Neutral Citation Number: [2011] IEHC 375

THE HIGH COURT

2006 5683 P

BETWEEN

HOLLYBROOK (BRIGHTON ROAD) MANAGEMENT COMPANY LIMITED

PLAINTIFF

AND

ALL FIRST PROPERTY MANAGEMENT COMPANY LMIITED

AND

GINA FARRELL (ALSO KNOWN AS EUGENIA PACELLI) TRADING AS GINA FARRELL CLEANING SERVICES

DEFENDANTS

JUDGMENT of Ms. Justice Laffoy delivered the 5th day of October, 2011

1. History of the proceedings

1.1 These proceedings were initiated by plenary summons which issued on 21st November, 2006. Initially, there was one defendant only, namely, the first defendant (All First). The plaintiff, a company limited by guarantee not having a share capital, is the management company for a complex of 48 luxury apartments located at Hollybrook, Brighton Road, Foxrock, Dublin 18 (Hollybrook). All First, a limited company which was controlled by the second defendant (Ms. Farrell), had acted as managing agent for the plaintiff in relation to Hollybrook from August, 2003 until its contract expired on 28th February, 2006. The primary relief originally claimed on the general endorsement of claim on the plenary summons against All First were mandatory orders directing All First:-

> (a) to return forthwith to the plaintiff all the books and records of the plaintiff, whether kept in hard copy or electronic format, in its possession which, it was alleged, were being unlawfully withheld by All First from the plaintiff,
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> (b) to provide a full account on affidavit in respect of any books and records of the plaintiff, whether kept in hard copy or electronic format, which had been in the possession of the plaintiff but were no longer, identifying, in general terms, their whereabouts, and
>
> (c) to be restrained from interfering with the plaintiff's entitlement to the immediate possession of the said books and records.

The other reliefs claimed were damages for conversion and/or debt, and/or breach of contract and a claim for accounts and inquiries and interest pursuant to statute.

1.2 On 12th December, 2006, Brian O'Brien, Solicitors, the firm which subsequently came on record for Ms. Farrell, entered an appearance on behalf of All First.

1.3 Almost contemporaneously with the plenary summons, the plaintiff issued a notice of motion on 22nd November, 2006, which was returnable for 4th December, 2006, in which the plaintiff sought interlocutory relief in the terms of the injunctive relief sought on the plenary summons. The motion was grounded on the affidavit of Mr. Tom Martin, sworn on 22nd November, 2006. Mr. Martin swore the affidavit in his capacity as a director and company secretary of the plaintiff. Two replying affidavits were filed on behalf of All First. The first was sworn on 12th December, 2006, by Mr. Darren Lancaster, who described himself as "the accountant appointed by" All First "in respect of its accounting duties under the Management Agency Contract with the plaintiff". The second was sworn by Ms. Farrell on 14th December, 2006. She described herself as "a director and principal shareholder" of All First. A further affidavit sworn by Mr. Martin on 12th January, 2007, was filed on the motion on behalf of the plaintiff and an affidavit of Mr. Michael Donnelly, of BFCD, Chartered Accountants, the plaintiff's auditors, sworn on 19th January, 2007, was also filed on behalf of the plaintiff. By order of the Court (Laffoy J.) made on 27th February, 2007, by consent of the parties, it was ordered that All First file and serve an affidavit within two weeks of the date of the order and that the motion be struck out with the costs of the motion reserved. Directions were given in relation to the delivery of pleadings. The affidavit referred to in the order was sworn by Ms. Farrell on 26th March, 2007. In it, on behalf of All First, she averred that All First did not have in its possession or within its power or procurement any of the documents referred to in the plaintiff's application. She made a similar averment in relation to herself. She averred that, to the best of her knowledge, information and belief, Mr. Lancaster did not have any documents other than those referred to in his replying affidavit of 12th December, 2006. Those documents had already been handed over to the plaintiff. By that stage, the motion had generated a lever-arch binder full of papers running to 370 pages. The foregoing detail is set out to illustrate how the main issue at the time, the issue in relation to the handover of the plaintiff's books and records to the plaintiff, was dealt with and because it points to the level of costs which obviously had been run up by that stage.

1.4 The next step in the proceedings was a motion brought on behalf of the plaintiff, on foot of notice of motion dated 30th May, 2007, seeking an order pursuant to O. 15, r. 13 of the Rules of the Superior Courts 1986 (the Rules) directing that Ms. Farrell be joined as a defendant in the proceedings. The outcome of that motion was an order of the Court (Clarke J.) made on 2nd July, 2007 recording that the Court had determined that the joinder of the proposed defendant as of that date was premature and had directed that the plaintiff be at liberty to bring an application to amend the plenary summons so as to include a plea of fraud. In the curial part of the order, the plaintiff was directed to indicate to what period of its claims it was asserted its plea (presumably, the intended plea

of fraud) related and it was ordered that Ms. Farrell "be at liberty to raise that period in her related proceedings in the High Court" which were specified as "bearing record number 2005 No 1168 S". For the reasons, I will outline later, I surmise that there is an error in the perfected order and that it was not intended that the summary proceedings entitled Gina Farrell T/A Gina Farrell Cleaning Services v. Sean Dunne (Record No. 2005/1168 S) should be referred to.

1.5 A further motion was brought by the plaintiff by notice of motion dated 24th July, 2007, which was grounded on an affidavit sworn by Mr. Martin on 23rd July, 2007, to which I will return later, seeking an order pursuant to O. 28, r. 1 of the Rules permitting the plaintiff to amend the plenary summons as outlined in the draft amended plenary summons, which was exhibited in the grounding affidavit. That motion resulted in two orders of the High Court made by Clarke J. on 30th July, 2007. In one, the plaintiff was given liberty to amend the plenary summons in the terms set out in the schedule attached to the order and costs were awarded to All First against the plaintiff. In the other, it was ordered that Ms. Farrell be joined as a co-defendant in the action, directions were given in relation to delivery of pleadings and costs were reserved. What is of significance for present purposes is that, in addition to the reliefs originally sought against All First, which, in the amended general endorsement of claim, were sought against both defendants, the plaintiff sought the following additional remedies against both defendants:

(i) damages for fraud (including conspiracy to defraud, fraudulent misrepresentation and the tort of deceit),

(ii) damages for negligence and breach of duty (including breach of fiduciary duty),

(iii) damages for negligent misrepresentation,

(iv) damages for conspiracy,

(v) damages for breach of confidence, and

(vi) such restitutionary remedies as are appropriate to restore the plaintiff to its property and funds.

The claim for damages for breach of contract was expanded to include breach of contract by reason of fraud.

1.6 Subsequently, no less than six motions were brought to the Court dealing with procedural matters and one to the Master.

1.7 An appearance was entered on behalf of Ms. Farrell by Brian O'Brien, Solicitors on 27th September, 2007. The statement of claim was delivered on 19th October, 2007, following a motion to dismiss. I propose considering so much of the statement of claim as is relevant to the proceedings as they currently exist later. A defence was delivered on 4th July, 2008, following two motions for judgment in default of defence.

1.8 A notice of trial was served by the plaintiff on 23rd December, 2009, notice of change of solicitor having been filed on the same day, as a result of which Johnsons, Solicitors, came on record for the plaintiff in place of Arthur Cox, Solicitors, who had been on record for the plaintiff up to that time. Subsequently, two motions were brought which are of relevance.

1.9 The first was a motion brought by Brian O'Brien, Solicitors, on foot of a notice of motion dated 22nd June, 2010, seeking an order declaring that they had ceased to be the solicitors for All First. The basis of that application was that All First had been dissolved with effect from 9th May, 2008, presumably for failure to file annual returns. In the affidavit grounding that motion, Mr. Brian O'Brien, the principal of Brian O'Brien, Solicitors, averred that Ms. Farrell had informed him that she would not be making an application to restore the company to the register at that time. The reality of the situation is that, from the date of its dissolution, All First had ceased to be a party to the proceedings, which, as against All First, were a nullity, subject to the possibility of being revived should All First be restored to the Register of Companies. Neither Ms. Farrell, as the principal shareholder and a director of All First, nor the plaintiff, as a creditor, has sought to have All First restored to the register. The position, accordingly, when this matter came on for hearing, was that there was only one defendant in the action, that is to say, Ms. Farrell. It was recognised from the outset by the plaintiff that no relief could be sought by the plaintiff against All First.

1.10 The later motion, which is of considerable significance for present purposes, was a motion brought on behalf of Ms. Farrell seeking, *inter alia*, an order pursuant to s. 390 of the Companies Act 1963, requiring the plaintiff to provide security in respect of the defendants' costs of the proceedings, which was brought on foot of a notice of motion dated 15th July, 2010. An order was made on foot of that motion by the Court (Kearns P.) on 22nd October, 2010, wherein it was ordered that the plaintiff furnish security for Ms. Farrell's costs in the action, the amount of the security being fixed at €150,000 inclusive of VAT, and that the plaintiff lodge in Court to the credit of the action the said sum of €150,000. It was also ordered that, in default of security, further proceedings be stayed. The sum of €150,000 was, in fact, lodged in Court pursuant to that order. The evidence at the hearing of the action established that the source of the sum lodged in Court was a cheque drawn on the account of Mrs. Gayle Dunne, the wife of Mr. Sean Dunne, and that the money was lodged on behalf of Mountbrook Homes Limited (Mountbrook).

1.11 The substantive action came on for hearing on 22nd June, 2011 and it was at hearing for 17 days. Despite being invited by the Court to mediate on the first day of the hearing, that did not happen, primarily due to Ms. Farrell's unwillingness to mediate at that stage. A lot of what ensued, in my view, involved a waste of the time and the resources of the High Court and the public monies which fund the High Court, for which both sides share responsibility.

2. Hollybrook and the plaintiff's status in relation thereto

2.1 The development of the Hollybrook apartment complex commenced in 2002. The development was carried out by a company controlled by Mr. Dunne, Mountbrook. A building company, which was also controlled by Mr. Dunne, DCD Builders Limited (DCD), was the construction company involved in the construction of the development. Of the 48 apartments in the Hollybrook complex, at the time of the hearing of this action, four remained unsold and in the ownership of Mountbrook, and five were owned by members of Mr. Dunne's family. The owners of those five apartments and the owners of the remaining 39 apartments are the members of the plaintiff. Since the beginning of May, 2003 the plaintiff has been responsible for, and borne the costs of, the management of Hollybrook, including the repair, maintenance, cleaning, insurance and such like of the Hollybrook complex, other than the individual apartment units, and for the provision of concierge services, which in the relevant period were provided by a company which was retained by the plaintiff and was independent of All First and Ms. Farrell, and the provision of a sinking fund. The costs thus incurred have been, and are being, recouped from the members of the plaintiff through the medium of service charges, which are levied on the apartment

owner members on a square footage basis. In relation to the apartments which remain unsold, Mountbrook has been, and is, liable for the related service charges.

