed to discharging the mortgages on the two properties located in Munster by lump sum payments, which amounted to €540,000.00 approximately. The respondent also agreed to put in place an education fund in the maximum sum of €140,000.00 for the children. In addition, the respondent agreed to pay €1,600.00 in maintenance per month in support of the three dependent children, along with an annual payment of €6,000.00 for the children's primary school and related expenses. In turn, the applicant agreed to leave the "B" Trust and to surrender all claims on the Trust and its assets. The respondent continued as a beneficiary of the promissory note, the properties in Leinster, the holiday home in Munster, and the apartment in a foreign jurisdiction. The deed of separation outlined that there was no spousal maintenance payable by the respondent to the applicant.
5. In the present application, the applicant claims that prior to the execution of the deed of separation on the 3rd December, 2010, the respondent valued the "A Ltd" shares (held by the "B" Family Trust) at €800,000.00 and claimed that "A Ltd" suffered a loss of \$400,000.00. The applicant claims that as a result of these representations concerning the "A" shares and the future of the "A" Group of companies, she agreed to the terms of the deed of separation. Moreover, the applicant claims that the respondent failed to disclose the true extent of his financial circumstances prior to the execution of the deed of separation, and in particular, that the "A" group had entered into an agreement with "F" Ltd in October 2010. The applicant claims that the aforesaid agreement related to a multi-million dollar investment in "A" which had a significant impact on the value of the "A" shares held by the "B" Trust.
6. In March 2011, the respondent set up "D" Ltd. On the 28th May 2014, the respondent swore an affidavit claiming that he had ceased all employment with "AFS(I)" Ltd (a subsidiary of AFS Ltd) whereby "D" Ltd would provide consultancy services to "AFS(I)" Ltd. As outlined in his affidavit of means dated the 10th December, 2013, and 10th March, 2014, the respondent claimed that his only source of income (apart from rental income) was his salary from "D" Ltd.
7. On the 10th May, 2011, the "B" Trust received the sum of \$1.3 million in relation to the sale of "A" shares. On the 13th June, 2011, the applicant claims that the respondent informed her that the Trust had sold its "A" shares and the respondent would receive the net repayment of monies in the sum of €826,882.00, owing on foot of the promissory note. The applicant highlights that during this period, the respondent provided the applicant with a bank statement relating to the bank account opened to receive the monies from the sale of the "A" shares. In addition, the applicant submits that the respondent did not have a difficulty in accessing internal documentation relating to the Trust from the trustees, including bank statements, during this period.
8. In July 2013, the respondent and his partner Ms. "R", purchased a property in Leinster for the sum of €1,150,000.00. The respondent and Ms. "R" obtained a mortgage for the said property in the sum of €972,780.28 from Allied Irish Bank (AIB).
9. In or around 2013, the respondent sought the applicant's agreement to a consent divorce. The respondent also sought a deed of waiver from the applicant so as to sell the Leinster property. At this time, the applicant claims to have had serious reservations

concerning the provision made for her and the dependent children in the deed of separation. Following the deed of separation of the parties, the applicant claims that the respondent's lifestyle was not in unison with the financial disclosure he made leading up to the execution of the deed of separation on the 3rd December, 2010.

10. On the 14th November, 2013, the applicant issued the within divorce proceedings.

The Current Application.

11. On the 19th December, 2013, the applicant sought financial documentation and information. In particular, the applicant sought the following documentation/information:

- (a). A copy of the mortgage application submitted by the respondent to AIB concerning the Leinster property together with all documents submitted to the bank by the respondent.
- (b). Documentation to vouch the respondent's income from all sources including basic income, bonuses, profit share and expenses.
- (c). Documentation relating to the "B" Trust to include its assets and its dealings, including the sale of the "A" shares.
- (d). Documentation including financial statements relating to the "A" Group of companies and "D" Ltd.
- (e). Copies of statements relating to all the respondent's bank accounts and credit card accounts in this jurisdiction and abroad.

12. On the 10th March, 2014, the respondent swore an affidavit which disclosed that, in fact, the "B" Trust had only sold three percent of the "A" shares. The applicant claims that as a result of that disclosure, she became aware that the respondent had undervalued the "A" shares prior to the execution of the deed of separation. The applicant claims that the Trust only sold a 2.62 percent stake in the "A" group, and in turn, the Trust received \$1.3 million for the sale of only 314.9 of its 1199 shares. On assessment of this transaction, the applicant claims that the "A" shares were worth a minimum of \$5 million at the time of the deed of separation, and not the sum of €800,000.00 as represented.

13. The applicant claims that the respondent provided some limited vouching documentation on the 18th March, 2014, but failed to provide any P60s, tax returns and assessments, audited accounts and financial statements for "D" Ltd, financial statements relating to the "A" companies, statements relating to all his bank accounts and documentation relating to the Trust. The applicant alleges that the respondent failed to disclose an accurate account of his financial position prior to the execution of the aforementioned deed of separation. The respondent did provide the applicant with a copy of a loan agreement dated the 1st September, 2012, which contracted a loan for the sum of €50,000.00 from "EAM" Ltd to the respondent.

14. On the 23rd April, 2014, the respondent swore an affidavit outlining that he had set up "CCM" Ltd. The said company was incorporated on the 11th April, 2014. During this period, the respondent had only disclosed that he had a shareholding in "D" Ltd and "CCM" Ltd, and the respondent did not disclose the existence of any other companies bearing the "C" name.

15. On the 22nd April, 2014, the applicant's solicitor sent a letter to the respondent's solicitor seeking financial documentation and information. In particular, the letter sought the mortgage application form and enclosures, documentation relating to the respondent's income from all sources, statements relating to the Trust and the "A" Group, documentation relating to loans including the loan from "EAM" Ltd to the respondent, and documentation relating to the rent from the apartment located in the foreign jurisdiction.

16. During this correspondence period, the applicant claims that the majority of her queries and requests for financial documentation were not met or were declined. However, this correspondence period did disclose that rental income from the foreign property was lodged to a bank account owned by "CH" Ltd. This was the first occasion that the respondent disclosed the existence of "CH" Ltd.

17. On the 6th June, 2014, the applicant's solicitor sent a letter to the respondent's solicitor seeking the aforementioned documents and queries. On the 19th June, 2014, the respondent replied to the said queries and outlined that he was not a party to any agreement relating to the sale of "A" shares to "F" Ltd. In relation to the request for the mortgage application for the Leinster property, the respondent deemed the request "disingenuous", and claimed that all documents provided to AIB had been included in his vouching documentation in the within proceedings.

18. On the 26th June, 2014, the issue of discovery and financial disclosure came before this Court. During the hearing, the respondent denied that there was any mortgage application form in relation to his AIB mortgage for the Leinster property. This Court issued an order for discovery dated the 26th June, 2014. However, this order was vacated by agreement of the parties on the 3rd July, 2014.

19. On the 3rd July, 2014, the respondent submitted to this Court that he was only a discretionary beneficiary of the "B" Trust and that the said documentation relating to the Trust should be sought from the trustees of the Trust (FTC Ltd). Moreover, the respondent represented to the Court that he was no longer a shareholder or employee of "A". Rather, the respondent claimed that his income derived from "D" Ltd. In turn, the respondent claimed that he should not be directed to provide documentation relating to the "A" Group. In response to the respondent's position, this Court directed the respondent to obtain a letter from the Trustees concerning the assets of the "B" Trust. Furthermore, the respondent was directed to obtain an affidavit from Mr. "P" (Chief Executive Officer of "A") and Mr. "R" (Chief Financial Officer of "A") to confirm the respondent's assertions that he was no longer a shareholder or employee of "A". The respondent was also directed to provide an affidavit from his accountant, Mr. "M", concerning the respondent's income.

20. On the 3rd July, 2014, this Court made an order for discovery. The terms of the discovery order were finalised and contained in an order dated the 7th November, 2014. This order was perfected on the 21st November, 2014. The respondent was directed to comply with the order within a three-week period. The applicant asserts that the respondent has failed to comply with the terms of the order dated the 7th November, 2014

21. In turn, the applicant seeks an order directing the respondent to comply with the order of this Court dated the 7th November, 2014, and in particular, an order directing the respondent to provide the documentation in the terms of Schedule I enclosed with the applicant's solicitor's letter to the respondent's solicitor dated the 11th February, 2015. In addition, the applicant seeks an order directing the respondent to make discovery on oath of all documentation within his possession, power and procurement relating to matters at issue in the within proceedings and in particular, an order directing the respondent to make discovery in terms of Schedule II, which was enclosed with aforementioned letter of the solicitor for the applicant.

22. Furthermore, the applicant seeks an order pursuant to section 38 of the Family Law (Divorce) Act 1996 directing the respondent to provide disclosure of all information and documentation pertaining to all assets, whether in his legal ownership or in respect of which he holds a beneficial interest income, and liabilities together with vouching documentation, together with an order directing the respondent to provide information and documentation set out in Schedule I and Schedule II as previously mentioned, and documentation relating to the assets and income comprised in any trust and trust arrangements created during the marriage and in respect of which the respondent is a beneficiary and/or a potential beneficiary. The applicant also seeks documentation regarding the restructuring of "AH" Limited as outlined in the Schedule of Documentation and contained in exhibit "A" attaching to the affidavit of Mr. "H" sworn on 12th March, 2015.

23. The respondent did issue replies to Schedule I and II, and were contained in exhibit "JB7" and "JB9" in the respondent's affidavit dated the 13th March, 2015.

Alleged Breaches of the Order of Discovery (dated the 7th November, 2014) by the Respondent.

24. The applicant claims that the respondent is in breach of an order for discovery dated the 7th November, 2014 (perfected on the 21st November, 2014 with appended terms of discovery dated the 3rd July, 2014), by failing to provide the following category of documents/information as set out in Schedule I (*"Schedule I - List of Documents which the respondent has not provided and which amounts to breaches of the order for discovery dated the 3rd July, 2014"*) contained in exhibit "Q" of the applicant's affidavit sworn on the 24th February, 2015:

(a). "D" Ltd Bank Statements: The applicant claims that the respondent has failed to provide credit card statements from the time of incorporation of "D" Ltd to the 3rd October, 2012. Moreover, the applicant claims that the respondent has failed to provide a completed bank statement dated 3rd August, 2014.

The respondent claims that the discovery order relating to the "D" Ltd statements stipulated that statements should be provided up to the 4th July, 2014. The respondent has endeavoured to provide updated statements in respect of all accounts prior to the main hearing.

(b). Documentation/Information relating to a mortgage transaction for the Leinster property: The specific documents the applicant claims the respondent has failed to provide are: Customer note of mortgage transaction relating to the Leinster property; full and complete correspondence between AIB and the respondent; supporting documentation furnished by the respondent to the said bank.

The applicant claims that the respondent had misled the Court with regard to the existence of the AIB mortgage application for the Leinster property on the 26th June, 2014. The applicant highlights that a completed mortgage application was provided by the respondent to the applicant by letter dated the 5th November, 2014. The aforesaid application was signed on the 9th April, 2013. The applicant outlines that disclosures on the respondent's mortgage application were not disclosed in his affidavit of means and/or contradict disclosures made by him in his affidavit of means. In particular, the applicant claims (i) that the respondent failed to disclose in his affidavit of means that he was in receipt of a €200,000.00 annual bonus, (ii) the respondent failed to disclose in his affidavit of means the existence of an investment fund with a foreign bank in the sum of €11,000.00 (which was receiving €1,600.00 per month) and (iii) the respondent failed to disclose that his true annual rental income from the foreign property was €21,600.00 as opposed to the sum of €8,647.00 as stated in his affidavit of means.

The applicant outlines that she received a number of emails relating to the AIB mortgage application between AIB and the respondent. It was submitted by the applicant that this email correspondence contained attachments of documentation/information concerning the "A" Group of companies, "CH" Ltd, "EAM" Ltd, the "B" Trust and the respondent's own income. It is asserted by the applicant that the appending of these attachments (which were not given to the applicant) import an ability on the respondent to access the aforesaid information in an efficient manner. In turn, this contradicts the representations the respondent made to this Court on the 26th June, 2013, 3rd July, 2014, and 11th July, 2014, that he was not in a position to provide the said documentation/information.

The applicant outlines that on the 20th March, 2013, the respondent, through his accountant, was in a position to furnish to AIB, via email, his notice of assessment for the year 2011, his P60 for the year 2012, and three months of payslips for 2013. The applicant highlights to this Court that these documents were not provided to the applicant, and were not contained in the respondent's vouching documentation dated the 18th March, 2014.

The applicant highlights that on the 18th April, 2013, the respondent disclosed to AIB via email that (a) he was the owner of seven percent of "AFSH" Ltd, (b) he was the owner of one share in the local Irish company, (c) he was the owner of 17.85 percent of "EAM" Ltd, (d) that "C" Ltd was his "foreign company" but was owned by the "B" Trust for tax reasons, (e) the foreign property was worth €450,000.00 and generated €1,800.00 in rental income per month, and (f) he had a combined income of €450,000.00 with his partner, Ms. "R". The applicant outlines that the attachments appended to this email reflect that the respondent was in a position to provide relevant documentation relating to the aforesaid commercial entities. Moreover, the applicant highlights that the respondent's disclosure to the bank in this email contradicts his affidavit of means and the representations he made to the Court on the 3rd July, 2014.

On the 15th May, 2013, the respondent's accountant, Mr. "M" furnished AIB with a statement of net worth of the respondent. In this document, the respondent is stated to have net assets of €3.275 million with the trust assets valued at €2.65 million. The applicant highlights that the respondent was in a position to provide documentation/information to his accountant upon which a net value of the respondent assets and the trust assets was calculated. It is submitted by the applicant that she should have access to this documentation and information.

However, a copy of the AIB bank file relating to the mortgage was obtained by the applicant by means of subpoena.

(c). The affidavits of Mr. "P" and Mr. "R": The applicant claims that the respondent has failed to provide the affidavit of Mr. "P". Moreover, the applicant claims that aspects of the affidavit of Mr. "R" do not comply with the terms of discovery dated the 3rd July, 2014. In particular, the applicant claims that the affidavit of Mr. "R" does not set out the actual payment that the respondent receives from any of the companies in the "A" Group, and refers only to the Management

Services Agreement. This agreement does not provide details of the respondent's income. The affidavit does not provide particulars of all directorships. Moreover, the applicant claims that the affidavit of Ms. "W" (which was not ordered by the Court), does not comply with the terms of discovery dated 3rd July, 2014, as contained in the order dated 7th November, 2014.

With regard Mr. "P's" failure to provide an affidavit outlining the respondent's relationship with the "A" Group, the respondent submitted that this is an issue outside his control. Moreover, the respondent outlined that Mr. "P" ceased to be the CEO of the "A" Group since October 2014.

(d). Bank Statements: The applicant claims that the respondent failed to provide bank statements as particularised in Part IV of Schedule I.

(e). AIB Loan Account: The applicant claims that the respondent failed to provide documentation/information relating to an AIB loan account as particularised in Part V of Schedule I.

The respondent does not have the requested pages of the loan agreement, but outlined that he would request the said pages from AIB.

(f). Affidavit of Mr. "M": The applicant claims that the affidavit of Mr. "M" does not comply with the terms of discovery dated the 3rd July, 2014. This non-compliance is particularised in Part VI of Schedule I.

The respondent proffered that the most appropriate manner of dealing with this matter is for the applicant's forensic accountant to engage directly with the respondent's accountant.

(g). Documentation/exhibits/information referred to in the Share Purchase Agreement for the sale of shares in the "A" Group: The specific documents that the applicant alleges the respondent has failed to provide are particularised in Part VII of Schedule I. The applicant highlights that the respondent was directed to provide the entire share purchase agreement and not a portion of the agreement. Furthermore, the applicant submits that the missing components of the share purchase and exchange agreement are fundamental to a complete understanding of the said agreement.

The applicant highlights that the missing components of the share purchase agreement includes a disclosure schedule which sets out a full list of all the subsidiary companies of "A" and up to date financial statements of "AFS" Ltd for the year ended 30th September, 2010, and for a further three month period.

The applicant submits that missing components of the share purchase agreement are relevant to (a) establishing the extent of the respondent's involvement with "A" and "EAM" Ltd, (b) determining when the Respondent was aware that "F" Ltd was going to purchase shares in "A" and at what price, and (c) to establish the value of the shares held by the Trust in the year 2010, 2011 and at the present date.