2.2 While this action has been maintained since 2006 by and in the name of the plaintiff, which, as I have stated, is a company limited by guarantee not having a share capital, which is funded through the medium of service charges paid by the members of the plaintiff who are the apartment owners in Hollybrook, the members of the plaintiff not connected with Mountbrook or Mr. Dunne appear to have had no involvement whatsoever in its prosecution and have played no active part in the hearing. The plaintiff has, however, an indemnity in respect of its costs of these proceedings. By a deed of indemnity dated 10th December, 2009, Mountbrook, in consideration of the plaintiff agreeing to take these proceedings against All First, which at the time had been dissolved, and against Ms. Farrell, covenanted with the plaintiff and agreed "to fully and completely irrevocably and unconditionally indemnify and keep indemnified" the plaintiff against "all losses, costs, demands, damages, actions, expenses and claims incurred" by the plaintiff or awarded against the plaintiff in these proceedings, or "not recovered in the legal action", and that "any damages rightly recovered for the account of [the plaintiff] shall be appropriately disbursed". The affixing of the common seal of Mountbrook to the deed of indemnity was witnessed by Ross Connolly, company secretary and a director of Mountbrook, who has been a director of the plaintiff since 2009. That formal indemnity replaced an informal verbal commitment on behalf of Mountbrook, which was sanctioned by Mr. Dunne before the proceedings were initiated, that Mountbrook would be responsible for the costs of the proceedings.

2.3 It emerged at the hearing of the action that Mountbrook has been converted into, and re-registered as, an unlimited company since August, 2009 (that is to say, before the date which appears on the deed of indemnity, although this is not obvious on the face of the deed) and its name has been changed to Mavior since March, 2011. It also emerged that, during the course of the hearing, Ms. Farrell's solicitors wrote to the National Asset Management Agency (NAMA) on 12th July, 2011 inquiring as to the attitude of NAMA to the funding by Mountbrook or Mavior of this action and the position of that company with regard to honouring the indemnity provided to the plaintiff, should Ms. Farrell be successful in defending the proceedings. The basis on which the information was sought was that Ms. Farrell was considering bringing an application to Court for additional security for costs. Predictably and understandably, in its response dated 18th July, 2011, NAMA indicated that it was bound by duties of confidentiality to the borrowers whose loans it had acquired and declined to confirm whether Mountbrook/Mavior is a debtor within the meaning of the National Asset Management Agency Act 2009, or whether loans advanced to Mountbrook/Mavior had been acquired by NAMA.

2.4 The principal witness who testified on behalf of the plaintiff was Mr. Martin who first became a director of the plaintiff in May, 2005 at a time when he was an employee (executive assistant to Mr. Dunne) and a director of DCD and, also, a director of Mountbrook. Although his employment by, and directorship of, DCD and his directorship of Mountbrook ceased in 2007, he currently remains the secretary and a director of the plaintiff, although he is not a member thereof. Two former directors of the plaintiff, who were linked to DCD and Mountbrook, also gave evidence. Mr. Peter Halpenny, who was called on behalf of the plaintiff, was a director of Hollybrook from mid 2002, after its incorporation, until September, 2009. At the same time he was an employee and a director of DCD and a director of Mountbrook. Mr. Frank Gleeson was called on behalf of Ms. Farrell. He became a director of the plaintiff at the same time as Mr. Halpenny, in mid 2002. At that time, he was financial director of Mountbrook and he was an employee of DCD, which he referred to as being in the "Mountbrook group". When he left that employment in May 2005, he was replaced by Mr. Martin as a director of the plaintiff.

2.5 The registered office of the plaintiff has at all material times been 67 Merrion Square, Dublin 2, which is also the registered office of DCD and Mountbrook/Mavior.

2.6 I am satisfied on the evidence that Mr. Dunne, who did not testify, was the instigator of the initiation of these proceedings. I am also satisfied on the evidence that they were initiated without the approval of the members of the plaintiff having been first obtained. The first mention of the proceedings in the minutes of an annual general meeting of the company is to be found in the minutes of the meeting held on 24th September, 2007, at which the audited accounts for the year ended 30th June, 2006 were considered. Those accounts were signed off by the auditors and directors in August, 2007. They contained a note headed "Post Balance Sheet Events" in the following terms:-

> "Subsequent to the period end, the company took injunction proceedings in the first instance against [All First] to successfully recover the company's books and records. Thereafter, in the same legal proceedings, the company is taking a legal action against [All First] and [Ms. Farrell] in order to recover monies which the company considers were paid to those companies on foot of invoices for alleged services rendered when in fact the services were not rendered. This case is currently ongoing.
>
> [Mountbrook] has undertaken to discharge all costs in the matter."

That note was brought to the attention of the members at the meeting. At subsequent annual general meetings, as the minutes record, the members were informed of the undertaking from Mountbrook to discharge all costs. At the most recent meeting held on 4th November, 2010, the members were informed of the order for security for costs made on 22nd October, 2010, and that Mountbrook had provided €150,000, which the minutes incorrectly record was "placed in an escrow account pending the outcome of the case". In fact, it has been lodged in Court. On that occasion, the members were informed that Mountbrook had also provided the plaintiff with an indemnity in respect of the costs of the proceedings.

2.7 Finally, on issue of the indemnity from Mountbrook, Mr. Martin's evidence was that he and Mr. Halpenny decided to take the case on the understanding that the costs would be borne by Mountbrook, the understanding, as I have stated, having been based on a verbal communication from Mr. Dunne. At the time, Mountbrook was a limited liability company.

2.8 As All First has ceased to exist, I can express no view on whether the initiation of the proceedings against All First and, more importantly, their continuance after the interlocutory motion was disposed of until the dissolution of All First was justified. If it was, I fail to understand why steps were not taken by the plaintiff to have All First restored to the Register of Companies, so that the proceedings could be continued against All First and issues in relation to reserved costs, for example, the costs of the interlocutory injunction, which must be substantial, could be resolved.

2.9 As regards the pursuit of the proceedings against Ms. Farrell to a hearing, which at the time they were listed for hearing was estimated to last for five days, and which have clearly given rise to very considerable legal fees and fees for expert advice, analyses, reports and testimony, I think it is reasonable to infer that Mr. Dunne has been the prime mover. I am satisfied on the evidence that he has funded, whether through Mountbrook or Mavior or otherwise, the process to date. On any objective assessment of the optimum result which would be likely to be gained by pursuing these proceedings against Ms. Farrell, if the plaintiff were to succeed in

its claim, against the likely cost to the plaintiff, if the claim were to be unsuccessful or only partially successful to an extent which would not attract High Court costs, one has to conclude that it is highly unlikely that, if the plaintiff was relying on its own resources, namely, the service charges paid by the apartment owners, the action against Ms. Farrell would have been pursued as it was. Leaving aside the legal costs, these proceedings have generated a substantial amount of expert fees. At 3rd August, 2010, in replies to a notice for particulars, the plaintiff's solicitors indicated that costs aggregating €70,867 had already accrued in respect of three experts who had investigated the claims against the defendants.

3. The case against Ms. Farrell as pleaded and her defence as pleaded

3.1 Purely for the purpose of giving context to the case as pleaded against Ms. Farrell in the statement of claim, I record that it is pleaded that by an agreement made between the plaintiff and All First, with effect from in or about 1st May, 2003, All First, which was operated and controlled by Ms. Farrell, was employed as the management agent for Hollybrook until the contractual arrangement expired on 28th February, 2006. It is pleaded that Ms. Farrell was awarded a further contract by the plaintiff to clean the common areas of Hollybrook, the term of which was stated to be one year from 1st March, 2005, but that prior to the awarding of that contract, Ms. Farrell had been providing cleaning services at Hollybrook, primarily to the plaintiff but also to DCD, since in or around late 2002. The allegations of wrongdoing made against Ms. Farrell in the statement of claim are as follows:-

> (a) that the plaintiff has suffered loss and has been defrauded as a result of the conduct of Ms. Farrell in -
>
> > (i) having made significant and substantial alterations to the concierge logs at Hollybrook, between September, 2003 and February, 2006 (336 incidents being identified), to give the impression that more cleaners were in attendance at Hollybrook than were actually there in order to support the overcharging of the plaintiff, and
> >
> > (ii) having overcharged and/or double charged for work carried out at Hollybrook on numerous occasions in the period from September, 2004 to January, 2006, and
>
> (b) further, or in the alternative, the conduct referred to at (a)(i) and (ii) amounted to a breach of contract on the part of Ms. Farrell, the breach of contract being particularised as follows:-
>
> > (i) it was an express term, condition or a fundamental term of Ms. Farrell's contract that she would provide two cleaning ladies from 9.00am to 1.00pm for the term of the contract at an annual fee of €28,800 but she was in breach thereof by not providing two cleaning ladies on a number of dates and by altering the concierge logs so as to conceal that fact, and
> >
> > (ii) it was an implied term, condition or fundamental term of her contract that Ms. Farrell would conduct her business with the plaintiff properly and in a *bona fide* manner and would not defraud the plaintiff or act so as to cause the plaintiff loss but she was in breach thereof by virtue of her conduct referred to above.

3.2 The particulars of the loss and expense which are alleged to have arisen from the wrongdoing alleged against Ms. Farrell which remains in the case as pleaded are:-

> (a) an overcharge to the plaintiff of €43,952 arising from "duplicate invoices"; and
>
> (b) an overcharge of €19,035 "in respect of charges only justified on the basis of altered records"; and
>
> (c) an overcharge of €4,640 "in respect of non-attendance".

Those sums aggregate €67,627.00. A claim for auditors' fees incurred in relation to reconstituting the books and records of the plaintiff, for which, in my view, only All First, not Ms. Farrell, could have been liable, in the sum of €4,104.00 was eventually dropped on the sixth day of the hearing

3.3 In the defence delivered on the 4th July, 2008, having pleaded the belief that the plaintiff's claim is not *bona fide* and has been brought solely at the behest of Mr. Dunne and on his instructions "pursuant to a vendetta" which he has against Ms. Farrell, the allegations of wrongdoing against Ms. Farrell are addressed as follows:-

> (a) It is admitted that she was employed by and was paid by the plaintiff and DCD to provide cleaning services at Hollybrook, but it is asserted that her appointment was made by Mr. Dunne and the termination of her position was at the direction of Mr. Dunne.
>
> (b) The allegations of fraud against her are denied.
>
> (c) The alleged alterations to the concierge logs are denied. If alterations were made in the logs, it is denied that they were made to support overcharging of the plaintiff or to give the impression that more cleaners attended than were actually there.
>
> (d) The allegation of overcharging is denied, as are the particulars thereof.
>
> (e) It is specifically pleaded that the remuneration of Ms. Farrell in respect of cleaning services provided by her at Hollybrook was not dependent on the number of cleaners which attended to provide the services or the time at which such services were carried out, but it is not denied that the contract price was €28,800 per annum, as pleaded by the plaintiff.
>
> (f) Breach of contract is denied.

3.4 In addition to the elements of the claim formulated on the basis of the duplication of invoices and of the alteration of records and of non-attendance, on the seventh day of the hearing counsel for the plaintiff formulated a further element of the plaintiff's claim on a basis which was not specifically pleaded, namely, that Ms. Farrell was actually overpaid by the plaintiff, in that the plaintiff paid her in excess of the contract price of €28,800 both in 2004 and 2005, giving rise to an overpayment for those years of €29,926. I heard the evidence on this element of the claim *de bene esse*, notwithstanding protest on the part of counsel for Ms. Farrell that it had not

been pleaded.

3.5 As I have outlined, in the plenary summons there is a claim for "interest pursuant to statute". At the hearing, counsel for the plaintiff claimed pre-judgment interest at the Court rate of 8%, having abandoned a claim for €50,457 in respect of "overdraft" interest at the rate of 9% referred to in opening the case on the "overcharge" elements of the claim as pleaded and set out at para. 3.2 above.

3.6 Further, in his closing submissions, counsel for the plaintiff submitted that the plaintiff should be awarded aggravated damages.

3.7 I propose considering each of the foregoing elements of the plaintiff's claim separately. However, before doing so, I propose outlining other proceedings involving Ms. Farrell, which are pending either in the Circuit Court or in the High Court, arising from her business relationship with Mr. Dunne and with companies controlled by him, including DCD.

4. Other Proceedings

4.1 There is a broader picture of a business relationship between Ms. Farrell and Mr. Dunne than merely a contract for the provision of the cleaning services for the common areas of the Hollybrook apartment complex in the background to these proceedings. Ms. Farrell's evidence was that her business relationship with Mr. Dunne dates back to the 1990s. The evidence confirms that she had cleaning contracts in various residential complexes developed by companies controlled by Mr. Dunne. She also had a cleaning contract in relation to the registered office and the headquarters of the companies in the Mountbrook Group at 67 Merrion Square. It is clear on the evidence that a serious dispute arose between Mr. Dunne and Ms. Farrell in April or May 2005. As a result, Mr. Dunne instructed Mr. Martin, in Mr. Martin's words, to "fire" Ms. Farrell. Mr. Martin wrote to Ms. Farrell on 13th May, 2005 on DCD letter heading confirming that her services were no longer required for DCD or Mountbrook. After that, Ms. Farrell continued providing cleaning services at Hollybrook. However, at the end of 2005, the plaintiff put the management contract and the cleaning services contract in relation to Hollybrook for the year commencing 1st March, 2006 out to tender. Although Ms. Farrell tendered, her tender was not accepted. All First ceased to be managing agent and Ms. Farrell ceased providing cleaning services at Hollybrook when their respective contracts expired on 28th February, 2006. The proceedings outlined below were obviously a consequence of the foregoing sequence of events.

4.2 Ms. Farrell (trading as Gina Farrell Cleaning Services) initiated proceedings in the Circuit Court against DCD by an ordinary civil bill which issued on 21st August, 2005 (Record No. 4634/05). In those proceedings she claimed the sum of €26,006.26 for work done and services rendered from 30th November, 2004 to 13th May, 2005. An affidavit sworn on behalf of DCD in response to those proceedings, which was put to Ms. Farrell in cross examination, indicates that, of the sum claimed, €7,450 plus VAT was claimed on foot of invoices raised in respect of Hollybrook. The deponent, who was not a witness in these proceedings, averred that there was no evidence that the services were provided and that there was no evidence available in the form which would normally be available, namely, work logs, diaries, signed offsite timesheets, staff timesheets and PAYE/PRSI records for the periods in question. On that basis, it was averred that the services may never have been rendered. Although the pleadings were closed, those proceedings have never proceeded to finality. Arthur Cox, who originally were on record for the plaintiff in these proceedings, came on record for DCD on 29th September, 2006, in place of the solicitors originally on record for DCD, Croskerrys, Solicitors.

4.3 Ms. Farrell initiated further Circuit Court proceedings against DCD in 2006 (Record No. 1055/2006), in which she claimed the sum of €19,096.20 for services rendered. Although a defence was delivered, those proceedings have not been prosecuted to finality.

4.4 The High Court proceedings referred to at para. 1.4 above (Record No. 2005/1168 S), in which Ms. Farrell claimed €86,750.00 for work done and for services rendered to Mr. Dunne, some of which was claimed in relation to providing cleaning services for Mr. Dunne's dwelling-house at Shrewsbury Road, Dublin 4, are still pending. By order of the Master dated 29th November, 2005, it was ordered that the action be adjourned to plenary hearing. It does not appear to have gone any further.

4.5 In 2006, DCD initiated summary proceedings in the High Court against Ms. Farrell, trading as Gina Farrell Cleaning Services. I surmise that these are the proceedings which were intended to be specified in the perfected order of Clarke J. dated 2nd July, 2007. The proceedings (Record No. 2006/248 S) were initiated by a summary summons which issued on 24th February, 2006. The claim was for the sum of €66,260 plus VAT as money had and received by Ms. Farrell for and to the use of DCD between 31st October, 2004, and 30th September, 2004 (*sic*) "as by the schedule annexed hereto appears". There was no schedule attached to the copy of the summary summons put in evidence. The proceedings appear not to have advanced beyond the stage of the issue of the summary summons. However, the proceedings, which I will refer to as "the DCD proceedings", are of particular relevance to the issues which arise in relation to the first element of the plaintiff's claim against Ms. Farrell. In his affidavit sworn on 23rd July, 2007, to ground the motion to amend the plenary summons, Mr. Martin addressed the issue as to whether there was an overlap between the DCD proceedings and these proceedings. It is for this reason that I believe that there is an error in the perfected order of 2nd July, 2007. He averred that, as regards the claims that remain in these proceedings, they related to the provision of cleaning services by Ms. Farrell at Hollybrook and did not relate to DCD. He averred that, in contrast, the dispute in the DCD proceedings related to invoices provided by Ms. Farrell to DCD for alleged works carried out and alleged services rendered at the request of DCD at various locations, including primarily Hollybrook, but also at Pembroke Lane, Carrickmines Wood and at the home of Mr. Dunne. Further, the DCD proceedings were issued following an audit of services carried out on behalf of DCD in response to the proceedings which Ms. Farrell had commenced against DCD. Mr. Martin averred that DCD considered that it had paid invoices for works and services which were not carried out by Ms. Farrell for DCD. Croskerrys acted for DCD in the DCD proceedings and Mr. Martin exhibited *inter partes* correspondence, which identified the claims being made by DCD for recovery against Ms. Farrell. I will return to that correspondence when dealing with the first element of the plaintiff's claim.

4.6 Finally, Ms. Farrell initiated plenary proceedings in this Court against Mr. Dunne by plenary summons which issued on 25th February, 2008 (Record No. 2008 1531 P). The proceedings centre on an allegation by Ms. Farrell of what is colloquially known as telephone "hacking" by Mr. Dunne of Ms. Farrell's mobile phone in April, 2005. The relief sought by Ms. Farrell in the proceedings is damages for the breach of her constitutional right to privacy and other alleged civil wrongs. The general thrust of Ms. Farrell's evidence was that the vendetta referred to in her defence herein is a response by Mr. Dunne to her complaint to An Garda Síochána of telephone hacking and her proceedings against him on that account. The court was informed that the allegations made against Mr. Dunne in the proceedings are denied by him and that the proceedings are being vigorously defended.

4.7 As was submitted by counsel for the plaintiff, Mr. Dunne, by reason of the ownership by members of his family, whom I understand

to be his children, of five apartments in Hollybrook, and by reason of Mountbrook's ownership of the four apartments which remained unsold, has a legitimate interest in these proceedings taken by the plaintiff. Notwithstanding that, it is impossible to avoid the conclusion that Mr. Dunne had from the start, and continues to have, an ulterior motive for funding these very costly proceedings against Ms. Farrell, although what that motive may be is irrelevant for present purposes. On any objective assessment, the monies outlaid at the direction of Mr. Dunne in bringing these proceedings to hearing are totally disproportionate to what the minority Dunne and Mountbrook membership and interest (less than 20%) in the plaintiff could hope to achieve from the proceedings, even if they were wholly successful.

5. Claim for duplication of invoices: the evidence

5.1 The main witness for the plaintiff, Mr. Martin, identified twelve instances of Ms. Farrell invoicing both the plaintiff and DCD in respect of cleaning services for the common areas at Hollybrook in the same month, which, it was contended, gave rise to duplicate charging for the same work. These instances were extrapolated from a vast volume of paper which was put in evidence. Helpfully, counsel for the plaintiff produced a manuscript summary of this element of the plaintiff's claim on the sixth day of the hearing. I propose outlining in narrative form the evidence in support of the twelve instances in paragraphs (1) to (12) below, in which in subparas. (a) (Hollybrook) and (b) (DCD) are set out the documented charges which Mr. Martin contended duplicate each other. I also consider that it is relevant and convenient to point to other invoices issued by Ms. Farrell to DCD in relation to cleaning services provided at Hollybrook during the months in issue, which will be set out at paras. (c) and (d) where appropriate. The twelve instances are as follows:-

(1)(a) On 3rd October, 2003, Ms. Farrell issued to the plaintiff an invoice for €3,632, which included €432 in respect of VAT, for the provision of "cleaning services to the gym-jacuzzi and the common areas" at Hollybrook.

(b) On the same day, 3rd October, 2003, Ms. Farrell issued to DCD an invoice (Inv. 33) for €3,405, which included €405 in respect of VAT. The latter invoice was headed "Hollybrook" and was itemised as being in respect of supplying "1 lady on the week…8.00am to 2.00pm" for five specified periods between 1st September and 3rd October at €600 per week. The plaintiff claims that this invoice, payment of which was authorised by the signature of DCD's "finishing foreman" at Hollybrook, Mr. Michael Fox, was a duplicate and that it was represented by Ms. Farrell to Mr. Fox as relating to the cleaning of the common areas at Hollybrook. "Duplicate", on the basis of the case made out by the plaintiff, means that it was a duplicate charge for the same service as the plaintiff had charged for on the invoice at (a). That is the sense in which the term "duplicate" is used throughout this judgment.