The respondent claims that the requested aspects of the exhibits sought by the applicant consist of a high volume of documentation. The respondent claims that all of the said documentation is within the control of the "A" Group and may also be subject to confidentiality restrictions between the "A" Group and "F" Ltd. Moreover, the respondent outlined that the documentation is not within the authority of the respondent to provide, and "A" has not authorised the respondent to provide that information to any third party.

(h). Documentation/Information relating to expenditure on the Leinster property: The applicant claims that the respondent has failed to provide vouching documents relating to all expenditure on the Leinster property. The specific aspects of non-compliance vouching is particularised in part VIII of Schedule I.

The respondent claims he has furnished all relevant documents that he can locate in relation to expenditure regarding the Leinster property.

(i). The Deed of Purchase of the Leinster property: The applicant claims that the respondent has failed to provide the deed of purchase of the Leinster property as outlined in Part IX of Schedule I.

In his replies, the respondent outlines that he had requested same, but had not be able to obtain a copy of the deed of transfer signed by both parties in respect of the Leinster property.

(j). A Letter from Ulster Bank: The applicant has failed to provide a letter from Ulster Bank concerning account balances and activities in an account from the 1st January, 2011, to the 1st July, 2014.

Further Categories of Documentation/Information Sought by the Applicant.

25. In order to determine the true extent of the respondent's financial circumstances, the applicant seeks the following categories of documents/information by way of discovery as outlined in Schedule II(*Schedule Two- List of Documents which the Applicant is seeking by way of Discovery from the Respondent in order to establish the true extent of his financial circumstances*) and contained in exhibit "R", which is attached to the applicant's affidavit sworn on the 24th February, 2015:

(a). Corporate Structure: The Corporate Structure of "CH Limited", "EAM Limited", "CM Limited", "D Limited", "AFS(I) Limited", "AFCS Limited", "AFS Limited" and "AFSH Limited". The particular documents relating to the corporate structure of each of the aforementioned entities have been particularised in Part I of Schedule II.

With regard the documentation sought relating to the "A" Group of companies, the applicant claims that the documentation is necessary to determine the true extent of the respondent's financial circumstances so that proper provision can be made for herself and the dependent children. The applicant claims that the said documentation is within the power and procurement of the respondent as he was in a position to provide valuations of the "A" Group

for the years 2010, 2011, 2012, 2013 and 2014 in his affidavit on the 13th March, 2015. These valuations were based on the aforesaid requested documentation. In his affidavit dated the 13th March, 2015, the respondent claims that he has no interest in the "A" Group, and the documents sought relating to Group are not relevant and necessary and are not within his power and procurement.

On the 14th March, 2014, the respondent disclosed that "EAM" had provided him with a loan for €50,000.00 in 2012. On the 22nd May, 2014, the respondent claimed that he did not own or manage "EAM". The applicant highlighted to the Court that in an affidavit dated the 10th December, 2014, the respondent outlined that he held a significant shareholding in "EAM" prior to the deed of separation of the parties. In an affidavit dated the 13th March, 2015, the respondent outlined that "EAM" was established in 2008. The applicant claims that the respondent's assertion that "EAM" is not part of the "A" Group is untrue, and that "EAM" is not a party to the aforementioned share purchase agreement as the company is not recited in the said agreement as a subsidiary of "A". Moreover, the applicant claims that the documentation sought in relation to "EAM" is within in the power and procurement of the respondent. This is evidenced by the respondent's ability to provide documentation relating to "EAM" to AIB in March and April 2013.

Regarding "EAM" Ltd, the respondent claims that discovery of the certificate of incorporation and constitutional documents of the company, and the minutes of the meetings of the said company are not relevant or amount to excessive discovery. The respondent has outlined that he is agreeable to providing the accounts of the company so that a valuation of the Trust assets can be ascertained. However, the respondent claims that discovery of the bank statements of "EAM" is not relevant or excessive, as all relevant financial information would be contained in the company accounts. Moreover, the respondent has outlined that he is agreeable to procuring evidence of the transfer of his previous shareholding in the company to the "B" Trust. The respondent has outlined that he is agreeable to requesting the company to provide details of any financial arrangements between him and/or "D" Limited. However, the respondent claims that discovery of any financial arrangements between "EAM" and members of his family or persons closely associated with him would be excessive.

With regard to the "C" Group ("CH" Ltd. and "CCM" Ltd), the respondent outlined in his affidavit of means that "CC" is the trading name of his company, "D" Ltd. Moreover, the respondent disclosed that he was setting up a company named "CCM". The applicant highlights that on the 22nd May, 2014, the respondent disclosed that the rent from the foreign property was paid into "CH" Ltd, a company which was owned by the Trust. On the 19th June, 2014, the respondent disclosed that he owned "CH" Ltd, and that he had transferred his shares in that company to the "B" Trust. The respondent outlined in an affidavit dated the 10th December, 2014, that he had transferred his shares in "CH" Ltd to the "B" Trust on the 20th September, 2012. This disclosure conflicts with an averment in the respondent's affidavit dated the 13th March, 2015, where he claims that he transferred his shares in "CH" Ltd to the aforesaid Trust in February 2012. Ultimately, the applicant claims that the respondent owns the "C" entities and in turn, he should disclose the documentation sought relating to those entities.

In his replies, the respondent, with regard to "CH" Limited, claims that discovery of the certificate of incorporation and constitutional documents of the company and minutes of meetings of the said company are not relevant and/or are excessive. The respondent is agreeable to providing the accounts of the company so that a valuation of the assets of the "B" Trust can be ascertained. Moreover, the respondent had indicated that he was agreeable to provide bank statements of the company that relate to an account in which the rent from the foreign property is paid into. Finally, the respondent is agreeable to procuring evidence of the transfer of his previous shareholding in the company to the "B" Trust, and any financial agreements between him and/or "D" Limited and "CH" Limited. However, the respondent claims that discovery of any financial arrangements between "CH" Limited and members of his family or persons closely associated with him, would be excessive.

With regard to "CCM" Limited, the respondent outlined in his replies that he would be agreeable to providing all the documents sought by the applicant relating to the company except for the minutes of the meeting of the said company. The respondent claims that discovery of documentation relating to the minutes of the meetings within "CCM" Limited is not relevant and/or is excessive.

(b). Authorisation to inspect AIB File: The applicant and/or agents seeks authorisation to inspect and take copies of the entire file of AIB Bank, 62 St. Brigid's Road, Artane, Dublin 5 in relation to the application and grant of a mortgage to the respondent relating to the Leinster property. The specific documents sought have been particularised in part II of Schedule II.

The respondent claims that he has no objection to providing the applicant with a full copy of the entire AIB file relating to an application and a grant of mortgage for the Leinster property.

(c). "B" Trust: The applicant seeks discovery of the documents in relation to aspects of the "B" Trust", in particular documents relating to the Trust's economic interest in "AFS" Ltd, the acquisition and disposition of shares in "AFSH" Ltd, the acquisition/disposition of shares in "EAM" Ltd, the acquisition/disposition of assets by the Trust, documentation relating to Trust receivables, bank statements of the Trust, documentation relating to the promissory note payable to the respondent, files of the trustees. The specific documents relating to each of the aforesaid aspects of the Trust have been particularised in part III of Schedule II.

The applicant claims that the respondent has had, at all times, full access to the documentation sought relating to the "B" Trust, and his decision in refusing to provide the said documentation amounts to a breach of the duty to disclose. It is highlighted by the applicant that the respondent was able to provide AIB with information concerning the Trust and its value in 2013. In his correspondence with AIB, the respondent claimed owning the Trust assets. Moreover, the applicant highlighted that on the 3rd July, 2014, the respondent did not disclose to the Court that he provided information concerning the Trust to AIB in 2011 and 2013, nor did he outline to the Court that he had told AIB that he was the owner of the Trust assets.

(d). Papers leading up to and concerning the sale by the respondent of shares in the "A" Group: The applicant seeks documentation leading up to, and concerning the sale of shares in the "A" Group by the respondent. The specific documents which are sought are particularised in part IV of Schedule II.

In his replies, the respondent submits that the aforesaid documentation is a matter for third party discovery.

(e). Right of employees to receive ordinary shares: The applicant seeks documentation relating to the rights of employees of the "A" Group to receive ordinary shares. The specific documents sought are particularised in part V of Schedule II.

The respondent submits that the documentation sought relating to the right of employees to receive ordinary shares is not relevant and necessary to the current proceedings, and that even if said documentation was relevant, the applicant should seek third party discovery of the documents from the "A" Group. Moreover, it was submitted by the respondent that he has provided information of his exercise of share options arising from his previous contract of employment with the "A" Group. In addition, the respondent claims that all of the shares of the "A" Group, bar one, were settled into the "B" Trust in 2007. The respondent submits that the applicant is familiar with that arrangement as the applicant's father advised and assisted the respondent in the entire process.

(f). Payment of annual bonus to the respondent: The applicant seeks documentation/information relating to the payment of an annual bonus to the respondent. The specific documents sought are particularised in part V of Schedule II.

The respondent claims that the bonus referred to relates to the profit share entitlement of "D" Ltd on foot of its service agreement with the "A" Group.

(g). Working papers of Mr. "M": The applicant seeks the working papers of accountant, Mr. "M", relating to the respondent from the 1st January, 2010, to the 31st January, 2015, as stated in part VII of Schedule II

The respondent objects to this discovery on the basis that it is unnecessary and disproportionate.

(h). Reimbursement of foreign expenses by separate credit card: The applicant seeks documentation/information relating to the reimbursement of foreign expenses by separate credit card. The specific documents/information sought is particularised in part VIII of Schedule II.

The respondent submits that the credit card in question is operated by the "A" Group and in turn, this is a matter for third party discovery to be addressed to the "A" Group.

(i). Investments: The applicant seeks documentation/information relating to an investment declared by the respondent to have been made in a foreign bank. The specific documents sought by the applicant have been particularised in part IX of Schedule II.

The respondent submits that he opened the account in the foreign bank on behalf of the company "CH" Limited. "CH" Limited is owned by the "B" Trust and in turn, the trustees control the aforesaid bank account. The respondent claims that the rent from the foreign property is paid into the foreign bank account so as to assist in delaying the cost of the trustees of the "B" Trust.

26. The applicant also seeks documentation regarding the restructuring of "AH" Limited as outlined in the Schedule of Documentation and contained in exhibit "A" attaching to the affidavit of Mr. "H" sworn on 12th March, 2015. The specific documents relating to the restructuring of "AH" Limited are particularised in the aforesaid Schedule of Documentation. The applicant seeks documentation relating to "AH" Limited as the respondent has not provided an explanation as to his relationship with this company following the execution of the share purchase agreement between the "A" Group and "F" Ltd.

The Law on the Duty of Disclosure in Family Law Proceedings.

27. This Court has jurisdiction to grant a decree of divorce under Article 41.3.2º of Bunreacht na hEireann, 1937, where the Court is satisfied that the particular spouses have lived separate and apart for periods amounting to four of the previous five years, there is no reasonable prospect of reconciliation between the spouses, and there is proper provision for each spouse and the relevant dependent members of the family. These pre-requisites are also prescribed under section (5)(1) of the Family Law (Divorce) Act 1996.

28. In granting a decree of divorce, this Court has a constitutional and statutory obligation to ensure that proper provision is made for each respective spouse of the marriage. In *D.T. v C.T.* [2002] 3 IR 334, Murray J. recognised the constitutional and statutory imperatives of ensuring that proper provision is established prior to issuing a decree a divorce. In his judgment, Murray J. stated as follows (at pg.403):

"The duty of the courts to ensure that proper provision is made for a spouse before a decree of divorce is granted flows directly from the provisions of Article 41 of the Constitution and it is in the context of that Article as a whole that the nature and extent of the duty set out in the Act of 1996, must be interpreted."

29. Thus, it is axiomatic that the Court's obligation to ensure proper provision for each respective spouse can only be met where both spouses give full and frank disclosure of their property interests and income during the course of litigation.

30. Section 38(6) of the Family Law (Divorce) Act 1996 stipulates that all relevant parties to family law proceedings have a duty to disclose their property and income for the purposes of the proceedings. Section 38(6) of the Act of 1996 states as follows:

"In proceedings under section 13, 14, 15(1)(a), 16, 17, 18 or 22-

(a) each of the spouses concerned shall give to the other spouse and to, or to a person acting on behalf of, any dependent member of the family concerned, and

(b) any dependent member of the family concerned shall give to, or to a person acting on behalf of, any other such member and to each of the spouses concerned, such particulars of his or her property and income as may reasonably be required for the purposes of the proceedings."

31. The duty of disclosure in family law proceedings also emanates from the provisions of Order 70A, rule 6 of the Rules of the Superior Courts, 1986, which state as follows:

"(1) Without prejudice to the right of any party to seek particulars of any matter from the other party to any proceeding or to the right of such party to make application to the Court for an order of discovery and without prejudice to the jurisdiction of the Court pursuant to section 12(25) of the 1995 Act or section 17(25) of the 1996 Act, in any case where financial relief under either of the Acts is sought each party shall file and serve an Affidavit of Means in the proceeding.

(2) The Affidavit of Means shall be in Form No.5 as set out in the Schedule hereto.

(3) An Affidavit of Means of the applicant shall be served with the verifying affidavit grounding such proceeding and the Affidavit of Means of any respondent or any other party shall be served with the replying affidavit in the proceeding unless otherwise ordered by the Master or the Court. Subsequent to the service of an Affidavit of Means either party may request the other party to vouch all or any of the items referred to therein within 21 days of the said request.

(4) In the event of a party failing properly to comply with the provisions in relation to the filing and serving of an Affidavit of Means as hereinbefore provided for or failing properly to vouch the matters set out therein, the Court may, on application by notice of motion, grant an order for discovery and/or make any such order as the Court deems appropriate and necessary, including an order that such party shall not be entitled to pursue or defend as appropriate such claim for any ancillary relief under the Act save as permitted by the Court and upon such terms as the Court may determine are appropriate or the Court may adjourn the proceeding for a specified period of time to enable compliance with any such previous request or order of the Court."

Legal Submissions of the Applicant

32. The applicant's position is threefold. Firstly, the applicant claims that she did not have an accurate account of the respondent's financial position or prospects prior to the execution of the deed of separation in December 2010.

33. Secondly, the applicant submits that the respondent breached the duty of disclosure in that he has failed to comply with the terms of discovery dated the 3rd July, 2014 (as contained in the order of this Court dated the 7th November, 2015), as particularised in Schedule I contained in exhibit "Q" of the applicant's affidavit sworn on the 24th February, 2015 (stated and outlined above). Furthermore, the applicant submits that the respondent has breached the duty of disclosure by misleading this Court regarding the categories of documents that were within his power and procurement. In particular, the applicant claims that at all material times, the respondent had the ability to access all documentation relating to the "A" Group of companies, "EAM" Ltd, and the "B" Trust. The applicant claims that this assertion is substantiated by the respondent's ability to provide the aforesaid documentation to AIB in 2011 and 2013. Moreover, the applicant asserts that at all material times, the respondent had access to the complete share agreement relating to the sale of "A" shares, as the respondent was a party to the said agreement. In addition, the applicant seeks discovery of the documents listed in Schedule II contained in exhibit "R" which is attached to the applicant's affidavit sworn on the 24th February, 2015 (stated and outlined above).

34. Thirdly, the applicant claims that until the respondent provides full compliance with the terms of discovery dated the 3rd of July, 2014 (as contained in the order of this Court dated the 7th November, 2015), and provides the categories of documents sought in Schedule II, the applicant is unable to ascertain the true extent of the respondent's financial circumstances and in turn, the Court is unable to make proper provision for the applicant and the dependent children of the parties in the within divorce proceedings.

35. The applicant submits that the respondent was and continues to be under a duty of full and frank disclosure regarding his material assets. The applicant relies on *Livesey v. Jenkins* [1985] 1 AC 424, where the House of Lords held that that the duty of full and frank disclosure applied to both contested proceedings and exchanges of information which lead to consent orders. This principle was enunciated by Lord Brandon where he stated (at pg.438):

"My Lords, once it is accepted that this principle of full and frank disclosure exists, it is obvious that it must apply not only to contested proceedings heard with full evidence adduced before the court, but also to exchanges of information between parties and their solicitors leading to the making of consent orders without further inquiry by the court. If that were not so, it would be impossible for a court to have any assurance that the requirements of section 25(1) were complied with before it made such consent orders."