(c) Ms. Farrell issued another invoice (Inv. 32) to DCD on 3rd October, 2003, in the sum of €1,362, inclusive of €162 in respect of VAT, which related to "cleaning of three show apartments plus common areas" on ten specified dates in September, 2003. This invoice was also signed by Mr. Fox. Although Hollybrook was not mentioned on the invoice, it is accepted by the plaintiff that it related to Hollybrook.

(2)(a) On 31st October, 2003, Ms. Farrell issued to the plaintiff an invoice for €3,632, inclusive of €432 in respect of VAT, for "cleaning services to the gym-jacuzzi and the common areas" at Hollybrook.

(b) On the same day, 31st October, 2003, Ms. Farrell issued to DCD an invoice (Inv. 36) in the sum of €3,632, inclusive of €432 in respect of VAT, which was headed in relation to Hollybrook and itemised as the supply of "1 lady on the week… 8.00am to 4.00pm @ €20.00 per hour" for four periods between 6th October and 31st October at €20 per hour and €800 per period. The plaintiff claims that the latter invoice, which was signed by Mr. Fox, was a duplicate.

(c) As happened in relation to September, 2003, on 31st October, 2003 Ms. Farrell issued another invoice (Inv. 35), which was signed by Mr. Fox, to DCD in the sum of €1,362 plus VAT, in respect of "cleaning of two show apartments plus common areas at Hollybrook" on ten specified days between 3rd October and 1st November, 2003.

(3)(a) On 30th November, 2003, Ms. Farrell issued the usual invoice for "cleaning services to the gym-jacuzzi and common areas" in Hollybrook in the sum of €3,632 inclusive of VAT.

(b) She also issued an invoice (Inv. 43) to DCD in the sum of €4,540 inclusive of VAT for November 2003. The latter invoice, while not referring to Hollybrook, was itemised as supplying one lady on the week from 8.00am to 4.00pm for each of two weeks during November (at €800 per week) and one lady from 8.00am to 8.00pm for the remaining two weeks in November (€1,200 per week). The plaintiff contends that this latter invoice was a duplicate. It was signed by Mr. Fox

(4)(a) The evidence was that the invoice issued by Ms. Farrell to the plaintiff for December, 2003 is missing. However, the plaintiff paid Ms. Farrell €4,540 by cheque in respect of cleaning the common areas during the month of December, 2003. The relevant cheque, a copy of which was put in evidence in the context of the third element of the claim, that is to say, the excess of the contract price element of the claim, was dated 31st December, 2003 and drawn on the plaintiff's account. For some reason, which is not material, there was a notation on it "refer to drawer". The payee was All First. I accept Mr. Martin's evidence as correct that the cheque was intended for Ms. Farrell and was endorsed by All First in her favour and she received payment of €4,540 from the plaintiff.

(b) For the same month, Ms. Farrell issued an invoice (Inv. 46) to DCD in the sum of €3,995, inclusive of €475.20 in respect of VAT. The invoice did not refer to Hollybrook. It was itemised as supplying one lady on the week from 8.00am to 4.00pm for three weeks and for two shorter periods in December 2003 and was charged on the same basis as Inv. 36. The plaintiff contends that this invoice, which was signed by Mr. Fox, was a duplicate.

(5)(a) It was represented that the invoice which issued to the plaintiff in respect of cleaning services at Hollybrook for January, 2004 is also missing. It appears that no payment was made by the plaintiff to Ms. Farrell in January 2004.

(b) Ms. Farrell issued an invoice (Inv. 49) to DCD in relation to Hollybrook for the sum of €3,632, inclusive of €432 in respect of VAT, for January 2004, which was itemised as the supply of one lady on the week from 8.00am to 4.00pm for four weeks and was charged on a similar basis to Inv. 36. That invoice was not signed on its face by Mr. Fox, but there is a note on its face "signed on attached". It is contended that this invoice was a duplicate.

(c) Ms. Farrell issued another invoice (Inv. 50) to DCD in respect of "final cleans" at two apartments at Hollybrook and a property at another location at €50 each, totalling €170.25 inclusive of VAT. There was no authorisation on the face of the invoice but there was a note "signed on attached".

(6)(a) The invoice issued by Ms. Farrell to the plaintiff for February 2004 is also missing. However, I am satisfied that the amounts of the invoices for January and February, 2004 (€3,632 per month) are identified by the cheque for €7,264 by which they were discharged.

(b) An invoice (Inv. 52) dated February, 2004 was issued by Ms. Farrell to DCD for €3,632, inclusive of €432 in respect of VAT. This invoice, which was signed by Mr. Fox, was headed Hollybrook and it was itemised as relating to the supply of one lady on the week from 8am to 4pm, Monday to Friday at €20 per hour for four weeks in February.

(c) At this point the plot thickens, because another invoice (Inv. 53) dated February, 2004 was issued by Ms. Farrell to DCD in the amount of €5,448, inclusive of €648 in respect of VAT. That invoice was itemised as the supply of one lady for five weeks, Monday to Saturday, at €800 per week, without identifying the time of day. A note was put on the invoice, which was date stamped as having been received by DCD on 1st March, 2004, "Not to be paid" and the note was initialled by Mr. Martin Roche, who was then the financial controller of DCD, who testified at the hearing. This invoice was subsequently discharged. Mr. Martin's evidence was that Inv. 52 related to the cleaning of Mr. Dunne's home at Shrewsbury Road, Dublin 4. A letter was put in evidence, also dated February 2004, from Ms. Farrell to Ms. Nicola Dunne, who worked in the Finance Department of DCD at the time, and who also testified. In the letter, Ms. Farrell stated that invoice No. 53 was in fact for "a new housekeeper" for Mr. Dunne, whom Mr. Dunne wanted Ms. Farrell to pay €600 in cash per week and had agreed that Ms. Farrell would charge DCD €800 per week. I am satisfied that Mr. Martin was mistaken in ascribing Inv. 52, rather than Inv. 53, to the cleaning of Mr. Dunne's home.

(d) There was a separate invoice issued by Ms. Farrell to DCD for the cleaning of one apartment, the number of which is identified, on 2nd February, 2004, for €50 plus VAT, making in total €56.75.

(7)(a) The invoice issued by Ms. Farrell to the plaintiff for March 2004 is also missing, but the cheque for €3,632 issued by the plaintiff in respect of the invoice was identified.

(b) Two invoices were issued by Ms. Farrell to DCD in respect of Hollybrook for March 2004, each of which was for €3,632, inclusive of €432 in respect of VAT. Mr. Martin's evidence, which I am satisfied was correct, was that one invoice (Inv. 57), which itemised one lady on the week from 8am to 4pm from Monday to Friday at €20 per hour for four weeks, was a duplicate, whereas the other related to the cleaning of Mr. Dunne's home. The payment of Inv. 57 was authorised by Mr. Fox by his signature.

(c) The other invoice (Inv. 55) was headed "Hollybrook" and was merely itemised as supplying one lady for four weeks from Monday to Saturday at €800 per week, without itemising the weeks, from 1st March to 27th March. Payment of that invoice was authorised by Mr. Roche.

(8)(a) Ms. Farrell issued an invoice to the plaintiff for €4,000, without stipulating VAT, in respect of "cleaning services to gym, jacuzzi and common areas" for April 2004.

(b) For the same month, two invoices were issued to DCD. One (Inv. 61) was for €4,540, inclusive of VAT in the sum of €540, and was itemised as relating to the supply of one lady on the week from 8am to 4pm from Monday to Friday for five weeks specified at €800 per week. The plaintiff's case is that the invoice, which was signed by Mr. Fox, was a duplicate.

(c) The other (Inv. 59) was also €4,540, inclusive of €540 in respect of VAT, and it was similar in format to the March invoice which Mr. Martin's evidence indicated was in respect of the cleaning of Mr. Dunne's home. The plaintiff's case is that this invoice was also in respect of Mr. Dunne's home.

(9)(a) The invoice issued by Ms. Farrell to the plaintiff for May 2004, which was dated 30th May, 2004, merely referred to cleaning services for that month. It was in the amount of €2,724, inclusive of VAT in the sum of €324. I infer that the amount charged reflected the fact that Ms. Farrell had been overpaid by the plaintiff for December, 2003 and made an adjustment for the overpayment.

(b)(c) Two invoices were issued by Ms. Farrell to DCD for May 2004, which followed the pattern of the invoices issued in April, the only difference being that the invoice (Inv. 64) which was itemised per week was in the sum of €4,540, inclusive of €540 VAT, whereas the other invoice (Inv. 67) merely gave a global figure for the four weeks and was for €3,632 inclusive of €432 VAT. Mr. Martin ascribed the invoice in the sum of €4,540 (Inv. 64) to the cleaning of Mr. Dunne's home, and identified the other invoice (Inv. 67) as a duplicate. In my view, that was an incorrect conclusion, in that Mr. Fox signed the invoice for €4,540, whereas Mr. Roche authorised the invoice for €3,632.

(d) A further invoice (Inv. 63) for a "final clean" for a specific apartment in the VAT inclusive sum of €56.75 issued from May, 2004. That invoice was authorised by a person whom I surmise, on the basis of the evidence of Ms. Dunne, was involved in the sale or letting of apartments at Hollybrook.

(10)(a) Ms. Farrell issued an invoice to the plaintiff for €3,632, inclusive of VAT in the sum of €432, which was described as being for "cleaning services to the gym, jacuzzi and common areas" for June 2004.

(b)(c) For the same month, two invoices were issued to DCD, which followed the format of the invoices issued in May and were for similar amounts. This time, the invoice (Inv. 68) for €3,632, which was authorised by Mr. Roche, has been ascribed to the cleaning of Mr. Dunne's home, which appears to be correct, whereas the invoice (Inv. 71) for €4,540, which has been signed by Mr. Fox, has been identified by Mr. Martin as a duplicate.

(11)(a) Ms. Farrell issued an invoice in what was then the usual format to the plaintiff for July 2004 in the sum of €3,632 inclusive of VAT.

(b) For the same month, an invoice (Inv. 73) for €3,632 was issued by Ms. Farrell to DCD and that the invoice was in the itemised format and was signed by Mr. Fox. It has been designated a duplicate by the plaintiff.

(c) Another invoice (Inv. 76) for €567.50, inclusive of VAT, which issued to DCD for cleaning services for Hollybrook for July 2004, was processed and discharged by the Finance Department of DCD, although no specific authorisation is apparent on its face.