36. It is submitted by the applicant that the category of documents sought in Schedule II contained in exhibit "R" appended to the applicant's affidavit sworn on the 24th February, 2015, is relevant to the issues to be determined in the within proceedings, and these documents are within the power and procurement of the respondent. In support of this proposition, the applicant relies on *S.Q v. T.Q* [2015] 1 I.L.R.M.60. In this case, the applicant sought relief under s.38(8) of the Family Law Act 1995 and Order 70A, rule 6(4) of the Rules of the Superior Courts, 1986, in judicial separation proceedings where she sought outstanding information concerning a company in which the respondent had a shareholding. The applicant sought the information so that proper provision could be established, as prescribed under s.16 of the Act of 1995. The respondent objected to the relief on the basis that the information was not necessary or relevant to the proceedings, nor was the information within his power and procurement, as the company was a separate legal entity. Keane J. adopted the approach taken by Abbott J. in *W v. W* (Unreported, High Court, Abbott J., April 18th, 2008) and Baroness Hale of Richmond in *Prest v. Petrodel Resources Ltd* [2013] UKSC 34, whereby it was held that the Court had, in seeking to make proper provision for the parties and the dependent children, an inquisitorial role in relation to the adequacy of the provision to be made in family law proceedings. In particular, this Court was directed to the judgment of Keane J., where he states (at pg.66, paras 13-15):

"13. In the case of *W v. W* [2008] IEHC 452, Abbott J. (at para 7.11) identified an obligation upon the court, of its own motion, to enquire into the adequacy and propriety of provision to be made in a judicial separation- as well as in a divorce- proceeding. In the view of Abbott J., that obligation derives from the provisions of Art.41 of the Constitution and mandates an approach similar to that adopted by the English courts under the equivalent statutory framework in that jurisdiction.

14. In *Prest v Petrodel* [2013] 2 A.C. 415, the United Kingdom Supreme Court (per Baroness Hale of Richmond JSC) expressed the position in the following terms (at p.504):

"There is a public interest in spouses making proper provision for one another, both during and after their marriage, in particular when there are children to be care for and educated, but also for all the other reasons explored in cases such as *McFarlane v. McFarlane* [2006] 2 A.C 618. This means that the court's role is an inquisitorial one. It

also means that the parties have a duty, not only to one another but also to the court, to make full and frank disclosure of all the material facts which are relevant to the exercise of the court's powers, including of course their resources: see *Livesy(formerly Jenkins) v. Jenkins* [1985] A.C. 424. If they do not do so, the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are".

15. I accept the foregoing as an appropriate description of the jurisdiction that the court must exercise in proceedings in which the obligation arises to make proper provision under s.16 of the 1995 Act."

37. In the present case, the applicant draws an analogy with the findings of Keane J. in *S.Q v. T.Q* [2015] 1 I.L.R.M.60 (see paras. 56-54 at pgs. 78-80) in that the Keane J. found:

(a). The nature of the proceedings (judicial separation proceedings) involve a determination of ancillary reliefs for proper provision and in turn, the Court has a quasi-inquisitorial role and an obligation to inquire into the relevant matters of its own motion if necessary;

(b). The parties have a binary duty to each other and to the Court to make full and frank disclosure of all material facts which are relevant to the exercise of the Court's powers, including the nature and extent of the resources available to them. Therefore, the obligations of the Court, and the duties of the parties go significantly further than they would in respect of the question of discovery in adversarial litigation generally.

(c). The company had made available information to the respondent husband's forensic accountant, which in turn reflected that the respondent had considerable access to the aforesaid company information.

(d). The applicant wife was entitled to seek the information sought pursuant to s.38(7) of the Family Law Act 1995. A mirror provision of s.38(7) of the Family Law Act 1995 is contained in s.38(6) of the Family Law (Divorce) Act 1996.

38. The applicant submits that the respondent has provided a valuation of the "A" Group of companies in his affidavit, and he has provided a valuation of the Trust to AIB in 2011 and 2013. Thus, it is submitted by the applicant that she is entitled to the documentation in Schedule II on the basis that the applicant, like the respondent, is entitled to equal information so as to be placed in an equal position to value the marital assets.

39. The applicant seeks information regarding the "B" Trust. The applicant outlined that the respondent is the settlor of the "B" Trust and he is capable of accessing documentation relating to the aforesaid Trust. In particular, the applicant refers to a bank statement provided to her by the respondent in June 2011. This bank statement related to an account held by the Trust. Moreover, the applicant claims that the respondent has provided information and a valuation of the Trust to AIB in support of his mortgage application. In seeking the aforementioned information relating to the Trust, the applicant relies on *W v. W* (Unreported, High Court, Abbott J., April 18th, 2008). This case concerned judicial separation proceedings where an applicant sought disclosure of information relating to a trust of which the respondent was the settlor. In addition, the respondent had a close interaction with the said trust and its assets. Abbott J. rejected the respondent's objection that the applicant should seek the relevant trust documentation from the trustees of the trust and stated (at para 7.2):

"In reaching this conclusion I am strongly moved by the consideration that the Court is obligated by s.16(1) to:-

"....ensure that such provision is made for each spouse concerned and for any dependent member of the family concerned as is adequate and reasonable having regard to all the circumstances of the case"

"In addition, the Court is further obligated by s.16(5) of the Act of 1995 not to make an order under a provision referred to in subs.(1), unless it would be "in the interests of justice to do so". To unnecessarily confine the disclosure, production, inspection or discovery obligations of a party would, in my view, in the vast majority of cases, and in this case in particular, be counter-productive, and lack proportionality insofar as by pursuing only one aspect of the broad framework the court might well have to commence further inquiries in relation to other aspects, thereby giving rise to duplication of costs and unnecessary delay."

40. The applicant is seeking the categories of documents as outlined in Schedule II and in the Schedule of Documentation attaching to the applicant's solicitors affidavit sworn on the 12th March, 2015, so as to seek further proper provision. The applicant referred the Court to *S.N v. P.O'D* (Unreported, Supreme Court, Fennelly J., 28th July, 2009) where the parties had executed terms of settlement in judicial separation proceedings. The terms of settlement contained a full and final settlement clause. In subsequent divorce proceedings, the respondent husband claimed that the appellant had not provided full financial disclosure relating to her circumstances and that of her company prior to the terms of settlement of the divorce proceedings. In fact, the applicant had sold her interest in the company for a substantial sum after the said settlement. In the High Court, Abbott J. held that the respondent did not have possession of material facts relating to the company which were available prior to the execution of the terms of settlement and therefore, the parties did not have equal information at the time of the execution of the deed of separation. The High Court granted the respondent a lump sum to remedy the deficiencies in the disclosure, and to make further proper provision for the respondent. On appeal to the Supreme Court, Fennelly J. held that the High Court had discretion to remedy the deficiencies in disclosure by making further provision for the respondent by means of a lump sum payment (see para.38 of the judgment of Fennelly J.).

41. The applicant submits that that having regard to the inquisitorial role of the Court in making proper provision for each respective spouse, the documentation and information sought in Schedule II and in the Schedule of Documentation attaching to the applicant's solicitors affidavit (sworn on the 12th March, 2015) is relevant to the determination of: (a) the extent of the respondent's resources and (b) the issue as to whether the respondent made full and frank disclosure of his financial resources to the applicant prior to the execution of the deed of separation in December 2010. Furthermore, it is submitted by the applicant that the fact that the respondent was in a position to provide information and documentation concerning the aforementioned companies and Trust (which included a valuation of the Trust assets and the valuation of the companies) to AIB in 2011 and 2013, imputes that the requested documents are within his possession, power and procurement. Moreover, the applicant proffers the position that she is entitled to the aforesaid documentation and information pursuant to section 38(6) of the Family Law (Divorce) Act 1996.

Legal Submissions of the Respondent

42. The respondent accepts the approach adopted by Keane J. in *S.Q v. T.Q* [2015] 1 I.L.R.M.60 (which endorsed the dicta of Abbott

J. in *W v. W* (Unreported, High Court (Abbott J.) April 18th, 2008) and Baroness Hale of Richmond in *Prest v. Petrodel* [2013] 2 A.C. 415) with regard to the management of disclosure in family law proceedings, namely that there is a statutory obligation on each respective spouse to disclose their income and property to the Court so that proper provision can be made. Moreover, there is an obligation on the Court to enquire into the adequacy and propriety of provision in judicial separation and divorce proceedings. However, the respondent's position is that the matter before the Court is an issue of discovery and therefore, the Court must consider whether the documents/information sought by the applicant is relevant and necessary. The respondent submits that the general law relating to discovery focuses on whether the discovery sought is "relevant and necessary" and that this benchmark has not been ousted by the decision in *S.Q v. T.Q* [2015] 1 I.L.R.M.60.