(12)(a) Finally, in August 2004, an invoice for €3,632, inclusive of €432 VAT, in what was then the usual format, was issued by Ms. Farrell to the plaintiff.

(b) An invoice (Inv. 79) for the same amount, €3,632, inclusive of €432 VAT, signed by Mr. Fox, was submitted by Ms. Farrell to DCD. This invoice has been identified as a duplicate by Mr. Martin on behalf of the plaintiff.

(c) Another invoice (Inv. 75) for €113.50, inclusive of VAT, also issued in August to DCD for "final cleans" at Hollybrook and another location and was authorised by Mr. Fox.

5.2 As will be clear from what I have stated above, I did not find the evidence of Mr. Martin as to the ascription of certain invoices issued to DCD to the cleaning of Mr. Dunne's home and others as representing a duplication of the invoices for cleaning the common areas at Hollybrook which issued to the plaintiff wholly reliable, although I had little difficulty in correcting it. Mr. Fox testified that, in relation to the invoices issued by Ms. Farrell to DCD outlined above which he signed, he was told by Ms. Farrell that they were in respect of the cleaning of the common areas at Hollybrook. That was denied by Ms. Farrell. Her evidence was that, apart from the invoices which she issued to DCD in respect of the cleaning of Mr. Dunne's home, the invoices which she issued to DCD in the period in issue were in respect of cleaning services she provided at Hollybrook other than for the common areas. Her evidence was that the additional cleaning services were provided by her at the direction of Mr. Fox and that, accordingly, there was no duplication of billing. As regards the invoices issued by her to DCD in respect of the cleaning of Mr. Dunne's home, her evidence, which I do not accept, was that this practice dated back to September 2003 and that the invoices which had been presented by her as relating to Hollybrook and which referred to the provision of services of one lady from 8am to 4pm all related to the cleaning of Mr. Dunne's home. An examination of the relevant invoices and the corresponding payments dispels that theory and all other theories advanced by Ms. Farrell in support of her contention that there was no duplication. An examination of the invoices and payments made by DCD to Ms. Farrell discloses another matter worth recording. Two cheques, which aggregated €37,509.46, were issued on 6th July, 2004 by DCD to Ms. Farrell and covered, *inter alia*, the invoices which I consider as being correctly ascribed as duplicates for April and May 2004 (Invs. 61 and 64) and the invoices which I consider as being correctly ascribed to the cleaning of Mr. Dunne's home for February, March, April and May 2004 (Invs. 53, 55, 59 and 67). Mr. Roche's evidence was that at a meeting of 5th or 6th July, 2004, he was instructed by Mr. Dunne to discharge those invoices.

5.3 Hours of court time were spent in the course of the hearing scrutinising the invoices and testing the credibility of the witnesses. Some general observations are apt. It is true that, in assessing the evidence of the alleged duplicate charging for each month from September 2003 to August 2004, it has to be borne in mind that Mr. Martin had no personal involvement in the affairs of the plaintiff or Hollybrook at the time, so that his knowledge of invoicing by Ms. Farrell can only be based on what appears on the face of the invoices and on payments actually made by the plaintiff and DCD to Ms. Farrell. In relation to the invoices issued to DCD and branded as duplicates by Mr. Martin, as I have stated, there is a conflict between the evidence of Mr. Fox, on the one hand, and of Ms. Farrell, on the other hand. Apart from Mr. Fox, the only other employee of DCD whose authorisation of payment to Ms. Farrell appears on the face of invoices issued by her was Mr. Roche. The credibility of both Mr. Fox and Mr. Roche was challenged by the opposition, in the case of Mr. Fox, in my view, in a wholly "over the top" manner on behalf of Ms. Farrell. The fact is that Mr. Fox has an ongoing working relationship with companies connected with Mr. Dunne and with Mr. Dunne personally in relation to the unsold apartments at Mountbrook and otherwise. However, documentation is available against which his evidence can be assessed for consistency and reliability. While I am satisfied that Mr. Roche, who left the employment of DCD in May 2005 by agreement, following suspension in February 2005 and legal proceedings brought by him against DCD, has, as the saying goes, "an axe to grind" against Mr. Dunne, his evidence can also be assessed for consistency and reliability against the documentation available.

5.4 Invoices submitted by Ms. Farrell's husband, Michael Farrell, to the plaintiff for the maintenance of the jacuzzi and gym equipment at Hollybrook charging €1,000 per month for the months of August 2003 to February 2005 inclusive, which were discharged by the plaintiff, were also put in evidence and subject to scrutiny. The VAT registration number of Ms. Farrell's son, Aaron Farrell, who was a minority shareholder in All First before it was struck off the register, appears on the invoices and is represented as being Michael Farrell's "Registration Number". While the monthly charge of €1,000 on the invoices appears to have been a VAT exclusive charge, the misrepresentation on the invoices certainly raises a question as to the reliability of the supervision by All First, in the person of Ms. Farrell and Mr. Lancaster, of charging for services at Hollybrook to the plaintiff.

5.5 Having regard to the foregoing, I have come to the conclusion that the most reliable approach to determining whether, as a matter of probability, Ms. Farrell charged both the plaintiff and DCD for the same work, as alleged by the plaintiff, is by reference to the documentary evidence put before the Court, in particular, the invoices issued by Ms. Farrell to the plaintiff and to DCD, and the evidence available in respect of the payments made on foot of those invoices, when assessed against the stage of the development at Hollybrook at the relevant time. As I have made clear, I have no doubt that Mr. Martin's evidence in relation to the relevant invoices to be ascribed to the cleaning of Mr. Dunne's house for both the months of February 2004 and May 2004 was incorrect, in that relevant invoice for February 2004 was invoice No. 53 in the sum of €5,448 and the relevant invoice for May 2004 was invoice No. 67 in the sum of €3,632.

5.6 There is tabulated hereunder for each month from September 2003 to August 2004:-

(a) the payments made by the plaintiff to Ms. Farrell in respect of the common areas at Hollybrook (column 2),

(b) the payments made by DCD to Ms. Farrell in respect of cleaning of Mr. Dunne's house, adjusted to correct the mistake in Mr. Martin's evidence, identifying related invoices (column 3) and,

(c) other payments made by DCD to Ms. Farrell, which are alleged to duplicate the payments made by the plaintiff to her in respect of the common areas at Hollybrook, similarly adjusted to correct the error in Mr. Martin's evidence, identifying related invoices (column 4).

1	2	3	4

Month	Payments by plaintiff in respect of common areas at Hollybrook	Payments by DCD in respect of cleaning Mr. Dunne's house (adjusted)/invoice	Other payments by DCD alleged to duplicate the payments in column 2 (adjusted)/invoice
	€	€	€
September 2003	3632		3405 (Inv. 33)
October 2003	3632		3632 (Inv. 36)
November 2003	3632		4540 (Inv. 43)
December 2003	4540		3995 (Inv. 46)
January 2004			3632 (Inv. 49)
February 2004	7264	5448 (Inv. 53)	3632 (Inv. 52)
March 2004	3632	3632 (Inv. 55)	3632 (Inv. 57)
April 2004	4000	4540 (Inv. 59)	4540 (Inv. 61)
May 2004	2724	3632 (Inv. 67)	4540 (Inv. 64)
June 2004	3632	3632 (Inv. 68)	4540 (Inv. 71)
July 2004	3632		3632 (Inv. 73)
August 2004	3632		3632 (Inv. 79)
Total	43952	20884	47352

While I have not tabulated the additional charges by Ms. Farrell to DCD which I have recorded in para. 5.1 above, for example, in relation to "final cleans", they aggregate €2,213.25 over the period. During the same period, All First, which in reality was Ms. Farrell, was being paid a management fee by the plaintiff for managing Hollybrook.

5.7 The figures set out in column 2 in the above table are taken from the list of payments put in evidence by Mr. Lancaster, who, at the age of 22 when he was a trainee accountant, started assisting Ms. Farrell in making her VAT and income tax returns and preparing, on behalf of All First, the records on the basis of which the financial statements for the plaintiff would be constructed, and who testified on behalf of the plaintiff. I am satisfied the list is accurate. In relation to the information in that column, as I have already recorded, the invoices in relation to December 2003 and January, February and March 2004 are missing. Obviously, as I have already narrated, the payment of €7,264 opposite February 2004 covered both January and February 2004, as Ms. Farrell was invoicing the plaintiff for the common areas for each month in the amount of €3,632 (inclusive of VAT in the sum of €432). Similarly, as I have already narrated, it is obvious that there was an adjustment in the May 2004 payment for an overpayment in December 2003. There is no obvious explanation for the amount of €4,000 invoiced for April 2004, which, as I have recorded, does not on its face include a charge for VAT.

5.8 Features common to the surviving eight invoices on foot of which the payments in column 2 were made are as follows:

> (a) With one exception, they are addressed to a variation of the name of the plaintiff, for example "Hollybrook Management Co." or "Hollybrook Brighton Road Management Company", the exception being the invoice for November 2003, on which no addressee appeared.
>
> (b) All of them, with one exception, particularise the services provided as "cleaning services to gym-jacuzzi area and common areas", the exception being the invoice for May 2004, which, as I have inferred, adjusted an overcharge for December 2003, and which merely refers to cleaning services for May 2004.
>
> (c) Payment on foot of the invoices was not, on their face, authorised by the signature of any person.
>
> (d) The first of the invoices, that is to say, the invoice for September 2003, the issuer of which was named as All First, included particulars which do not appear on the later invoices, in that it referred to "Monday to Friday 8.00 am to 4.00 pm for September". Ms. Farrell's evidence was that that invoice was for the cleaning of Mr. Dunne's home. I do not consider that her evidence was correct in that regard.

It is interesting to note that the invoices available in respect of the payments in column 2 for each month from September 2003 to August 2004 include a claim for VAT but a VAT number appeared for the first time as part of the content of the invoice much later, on the invoice for August 2005, which was dated 31st August 2005, although there are some instances in which a VAT number appears printed at the foot of the letter heading on which the invoice was typed. I surmise that the explanation of the change in August 2005 is that, as he testified, after the row broke out between Ms. Farrell and Mr. Dunne in May 2005, Mr. Lancaster began taking over Ms. Farrell's role in relation to bringing invoices to Mr. Martin. I surmise that he was responsible for the August 2005 invoice and subsequent invoices issued to the plaintiff.