43. The respondent submits that there are a number of significant features about this case, which must temper the Court's approach to the issue of discovery. The respondent outlines these features as follows:

- (a). The parties have already negotiated a comprehensive deed of separation;
- (b). The parties negotiated the deed of separation with the benefit of independent legal advice from specialist family lawyers;
- (c). The applicant has accepted performance by the respondent of his capital obligations under the aforesaid deed;
- (d). The deed of separation is stated to be in full and final settlement of all claims and in contemplation of divorce;
- (e). The claim for further provision is premised principally on an alleged misrepresentation or series of misrepresentations by the respondent to the applicant, in and around the time of the negotiation of the deed of separation, concerning the value of the shareholding of the "B" Trust in the "A" Group of companies;
- (f). The applicant claims that she only became aware of the alleged misrepresentation as to value of the "A" shares when she was informed in 2014 that the "B" Trust retained seven percent of its shareholding in the "A" Group of companies.
- (g). The respondent holds one share in the Irish company within the "A" Group of companies. Thus, the respondent's personal shareholding is minute.
- (h). The "B" Trust, a distinct legal entity; is itself a minority shareholder in the "A" Group of companies.

44. The respondent submits that the features of the current case are distinguishable from that in *S.Q v. T.Q* [2015] 1 I.L.R.M.60. The respondent recognises that that in *S.Q v. T.Q.*, Keane J. ordered the respondent to disclose the relevant company documentation to the applicant on the basis that if it was within the respondent's gift to produce the information and documents of the relevant company for his own purposes (i.e. information for the formulation of an accountant's valuation report for the respondent) then the same information was within his gift for the purposes of discovery for the wife's purposes. However, the respondent did direct the court to the dictum of Keane J. in *S.Q. v. T.Q.*, where the learned Judge recognised that it would be an error of law to make any order directed to the aforementioned company (which was not a party to the proceedings), or to make any order that treated the property of the company as that of the husband (at pg.70, para. 30):

"As this application is solely concerned with the assessment of the husband's worth and not with the suggested transfer of any of the company's assets to the wife, I do not consider it necessary to consider either the restatement of the law in *Prest* on the exceptions to the doctrine of the separate legal personality of the company; or to the extent to which that restatement differs from the summary of those exceptions set out in Keane *Company Law* (4th edn 2007) at p.145 and cited with approval by Laffoy J. in *Fyffes Plc v. DCC Plc* [2009] 2 I.R. 417 (at p.488); or, should there exist a material difference between them, which of those formulations is to be preferred. For the avoidance of doubt, I do not consider it appropriate or necessary to consider whether the separate legal personality of the company can or should be disregarded for the purposes of the present application. That is to say, I accept that it would be wrong in law to make any order directed to the company (which is not a party to the proceedings or to the present application), or to make any order that treats the property of the company as, in effect, that of the husband."

Keane J. goes on to say (at pg.80, para.62):

"In the circumstances set out above, I have concluded that the decisions of the Supreme Court in *Johnston v Church of Scientology and Thema International Fund Plc*, while clearly binding on this court, are plainly distinguishable on the basis of the particular jurisdiction engaged in this case; the specific facts before the court; and the sui generis nature of the relief sought in the present application."

45. The respondent submits to this Court that it should not follow the approach of Keane J. in *S.Q v. T.Q* [2015] 1 I.L.R.M.60, namely that the Court can order disclosure of documents/information to the applicant that have been used by the respondent for the purpose of proceedings and are within his gift. The respondent submits that the Court should decline to follow the approach of Keane J. in *S.Q v. T.Q* having regard to the following distinguishing features of the case:

- (a). The respondent has not purported to rely on documents to assist his own case that he is unwilling to provide to the applicant;
- (b). The sworn evidence of the respondent is that he has "no interest in the "A" group, nor any of the subsidiary companies bar one share";
- (c). There is no suggestion made that the "A" Group of companies is an alter-ego of the respondent. Indeed the evidence proffered before the Court is that Mr. "P" is the controller of the "A" Group of companies;
- (d). The information sought by the applicant includes matters concerning a distinct legal entity ("A" Group of companies) and yet another distinct legal entity ("F" Ltd);
- (e). The "B" Trust is a legal entity based in a foreign jurisdiction and has a distinct legal personality to that of the respondent;
- (f). The respondent has made detailed and comprehensive discovery pursuant to an order of the Court that was not

appealed by either party.

46. The respondent submits that if this Court is to distinguish the present case from that of *S.Q v. T.Q* [2015] 1 I.L.R.M.60 on the features set out above, the Court must adhere to the principles of non-party discovery as enunciated by the Supreme Court in *Johnston v. Church of Scientology* [2001] 1 I.R. 682 and *Thema International Fund Plc v. HSBC Institutional Trust Services (Ireland) Ltd* (Unreported, Supreme Court (Clarke J.), 25th January, 2013).

47. It is submitted by the respondent that the overall disclosure sought by the applicant is inordinate. The respondent directed the Court to the wording of s.38(6) of the Family Law (Divorce) Act 1996 and in particular, to the phrase "as may be reasonably required for the purposes of the proceedings" in the context of spousal disclosure of income and material assets. The respondent submits that the phrase "as may be reasonably required" reflects that the Court must engage in a qualitative assessment as to what documents/information is necessary in order for the applicant to make out their case. It was submitted by the respondent that this qualitative assessment with regard to discovery/disclosure does not require absolute perfection, nor is it an exercise in perfection. In support of this proposition, the respondent directed the Court to the case of *Quinn v. Irish Bank Resolution Corporation Ltd* (Unreported, High Court (Costello J.), 27th November, 2014). In particular, the Court was directed to a passage of the judgment of Costello J. (at para.36):

"The temptation in litigation as extensive and complex as this litigation is for the parties to become immersed in the pre-trial procedures to the detriment of focusing upon the trial of the action. Litigation is not an exercise in perfection. Many trials take place in the absence of perfect discovery and indeed in the absence of major relevant witnesses for a variety of reasons. It is important to bear in mind the immense discovery which has been made in this case and which will be completed."

Conclusion

48. There are three issues that this Court must determine in the present application. Firstly, to what extent, if any, has the respondent breached the terms of discovery (dated the 3rd July, 2014) as contained in the order of the Court dated the 7th November, 2014? Secondly, what documents in Schedule II (as aforementioned) are the respondent entitled to by means of discovery? Thirdly, is the respondent entitled to the documents listed in the Schedule of Documentation relating to "AH" Limited as contained in exhibit "A" attaching to the affidavit of Mr. "H" sworn on 12th March, 2015? The issue of whether there was material non-disclosure by the respondent prior to the deed of separation on the 3rd December, 2014, is an issue to be determined at the trial of the action.

(a) Compliance with the terms of discovery as contained in the order of the Court dated the 7th November, 2014.

49. The Court finds the following in relation to the issue of the respondent's compliance with the terms of discovery as contained in the order of the Court dated the 7th November, 2014:

(i). Bank Statements of "D" Ltd: The order of the Court stipulates that the respondent was to provide bank statements from the 1st January, 2011, up to the 1st July, 2014. The respondent is to provide all bank statements of "D" Ltd up until the 1st July, 2014 in order to comply with the order of the Court, if any such statements are outstanding. However, updated statements in respect of all "D" Ltd accounts are to be furnished to applicant within ten days of this Court's order.

(ii). AIB Mortgage Documentation: The whole AIB file was provided to the applicant by means of subpoena. In order to ensure full compliance with this Court's order, the respondent is to provide the attachments that were appended to the email correspondence between the respondent and AIB relating to the mortgage transaction for the Leinster property within ten days of this Court's order.

(iii). Affidavit of Mr. "P" and Mr. "R": Mr. "P" has refused to swear an affidavit concerning the respondent's interactions with the "A" Group. The respondent has outlined that he is not in a position to compel Mr. "P" to swear an affidavit, as he is not a party to proceedings. This Court is of the view that if the applicant wishes to pursue Mr. "P" for the affidavit sought, the third party discovery/non-party discovery procedure may be used. With regard to the affidavit of Mr. "R", this Court finds that it does not comply with the aforesaid Court order in that it failed to set out any actual payments received by the respondent, either directly or indirectly through "D" Limited or any other company including but not limited to salary, profit share, management fees, bonuses, directorships fees and expenses. Moreover, the affidavit of Mr. "R" does not outline the particulars of all directorships held by the respondent in all companies in the "A" Group. This Court requests that Mr. "R" swear an affidavit addressing the aforesaid issues so as the respondent can comply with the order of the Court dated the 7th of November, 2014. The said affidavit is to be provided to the applicant within ten days of this Court's order.

(iv). Bank Statements in respect of accounts operated and held by the respondent either solely or jointly with any other person or held for the respondent's benefit either in Ireland or abroad from the 1st of January, 2011, to the 1st July, 2014: In Schedule I Part IV, the applicant has particularised the statements that have not been produced by the respondent. The respondent is ordered to provide these statements within ten days of this Court's order so as to comply with this Court's order dated the 7th November, 2014.

(v). AIB Loan Account: The respondent has failed to provide pages two and three of the AIB loan account as particularised. However, the respondent has outlined that he will provide these outstanding pages. The respondent is ordered to provide the aforesaid pages within ten days of this Court's order.

(vi). Affidavit of Mr. "M": The affidavit of Mr. "M" fails to comply with this Court's order dated the 7th November, 2014 by (a) failing to provide complete particulars of payments setting out which payments received by the respondent relate to net salary and which relate to expenses, (b) there is an unexplained discrepancy of €168,000.00 regarding the respondent's income, (c) the affidavit does not provide details of every net salary payment paid to the respondent for the discovery period from the "A" Group of companies, "D" Ltd and or any other person or company, (d) the affidavit does not refer to the respondent's €200,000.00 annual bonus referred to in the AIB mortgage application for the Leinster property, (e) the affidavit does not provide a breakdown of the sum of €331,586.00 paid to respondent, nor does it indicate distinctively what components of the aforesaid sum were payments by way of expenses, reimbursement or salary, and (f) the affidavit does not provide particulars and details of the basis of a chargeable gain tax of €266,288.00 paid by the respondent.

(vii). Exhibits and Documents referred to in Share Purchase Agreement: The respondent has failed to provide the complete share purchase agreement in that he has failed to provide all the exhibits and documents referred to in the share purchase agreement for the sale of shares in the "A" Group comprising the Bye-Laws in Exhibit A, the Managements Letter in Exhibit B, the Shareholder's Agreement in Exhibit C, the Rights of First Refusal and Co-Sale Agreement in Exhibit D, the Registration Rights Agreement in Exhibit E, the Indemnification Agreement referred to in Exhibit F, the Employment Agreement with the Respondent in Exhibit G, the Compensation Letter in Exhibit H along with other documents referred to comprising the Disclosure Schedule, the Promissory Note, the Bye-Laws adopted on April 6th, 2011, and the Letter of Intent dated the 11th January, 2011. The respondent is ordered to provide the aforesaid documents within ten days of this Court's order.

(viii). Expenditure on the Leinster property: The applicant claims that the respondent has failed to provide vouching documentation in relation to all expenditure on the Leinster property to include all amounts spent on furnishing, repairs and improvements. The respondent claims to have furnished all documents which he can locate in relation to the expenditure regarding the Leinster property. This Court deems it appropriate that the respondent vouch all of the above categories of documents sought within ten days of the date of this Court's order.

(ix). Deed of Purchase for the Leinster property: The applicant claims that the respondent has failed to provide the deed of purchase for the Leinster property. The respondent is directed to provide the deed of purchase for the aforesaid property within ten days of this Court's order so as to comply with the Court order dated the 7th November, 2014.

(x). Letter from Ulster Bank: The applicant claims that the respondent has failed to provide a letter from Ulster Bank concerning account balances and activities in the account from 1st January, 2011, up until the 1st July, 2014. The respondent is directed to provide the aforesaid letter which is to provide a summary of the account balances and activities of the Ulster Bank from the 1st January, 2011, up until the 1st July, 2014. This letter is to be provided to the applicant within ten days of this order.

(b) Discovery of Documents listed in Schedule II and documents relating to "A" Holding Limited

50. The applicant seeks discovery of the documentation listed in Schedule II and/or disclosure of the documents listed in Schedule II pursuant to s.38 of the Family Law (Divorce) Act 1996, so as to establish the true extent of the respondent's financial circumstances. The Court has both a constitutional and statutory obligation to ensure that proper provision is made for both spouses prior to issuing a decree of divorce. As evidenced in the case of *S.Q. v T.Q* [2015] 1 I.L.R.M. 60 (at pg. 79, para.58) this constitutional and statutory imperative places the court in an quasi-inquisitorial role. However, the Court is cognisant that the documents sought by the applicant must be relevant and necessary in ascertaining the financial position of the respondent so that proper provision can be made for the respondent, the applicant and the dependent children, and that the said documentation/information is within the power and procurement of the respondent. I now turn to determining which of the documents sought in Schedule II are to be discovered/disclosed:

(i). Corporate Structure:

(a) "CH" Limited- The Court concludes that although company is now owned by the "B" Trust, the company was set up by the respondent and he remains a director of the company. Moreover, rental income from the foreign property is paid into an account owned by "CH" Limited. In turn, this Court finds that the documentation sought by the applicant as contained in Schedule II is relevant and necessary to the present proceedings. However, the documentation sought for the minutes of the meetings of "CH" Limited is limited to the minutes of meetings relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which he has any interest or relationship. Moreover, as the respondent is a director of the company, these documents are within his possession, power and procurement.

(b) "CCM" Limited- This is a company which the applicant claims the respondent has set up but is now owned by the "B" Trust. The existence of this company has been acknowledged by the respondent in his replies to the applicant. Therefore, it is the view of this Court that the documents set out in Schedule II relating to this entity are relevant and necessary to the present proceedings. However, the documentation sought for the minutes of the meetings of "CCM" Limited is limited to the minutes of meetings relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which he has any interest or relationship. Moreover, as evident in the respondent replies, the documentation sought by the applicant relating to this entity is within the possession, power and procurement of the respondent.

(c) "EAM" Ltd - This entity was set up by the respondent but is now owned by the "B" Trust. The respondent remains a director of the company and has received a loan for €50,000.00 from the company in 2012. Moreover, the applicant alleges that the respondent had a significant shareholding in this company prior to the deed of separation. Therefore, it is the view of this Court that the documentation sought by the applicant relating to this entity, as listed in Schedule II, is relevant and necessary to the main proceedings. However, the documentation sought for the minutes of the meetings of "EAM" Ltd is limited to the minutes of meetings relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which he has any interest or relationship. Moreover, as the respondent is a director of the said company and was in a position to provide documentation relating to "EAM" Ltd to AIB in March and April of 2013, the documents sought are within his possession, power and procurement.

(d) "D" Ltd- This is the respondent's company. Thus, this Court is of the view that all documents sought by the applicant relating to this entity, as listed in Schedule II, are relevant and necessary to the main proceedings. Moreover, as the applicant owns the said company, the documentation sought is within his possession, power and procurement.

(e) "AFS(I)" Limited- This Court is of the view that the following documentation, files, correspondence and papers from 1st January, 2010, to 31st January, 2015, are relevant and necessary to determining the true extent of the financial circumstances of the respondent: (1) The acquisition or disposition of any interest either directly or indirectly by the respondent of any shares or interest in "AFS(I)" Limited, (2) papers, correspondence or contracts made directly or indirectly with the respondent and the company, (3) all company agreements made either directly or indirectly with the respondent, (4) minutes of meetings of the company relating to all dealings, transactions and

contracts either directly or indirectly with the respondent and every entity to which the respondent has an interest and relationship, (5) the components of the company share register relating solely to the respondent's ownership and transfer of shares, (6) all company agreements made directly or indirectly with any payments to the respondent. In addition, as the respondent is a party to the aforesaid agreements and correspondence, the aforementioned documentation is within his possession, power and procurement. In particular, the respondent was able to provide, via email dated the 18th April, 2013, "AFS(I)" financials for the year 2011 and 2012 to AIB in support of his mortgage application for the Leinster property. In turn, the Court would order the respondent to provide discovery of full financial statements of the company with audited accounts for the years 2010, 2011, 2012, and 2013. The remainder of the documents sought by the applicant in relation to "AFS(I)" Limited is a matter for third party/non-party discovery.