5.9 Mr. Martin's evidence in relation to the invoices from Ms. Farrell for the provision of cleaning services at Mr. Dunne's home, which DCD discharged, was not merely unsatisfactory because it was incorrect in the respects which I have identified. Having regard to the manner in which the evidence emerged, I consider that there was an aura of reticence about those payments, which was not designed to give the court the full picture. In relation to the invoices itemised in column 3 of the table, invoice 53, was accompanied by the letter, which was dated February 2004, from Ms. Farrell to Ms. Dunne at the Finance Department of DCD referred to earlier. As I have recorded, that invoice was itemised as "to supplying" one lady from Monday to Saturday for six identified weeks in January and February 2004 at €800 per week, and it was marked by Mr. Roche "not to be paid". However, subsequently that notation was scribbled out, but Mr. Roche's initials remained. The subsequent invoices in column 3 (invoices 55, 59, 67 and 68) were all particularised as relating to the supply of one lady for either four or five weeks from Monday to Saturday at €800 per week, but without itemising on a weekly basis. In short, the five invoices, in format and content, are fundamentally consistent with each other. With the exception of invoice 68 relating to June 2004, they were discharged by one or other of the July cheques. I infer that, with the approval of Mr. Dunne, Mr. Roche ultimately authorised payment of the first invoice (Inv. 53), because his initials remained on the invoice. He certainly authorised the payment of the remaining four invoices by initialling them.

5.10 Returning to the letter which accompanied the first invoice in column 3 (Inv. 53), that letter suggests that the payment for

cleaning services at Mr. Dunne's home through the medium of Ms. Farrell occurred because the cleaner or housekeeper who was carrying out the work could not be legally employed, because she was a non-national who did not have a work permit. The evidence of Mr. Roche was that he raised with Mr. Dunne the issue of the invoices which related to the cleaning of Mr. Dunne's home, because he considered that they should not be charged to DCD, suggesting in his testimony that there were "benefit in kind" and "VAT reclaim" considerations involved. Mr. Dunne's position, as put to Mr. Roche in cross-examination, was that an issue arose with Ms. Farrell around June or July 2004 that she was charging Mr. Dunne €800 per week, rather than the agreed figure of €600 per week, for the cleaning services in relation to his home. Copies of two memoranda, dated respectively 24th June, 2004 and 28th June 2004, from Mr. Roche to Mr. Dunne dealing with the breakdown of the sum of €800 per week, were put before the Court. The two memoranda are certainly consistent with a query having arisen as to the basis of a charge of €800 per week, but beyond that they do make a lot of sense. I am at a loss to understand why Mr. Roche should have made available to Ms. Farrell copies of internal memoranda to his superior in DCD, Mr. Dunne, which enabled her to produce them at the hearing, unless Mr. Roche had an ulterior motive in so doing. Mr. Dunne chose not to give evidence or to subject himself to cross examination, so Mr. Roche's evidence as to what transpired between him and Mr. Dunne remains uncontradicted. Equally inexplicable is the fact that, subsequently, Mr. Roche, at a time when he was still employed by DCD as its financial controller, signed "per pro" Ms. Farrell, a covering letter on Ms. Farrell's letter heading to the Department of Enterprise, Trade and Employment dated 24th September, 2004, enclosing an application for work permits for two Romanian nationals. In any event, on the totality of the evidence before the Court, including Ms. Farrell's letter dated February 2004, in my view, it is reasonable to infer that the objective of Mr. Dunne's involvement of Ms. Farrell in relation to the cleaning of his home at the time to which the invoices in column 3 of the table relate was to ensure that Ms. Farrell, and not Mr. Dunne, would be retaining and would be seen to be retaining the individual who rendered the services, who did not have a work permit.

5.11 Mr. Martin's evidence was that the amounts paid by DCD to Ms. Farrell in respect of cleaning services at Mr. Dunne's home were recharged by DCD to Mr. Dunne. However, no documentary evidence to corroborate that was put before the Court.

5.12 The invoices issued by Ms. Farrell to DCD, which are set out in column 4 of the table, or some of them, share the following common features:-

> (a) With the exception of the invoice for the month of January 2004, which, as I have recorded, contained a note "signed on attached", all of the invoices were signed by Mr. Fox.
>
> (b) All of the invoices related to supplying one lady per week for five days in each week in the relevant month. Some differences are apparent on the face of the invoices. On the first invoice for September 2003 (Inv. 33), the time of attendance is shown as 8am to 2pm and the rate per week is shown as €600, whereas on most of the other invoices the time of attendance is shown as 8am to 4pm, the hourly rate is shown as €20, and the weekly rate is shown as €800.
>
> (c) The invoices for April 2004 (Inv. 61) and May 2004 (Inv. 64) were discharged by one or other of the two cheques in July 2004.

5.13 As I have stated, Mr. Roche's evidence was that the payments included in the July cheques were specifically authorised by Mr. Dunne at a meeting on the 5th or 6th July, 2004. There is no doubt that payments due to Ms. Farrell on foot of invoices submitted by her to DCD, including invoices in relation to the provision of cleaning services at Mr. Dunne's home and other services provided by her, were in arrears at that time. One would assume that both Mr. Roche and Mr. Dunne would have been satisfied that the payments claimed were due by DCD to Ms. Farrell before they authorised the payments. The first element of the plaintiff's case against Ms. Farrell, as presented to the court, is that the payments listed in column 4 were not due, because they were falsely represented by her to Mr. Fox as being in respect of cleaning the common areas at Hollybrook, while she was contemporaneously invoicing the plaintiff for the same work. As I have recorded above, Ms. Farrell's answer is that the invoices in column 4 related to additional work at Hollybrook directed by Mr. Fox to be carried out by her, insofar as they did not relate to cleaning services provided for Mr. Dunne's home.

5.14 For a number of reasons, I have come to the conclusion that Mr. Fox's evidence that Ms. Farrell told him that the invoices in column 4 related to the common areas at Hollybrook is to be preferred to that of Ms. Farrell. First, as the narrative at 5.1 above discloses, during the period in issue, from September 2003, to August 2004, Ms. Farrell issued separate invoices in respect of cleaning a specific number of show apartments on specific days, presumably days on which they were on view, and in respect of "final cleans" in relation to identified apartments. One would expect that, if Mr. Fox, on behalf of DCD, directed specific cleaning work, in addition to the cleaning of the common areas for which the plaintiff had become responsible, invoices in respect of that work would particularise the directions given and the breakdown of the price charged. The invoices listed in column 4 of the table all follow a pattern and I find it impossible to conclude that they related to specific additional work directed to be carried out by Mr. Fox. Secondly, apart from that, by September 2003, the construction work at Hollybrook was largely completed. The external site office was removed in September 2003 and thereafter Mr. Fox used an apartment as his office. Moreover, what are referred to in the building trade as "builder's cleans", that is to say, major cleaning following construction work, were carried out by a specialist contractor at Hollybrook, not by Ms. Farrell. In my view, it is inconceivable that Hollybrook could have required €47,352 worth of cleaning services from Ms. Farrell from September 2003 to August 2004, in addition to the services provided to the plaintiff, which cost the plaintiff €43,952, as well as the specific services supplied in relation to show apartments and "final cleans". Finally, I found Ms. Farrell's evidence in relation to the work to which the invoices referred to in column 4 related casual, contradictory and wholly unreliable.

5.15 No doubt, with a little time and patience, one could explain why the charges to DCD set out in column 4 of the table aggregate €3,400 more than the charges to the plaintiff set out in column 2. I find it unnecessary to do so, although I have commented on the other peculiar amount of €4,000 charged to the plaintiff for April 2004 recorded in column 2 and I note that, although the amount charged to DCD for May 2004 (Inv. 64) represents a charge for five weeks, only four weeks are itemised on the invoice and the aberration was obviously only noted after payment was made. Notwithstanding the difference in the totals of the amounts set out in columns 2 and 4, on the totality of the evidence, I am satisfied that Ms. Farrell charged both DCD and the plaintiff in relation to the cleaning services of the common areas which she was contractually bound to provide to the plaintiff for the period from September 2003 to August 2004.

6. Recovery for duplicate charging: the proper plaintiff

6.1 There are many features of this case which are incomprehensible. I cannot understand why Mr. Dunne chose Ms. Farrell, who had absolutely no experience of the management of a multi unit residential property development, and who was assisted by Mr. Lancaster, who had no experience either, to manage the Hollybrook residential complex. I cannot understand how within 67 Merrion Square, Mr. Gleeson, on behalf of the plaintiff, and its Accounts Department, on behalf of the DCD, managed to pay Ms. Farrell twice for the same work – clearly an example of the right hand not knowing what the left hand was doing. This is all the more bewildering, as the evidence clearly establishes that, at the material time, Mr. Dunne exercised ultimate control over payments to be made on behalf of

DCD. However, the aspect of the case which I find most incomprehensible is why it is considered that the plaintiff, rather than DCD, should recover from Ms. Farrell in respect of the duplicate charging.

6.2 What the evidence establishes beyond doubt is that from May 2003 responsibility for the maintenance and cleaning of the common areas at Hollybrook passed from DCD to the plaintiff, although in the first three months to 1st August 2003, the costs were defrayed by DCD but subsequently recouped by DCD from the plaintiff. In fact, it was stated clearly and unequivocally in the first audited financial statements of the plaintiff for the fourteen month period to 30th June, 2004, which were signed by the directors and the auditors of the plaintiff in December 2004, that the plaintiff had "started to trade in May 2003 as a property management company". The detailed trading, profit and loss account for that period shows a sum of €46,630 in respect of cleaning, which I assume included such of the figures in column 2 of the table above as related to that financial period. There is absolute consistency on the evidence that there was a contractual arrangement between the plaintiff and Ms. Farrell with effect from 1st August, 2003 for the provision to the plaintiff of cleaning services for the common areas at Hollybrook by Ms. Farrell. In accordance with that contractual arrangement, Ms. Farrell invoiced the plaintiff for the cleaning services for August 2003 and for each subsequent month until March 2006, including the twelve months in issue on this element of the claim, and the invoices were discharged by the plaintiff.

6.3 A very simple submission was made by counsel for Ms. Farrell in closing on this element of the plaintiff's claim. It was that it is not properly before the court, because what had been pleaded was that the plaintiff was "overcharged and/or double charged", not that both the plaintiff and DCD were charged for the same work. Counsel for the plaintiff, on the other hand, had to deploy a considerable degree of ingenuity to meet the obvious proposition that it was DCD which suffered loss by reason of the duplication of charging for cleaning the common areas, and, therefore, that it is DCD which has a claim for recovery against Ms. Farrell. It was submitted that it was an implicit term of the contract between the plaintiff and Ms. Farrell that, if DCD continued to be invoiced, the plaintiff would not be invoiced and that, accordingly, Ms. Farrell was in breach of her contract with the plaintiff in invoicing the plaintiff at the same time as invoicing DCD. An alternative argument was that, by telling Mr. Fox that the invoices issued to DCD were for the common areas, Ms. Farrell perpetrated a deliberate deception. The presentation of invoices to the plaintiff involved deception, it was contended, and misrepresentation, in that Ms. Farrell represented that each sum claimed was properly due and that she was not charging DCD as well. The deceit or misrepresentation involved was that she concealed the relevant information in order to be paid by the plaintiff, in consequence of which a loss ensued to the plaintiff.

6.4 Those submissions by counsel for the plaintiff do not stand up to scrutiny. The plaintiff and DCD are, and have always been, separate legal entities. Having assumed liability for the common areas at Hollybrook and having entered into the contractual relationship with Ms. Farrell to provide cleaning services during the period in issue, as reflected in the audited financial statements of the plaintiff for the period ending on 30th June, 2004, the plaintiff cannot claim that it had no liability to Ms. Farrell for the cleaning services she provided, because she also charged a separate and distinct legal entity for those services. The loss which ensued from the fact that DCD was charged, as well as the plaintiff having been charged, for the cleaning services provided by Ms. Farrell in relation to the common areas at Hollybrook during the period in issue is DCD's loss. The plaintiff cannot maintain a claim in respect of that loss.

6.5 That brings me back to Mr. Martin's affidavit of 23rd July, 2007 and the correspondence exhibited therein. It is clear from the correspondence which passed from Croskerrys to Ms. Farrell's solicitors that the sum of €66,260 plus VAT claimed in the DCD proceedings includes every invoice which is set out at column 4 of the table above, in most cases to the full extent of the amount claimed in the invoice. Accordingly, Mr. Martin's affidavit was misleading in asserting that there was no overlap between the plaintiff's claim in these proceedings and DCD's claim in the DCD proceedings. In these proceedings, the plaintiff's case is that the payments in column 2 were made by the plaintiff and that the payments in column 4 were made by DCD for the same services rendered by Ms. Farrell, who is being sued by the plaintiff in these proceedings and by DCD in the DCD proceedings. Therefore, in my view, the claims do overlap. However, it is not open to DCD, as a separate limited liability company, to forgo its claim and to allow the plaintiff to recover from Ms. Farrell. The liability to Ms. Farrell at the relevant time for payment of the invoices for the services rendered in respect of the common areas at Hollybrook lay with the plaintiff, not with DCD. Most bizarrely, the sum claimed in the DCD proceedings also covers the five invoices set out in column 3 of the table and, in the correspondence exhibited, Croskerrys contended that Ms. Farrell invoiced DCD for a debt properly due and owing by Mr. Dunne, DCD's managing director, and sought recovery of that sum from Ms. Farrell. It would appear that Croskerrys were not told what the court was told – that DCD recharged the relevant amounts to Mr. Dunne by charging his loan account at the end of the year, as Mr. Martin testified on the eleventh day of the hearing.

6.6 The first element of the plaintiff's case fails because, while I have found that Ms. Farrell duplicated the charges for the services she provided in respect of the common areas in Hollybrook, DCD is the proper plaintiff to recover the sums paid by it as it is seeking to do in the DCD proceedings.

7. Claim in respect of altered records

7.1 The opening sally in the dispute between the plaintiff and Ms. Farrell, trading as Gina Farrell Cleaning Services, which led to her joinder in these proceedings, appears to have been a letter dated 2nd March 2006 from Mr. Martin, in his capacity as a director of the plaintiff, to Ms. Farrell, in which Mr. Martin made two complaints in relation to the non availability of cleaners during mid morning on 23rd and 24th February, 2006, because, it was asserted, on each occasion, Ms. Farrell's two cleaners were cleaning a private apartment which was not part of the common or communal areas. In that letter, Mr. Martin requested that Ms. Farrell produce a daily schedule for the period from November 2005 to February 2006 inclusive, showing the number and names of cleaners supplied for cleaning the common areas, the time they started and finished cleaning and so forth.

7.2 Ms. Farrell's response to Mr. Martin, which was obviously mistakenly dated 6th February, 2006, rather than 6th March, 2006, was to the effect that her contract was for cleaning the common areas, and that it did not specify hours or duration but merely specified that the common areas must be cleaned between Monday and Friday. She declined to provide the schedule requested. Prior to that, Mr. Martin had written to Ms. Farrell, in her capacity as representing All First, stating that it had come to his attention that the concierge logs for 2003 and 2004 were missing from Hollybrook and requesting their immediate return. As she admitted in her evidence in chief, sometime in January 2006, Ms. Farrell had taken the concierge logs from the storeroom in Hollybrook. She subsequently altered the entries to show attendance by cleaners on days and at times which had not been recorded by the relevant concierge at the relevant time. By letter dated 31st January, 2006 to Mr. Martin at the Accounts Department of the DCD, Ms. Farrell produced what she described as an "independent analysis" by "Percision (sic) Accountancy Services" of all bills in relation to Hollybrook, which, she contended, showed that all bills raised were correct and that, in fact, under-billing had occurred.

7.3 However, it was not until the twelfth day of the hearing that Ms. Farrell admitted that she made alterations to the concierge logs, which she represented as a "tidying up" operation. In addition to a denial in the defence that she altered the concierge logs, in an

affidavit sworn by her on 15th July, 2010, which was filed on the motion for security for costs, Ms. Farrell averred as follows:

> "Further your deponent strenuously denies that there was any alteration of records to give the impression that there were two cleaners present on the relevant days when there was only one or none present."

I find that averment to be untrue. The only reasonable inference which can be drawn from the fact that Ms. Farrell made alterations in January 2006 in relation to the presence of cleaners at Hollybrook in 2003, 2004 and 2005 is that her motivation was to mislead any person examining the logs on behalf of the plaintiff. It strains credulity that Ms. Farrell could have believed that the concierges on duty between September 2003 and February 2006 would have mistakenly failed to record 336 instances of attendance by her cleaners and that she was capable of accurately rectifying their omissions in early 2006. Further, the so called "independent analysis" referred to above, which was based on the altered logs, was a further attempt to mislead. Ms. Farrell acknowledged that Precision Accountancy Services was none other than Mr. Roche. Mr. Roche acknowledged in cross examination that "Precision Accountancy Services" was merely a trade name he made up for the purpose of disguising the fact that he was acting for Ms. Farrell.

7.4 No loss accrued to the plaintiff arising from the act of falsification of the logs by Ms. Farrell other than the wasted costs which were incurred by the plaintiff in obtaining expert advice from Dr. Audrey Giles, a forensic scientist practising in the United Kingdom, whose speciality is scientific examination of documents and handwriting, and in calling her as a witness. While, I found Dr. Giles's evidence, which took up a full day of the hearing, convincing, in view of the admission ultimately made by Ms. Farrell, I have not had to rely on it. If Ms. Farrell had not made the false averment in the affidavit of 15th July, 2010, and had admitted that she had altered the logs when it became an issue, the retainer of Dr. Giles would have been unnecessary. However, the plaintiff has not formulated a claim for damages in respect of those costs, although, of course, an issue may arise in relation to them when liability for the costs of these proceedings is being determined.

7.5 The sums claimed in the statement of claim arising from the alteration of the logs (€19,035 and €4,640) represent the amounts by which it is contended that the plaintiff was overcharged if, in order to be contractually entitled to be paid €3,200 per month (net of VAT) or €28,800 per year, the relevant contractual rate being in dispute, for the cleaning services provided, Ms. Farrell was obliged to have two cleaners in attendance at Hollybrook cleaning the common areas from Monday to Friday in each week from 9am to 1pm and the record of attendance in the logs prior to the alterations made by Ms. Farrell represents the actual attendance by Ms. Farrell's cleaners at Hollybrook, which would have fallen short of her contractual obligation. In other words, in essence, the basis of this element of the claim is that the loss contended for arose from an alleged breach of contract.

7.6 The calculation of the loss was carried out on behalf of the plaintiff by Mr. Kieran Wallace, a partner in KPMG, which firm was auditor of certain companies in the Mountbrook Group at the time. Mr. Wallace's brief, in addition to advising on the financial impact of the alterations to the logs and the apparent non attendance by cleaners, was to calculate the loss accruing from the duplicated invoicing in the period from September 2003 to August 2004, that is to say, the first element of the plaintiff's claim. He made the reasonable assumption, on the basis of his instructions, that the loss arising from duplication was the amount actually paid to the plaintiff, that is to say, the total which appears at the bottom of column 2 in the above table, €43,952. He was right in assuming that only one set of invoices could be justified. However, as I have held, it was the plaintiff which, as a matter of law, was liable to discharge the one set of invoices, so it incurred no loss as a result of the double charging. It was DCD which was wronged and incurred loss as a result. In assessing the financial impact based on the logs in their original form, Mr. Wallace, properly on the basis of the assumption he had made, omitted the period covered by the first element of the case and made an assessment in relation to the period from September 2004 onwards. One could not quibble with the methodology he employed to calculate the loss, if Ms. Farrell was in breach of her contractual obligations, on the basis of the assumptions he made in reliance on Mr. Martin's instructions. Indeed, in his report, which was put in evidence, in summarising the financial impact of the alterations to the logs, there was implicit a *caveat*, in that he stated:-

> "In summary, if the amounts invoiced by [Ms. Farrell] were assumed to rely solely on evidence of attendance recorded on the concierge log, it appears that the effect of the alterations has been to overcharge Hollybrook."

7.7 Mr. Wallace then summarised the amount of the overcharging from August 2004 to February 2006 in a table which followed and quantified it at €19,180. Understandably, Mr. Wallace applied the same assumptions in relation to non-attendance. In calculating the financial impact of apparent zero attendance of cleaners on certain occasions, the figure he arrived at was €3,040.

7.8 The real issue, of course, is whether the instructions given to Mr. Wallace were correct and whether one can conclude that Ms. Farrell was in breach of her contractual obligations and, if so, to what extent. I propose considering the evidence in relation to that question in conjunction with the evidence relating to the third element of the plaintiff's claim, the alleged overcharging on the basis of the yearly contract price.

8. Contractual terms: the evidence

8.1 Apart from the invoices issued by Ms. Farrell to the plaintiff and the payment cheques issued by the plaintiff on foot of those invoices, the only documentary evidence adduced in relation to the terms on which Ms. Farrell was retained to provide cleaning services at Hollybrook is correspondence and draft contracts which passed between Mr. Lancaster, on behalf of All First and Ms. Farrell, and Mr. Gleeson, on behalf of the plaintiff, in February and March 2005. To put that documentation in context, the first Annual General Meeting of the plaintiff was held on 2nd February, 2005. The meeting was chaired by Mr. Gleeson and Mr. Halpenny was also present. The plaintiff's financial year ends on 30th June in each year. The projected costs to 30th June, 2005, were discussed at the meeting and adopted. It was agreed that a budget for the year ending 30th June, 2006, would be provided to members with notice of the service charge. I think it is reasonable to infer that the Annual General Meeting was the catalyst for what transpired a short time later between Mr. Gleeson and Mr. Lancaster.