(f) "AFCS" Limited- This Court is of the view that the following documentation, files, correspondence and papers from 1st January, 2010 to 31st January, 2015, are relevant and necessary to determining the true extent of the financial circumstances of the respondent: (1) The acquisition or disposition of any interest either directly or indirectly by the respondent of any shares or interest in "AFCS" Limited, (2) papers, correspondence or contracts made directly or indirectly with the respondent and the company, (3) all company agreements made either directly or indirectly with the respondent, (4) minutes of meetings relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which the respondent has an interest and relationship, (5) the components of the company share register relating solely to the respondent's ownership and transfer of shares, (6) all agreements made directly or indirectly with any payments to the respondent, (7) financial statements of the company for the years 2010, 2011 and 2012. In addition, as the respondent is a party to the aforesaid agreements and correspondence, the aforementioned documentation is within his possession, power and procurement. The remainder of the documents sought by the applicant in relation to "AFCS" Limited is a matter for third party/non-party discovery.

(g) "AFS" Limited- This Court is of the view that the following documentation, files, correspondence and papers from 1st January, 2010 to 31st January, 2015 are relevant and necessary to determining the true extent of the financial circumstances of the respondent: (1) The acquisition or disposition of any interest either directly or indirectly by the respondent of any shares or interest in "AFS" Limited, (2) papers, correspondence or contracts made directly or indirectly with the respondent and the company, (3) all company agreements made either directly or indirectly with the respondent, (4) minutes of meetings of the company relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which the respondent has an interest and relationship, (5) the components of the company share register relating solely to the respondent's ownership and transfer of shares, (6) all company agreements made directly or indirectly with any payments to the respondent. In addition, as the respondent is a party to the aforesaid agreements and correspondence, the aforementioned documentation is within his possession, power and procurement. In particular, the respondent was able to provide, via email dated the 18th April, 2013, "AFS" Limited financials for the year 2010 to AIB in support of his mortgage application for the Leinster property. In turn, the Court would order the respondent to provide discovery of full financial statements of the company with audited accounts for the years 2010, 2011, 2012. This Court notes that financial statements with audited accounts will be provided for the years 2013 and 2014, if such documents exist. The remainder of the documents sought by the applicant in relation to "AFS" Limited is a matter for third party/non-party discovery.

(h) "AFSH" Limited- This Court is of the view that the following documentation, files, correspondence and papers from 1st January, 2010, to 31st January, 2015 are relevant and necessary to determining the true extent of the financial circumstances of the respondent: (1) The acquisition or disposition of any interest either directly or indirectly by the respondent of any shares or interest in "AFSH" Limited, (2) papers, correspondence or contracts made directly or indirectly with the respondent and the company, (3) all company agreements made either directly or indirectly with the respondent, (4) minutes of meetings of the company relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which the respondent has an interest and relationship, (5) the components of the company share register relating solely to the respondent's ownership and transfer of shares, (6) all company agreements made directly or indirectly with any payments to the respondent. In addition, as the respondent is a party to the aforesaid agreements and correspondence, the aforementioned documentation is within his possession, power and procurement. In particular, the respondent was able to provide, via email dated the 18th April, 2013, "AFSH" Limited financials for the year 2010 and 2011 to AIB in support of his mortgage application for the Leinster property. In turn, the Court would order the respondent to provide discovery of full financial statements of the company with audited accounts for the years 2010, 2011 and 2012. This Court notes that full financial statements of the company with audited accounts for the years 2013 and 2014 have been provided. The remainder of the documents sought by the applicant in relation to "AFSH" Ltd is a matter for third party/non-party discovery.

(ii). Authorisation to inspect AIB File: The applicant has obtained the AIB file by means of subpoena. In his replies, the respondent outlines no objection to such inspection.

(iii). "B" Trust: The documentation sought by the applicant relating to the "B" Trust is particularised at Part III of Schedule II. This documentation is relevant and necessary to the main proceedings as the respondent was the settlor the aforesaid Trust and is the beneficiary of a promissory note of the Trust. The respondent claimed that the discovery sought for documents for a period between 1st January, 2010, to 31st January, 2015, is disproportionate. This Court believes that the documentation sought from this period is relevant and necessary in light of the fact that the deed of separation was executed between the parties on the 3rd December, 2013. This Court finds that the said documentation is within the possession, power and procurement of the respondent as he has a legal right to the documentation, and he was in a position to provide AIB with information concerning the Trust and its value in 2013.

(iv). Papers leading up to and concerning the sale by the respondent of shares: This Court is of the view that the sale of shares/investment by "F" Ltd was dealt with by the "A" Group. In turn, this Court concludes that the applicant may seek the documentation particularised in Part IV of Schedule II by means of third party discovery.

(v). Rights of employees to receive ordinary shares: This Court is of the view that the documents relating to the rights of "A" Group employees to receive ordinary shares, as particularised in Part V of Schedule II, may be applied for by the applicant against the "A" Group by means of third party discovery/non-party discovery.

(vi). Payment of annual bonus to the respondent: The documentation sought by the applicant is particularised in Part VI of Schedule II. The payment of a bonus to the respondent is necessary and relevant to determining his financial circumstances. As the respondent is in receipt of the said bonus, he is entitled to the documentation aforementioned. Thus, the documentation sought by the applicant in this regard is within the possession, power and procurement of the respondent.

(vii). Working papers of Mr. "M" relating to the respondent: The applicant seeks the files of Mr. "M" (the respondent's accountant) relating to the respondent from 1st January, 2010 to the 31st January, 2015. These files are relevant and necessary to determine the true extent of the respondent's financial circumstances prior to and post the execution of the deed of separation of the parties. As the respondent pays for Mr. "M's" accountancy services, he has a legal right to the aforesaid documentation, and in turn, the said documentation is within the respondent's power and procurement.

(viii). Reimbursement of foreign expenses by separate credit card: The specific documents/information sought is particularised in part VIII of Schedule II. This Court is of the view that documentation sought is relevant and necessary to determine the true extent of the financial circumstances of the respondent, as he was in receipt of these reimbursed funds. In turn, as the respondent had a right to be reimbursed the aforesaid funds, he also has a right to receive documentation concerning the reimbursed funds. Therefore, this Court finds that the said documentation is within the respondent's possession, power and procurement.

(ix). Investments: The applicant seeks documentation/information relating to an investment declared by the respondent to have been made in a foreign bank. The specific documents sought by the applicant have been particularised in part IX of Schedule II. As the respondent has made the said investment, the documentation sought are necessary and relevant to determining his true financial circumstances. Moreover, as the respondent continues to pay €1,600.00 per month into this bank account, the documentation sought relating to the foreign bank account is within his possession, power and procurement.

51. The Court directs the respondent to provide discovery of the documents outlined in para. 50(i)-(ix) of this Court's judgment, within ten days of this Court's order.

52. The specific documents relating to the restructuring of "AH" Limited are particularised in the aforesaid Schedule of Documentation. The applicant seeks documentation relating to "AH" Ltd as the respondent has not provided an explanation as to his relationship with the company following the execution of the share purchase agreement between the "A" Group and "F" Ltd. This Court is of the view that the following documentation, files, correspondence and papers from 1st January, 2009 to 31st January, 2015, are relevant and necessary to determining the true extent of the financial circumstances of the respondent: (1) The acquisition or disposition of any interest either directly or indirectly by the respondent and the "B" Trust of any shares or interest in "AH" Ltd, (2) papers, correspondence or contracts made directly or indirectly with the respondent and/or the "B" Trust and the company, (3) minutes of meetings relating to all dealings, transactions and contracts either directly or indirectly with the respondent and every entity to which the respondent has an interest and relationship, (4) the components of the company share register relating solely to the respondent's ownership and transfer of shares. In addition, as the respondent is a party to the aforesaid agreements and correspondence, the aforementioned documentation is within his possession, power and procurement. The Court directs the respondent to provide discovery of the aforesaid documentation within ten days of this Court's order. The remainder of the documents sought by the applicant in relation to "AH" Ltd is a matter for third party/non-party discovery.