8.2 By letter of 28th February, 2005, on the letter heading of All First, Mr. Lancaster sent a number of documents to Mr. Gleeson, including a draft contract for cleaning services and a draft contract for property management services. The Court is not concerned with the latter draft, as All First no longer exists and the case against it no longer exists. The draft contract between the plaintiff and Gina Farrell Cleaning Services merely recited that the plaintiff had agreed "that [Ms. Farrell] provide cleaning services to the apartments at Hollybrook . . . at an annual contract price at €36,000 for one year commencing at the date of this contract". The date on the contract was 28th February, 2005. It is hardly surprising that Mr. Gleeson considered that the draft was lacking in specific details. By e-mail dated 2nd March, 2005 to Mr. Lancaster, which was copied to Mr. Halpenny, he requested "an updated contract setting out precisely what the services are . . . (i.e. number of cleaners, areas covered, hours per day, days per week, responsibility for materials etc)". He then set out the following:

"Fee 2004 €2,400 per month = €28,800 per annum

Proposal 2005 €3,000 per month = €36,000 per annum

Max available €2,400 per month = €28,800 per annum"

Following that, he stated that, based on the historic levels which were charged and which were deemed to be high, and subject to the details to be provided in the contract, "we believe that a fee of €28,800 per annum is appropriate".

8.3 In response to that e-mail, Mr. Lancaster sent what only can be described as a fairly amateurish draft contract to Mr. Gleeson, which contained the following provision:-

> "[Ms. Farrell] will be appointed as the cleaning agent to ensure all common areas are cleaned on a daily basis, with [Ms. Farrell] providing two cleaning ladies from 09.00 hrs to 13.00 hrs, to include all cleaning materials and detergents for a term of one year from 01 March 2005 to 28 February 2006 at an agreed annual fee of €28,800."

There followed a number of specific provisions in relation to the nature of the work to be carried out, including a provision that each day "the jacuzzi must be extensively sprayed to remove body fat from the equipment to avoid legionnaire's disease".

8.4 On the basis of that evidence, the plaintiff's case is that the contract price for Ms. Farrell's cleaning services was historically €28,800 per annum and that after 1st March, 2005 it remained at €28,800 per annum. There was a lack of clarity as to whether that figure was inclusive or net of VAT. I am satisfied that there was no follow through on the correspondence after the 2nd March, 2005 and that Ms. Farrell did not execute a contract in the form of the second draft presented by Mr. Lancaster. Ms. Farrell's evidence was that she was never aware of that draft contract and that Mr. Lancaster never discussed it with her.

8.5 The evidence of Mr. Halpenny, who, as I have recorded, was a director of the plaintiff from its incorporation until he resigned in 2009, on behalf of the plaintiff, was that the arrangement between the plaintiff and Ms. Farrell in relation to the provision of cleaning services was that she was to maintain and keep clean the common areas by providing two cleaners every working day, Monday to Friday, in the morning, that is to say, for half the day. His evidence was that the second draft contract furnished by Mr. Lancaster in March 2005 was founded on the existing position and reflected the existing arrangement. Although, counsel for the plaintiff read out the text of the draft contract which I have quoted at para. 8.3 above, including the reference to an agreed annual fee of €28,800, in regard to Mr. Halpenny's evidence, I believe the focus of his evidence was on the provision in relation to providing two cleaning ladies, rather than on the contract price. The basis for that belief is that my note of his evidence in chief is that he stated at the outset that the fact that Ms. Farrell was being paid €3,200 per month plus VAT reflected the requirement for the provision of two cleaners for the working days of the week for half a day. Mr. Halpenny wholly rejected a suggestion put to him in cross examination that no express terms were agreed with Ms. Farrell in relation to the provision of two cleaners for a specific period from 9.00 am to 1.00 pm and that her cleaners could do the work at any time. His evidence was that, as a director of the plaintiff, he would not have tolerated that. From his perspective it was important that two cleaners be seen to be at Hollybrook. His only evidence of a complaint having been made in relation to the quality of the cleaning service being provided by Ms. Farrell was that a point had arisen at the first Annual General Meeting of the plaintiff referred to above, as reflected in the minutes of the meeting, that the cleaning service was to be carefully monitored "as the standards appear to have slipped". He acknowledged that that was no more than a minor complaint. Apart from the complaints in the letter from Mr. Martin in his letter of 2nd March, 2006, there was no evidence before the Court of any other complaints in relation to the quality of the service provided by Ms. Farrell in relation to the cleaning of the common areas at Hollybrook between the beginning of August 2003 and the end of February 2006, other than Ms. Farrell's rather farcical evidence that, while there were never any complaints about her cleaning, one occupant of Hollybrook informed her that she would like her to get a vacuum cleaner which would produce lines going up and down the carpet such as the lines produced by a lawnmower!

8.6 Mr. Gleeson, who ceased to be a director of the plaintiff in May 2005, when testifying on behalf of Ms. Farrell, understandably stated that the question of the provision of two cleaners for five days a week did not stand out in his mind. He made the point that it was Mr. Halpenny who was the contracts manager at the time, and that that sort of detail would have been his job. In cross-examination, he accepted that the contract price payable to Ms. Farrell for 2004 was €28,800 and that in February and March 2005, he wanted a written contract to formalise what had been agreed orally. In other words, he agreed that, going forward for the year from 1st March 2005, the contract price was to be €28,800 per annum or €2,400 per month. However, in less than a fortnight, he co-signed a cheque for €3,632 (€3,200 per month plus VAT) drawn on the plaintiff's current account and he did the same following month, although, on the evidence, I believe that those cheques represented payments for January and February 2005.

8.7 The practice of the plaintiff paying €3,200 per month plus VAT to Ms. Farrell was continued by Mr. Martin, when he replaced Mr. Gleeson as director from May 2005, notwithstanding that his evidence was that his understanding of the arrangement between Ms. Farrell and the plaintiff was what he had been told by Mr. Gleeson, which reflected the content of the second draft contract. However, on the basis of my note of the evidence, I believe that when the issue was addressed by Mr. Martin in examination in chief on the first day of the hearing the focus was on the requirement that Ms. Farrell supply two cleaners per day from 9.00 am to 1.00 pm, rather than on the contract price. At that stage of the hearing, the issue of the overcharge by Ms. Farrell by reference to the correct contract price had not arisen.

8.8 Ms. Farrell's evidence was that in August 2003, at a meeting in 67 Merrion Square, which was attended by herself, Mr. Lancaster, Mr. Gleeson, Mr. Halpenny and, perhaps, Mr. Dunne, it was agreed that she would be paid €3,200 per month plus VAT for providing cleaning services in relation to the common areas. What she was to do for the €3,200 per month was not discussed with Mr. Gleeson or Mr. Halpenny. She knew what was involved and all that was said to her was that the common areas had to be kept "immaculate". During cross-examination, she persisted that she had a fixed price contract and that all that was required of her was to keep the common areas in "immaculate" condition.

8.9 By way of general observation, I appreciate the difficulty which both Mr. Halpenny and Mr. Gleeson encountered when being asked to recollect the terms of a cleaning contract in relation to a particular development entered into eight years previously and last renewed six years previously. I have no doubt that both did their best to assist the court.

9. Contractual terms: conclusions

9.1 For a number of reasons, it is not possible to find on the evidence that the contract price agreed with Ms. Farrell was €28,800 per annum, inclusive or net of VAT, and that by claiming €38,400 per annum (€3,200 per month plus VAT), she was overcharging the plaintiff and in breach of her contract.

9.2 First, this element of the claim was very much an afterthought, having been introduced, as I have already recorded, on the seventh day of the hearing. As counsel for Ms. Farrell pointed out, no issue was raised on the pleadings that Ms. Farrell had overcharged by claiming in excess of the contractual price.

9.3 Secondly, as I have already recorded, there was no clarity as to whether the sum of €28,800 was inclusive of, or net of, VAT. The evidence of the quantification of the loss alleged to have been incurred by the plaintiff as a result of Ms. Farrell claiming in excess of the contract price was given by Dara O'Gaora, a partner in the firm of BFCD, Chartered Accountants, the plaintiff's auditors. Mr. O'Gaora produced a schedule, which, apart from being inaccurate in a number of respects, quantified the loss on the basis of subtracting the sum of €28,800 from the VAT inclusive sums actually paid to Ms. Farrell over two twelve month periods in relation to the "2004 Contract" and "2005 Contract". The lack of clarity in relation to VAT, of itself, raises a question as to whether there could have been, or was, agreement at all. Although, having regard to the view I have taken on the contract price, this is irrelevant, I would point out that what Mr. O'Gaora referred to as payments under the "2004 Contract" included the payments made in respect of December 2003 and March 2004 to January 2005 inclusive, but omitted the payment of €7,264 made in February 2004, which obviously covered January and February 2004. What he referred to as the payments under the 2005 Contract included payments made in respect of February 2005 to January 2006 inclusive.

9.4 Thirdly, as I have reiterated on numerous occasions, for each and every month from August 2003 to and including January 2006, with the exception of the odd payment of €4,000 for April 2004, the plaintiff paid €3,200 plus VAT by cheque to All First or Ms. Farrell and the cheques were co-signed by Mr. Gleeson initially and subsequently by Mr. Martin. Counsel for the plaintiff sought to explain away that blatant inconsistency with the case being made by the plaintiff that the contract price was €28,800 per annum on the basis that Ms. Farrell was, through the medium of All First, the managing agent and there was a relationship of trust between her and Mr. Gleeson and Mr. Martin, as the directors of the plaintiff. Implicit in that explanation is that neither Mr. Gleeson nor Mr. Martin critically scrutinised invoices presented by Ms. Farrell. As each was answerable to the members of the plaintiff, the apartment owners, who, after all, were footing the bill for the management and cleaning services, I must infer that that is unlikely.

9.5 Finally, the final payment made to Ms. Farrell was made by bank draft in the sum of €3,632 sent by Arthur Cox to her on 6th October, 2006 along with two other payments. While those payments were made "without prejudice" to certain contentions made by Arthur Cox on behalf of the Plaintiff, there was no suggestion that the amount contractually due to Ms. Farrell in respect of cleaning services for February 2006 was other than in the sum of €3,632 inclusive of VAT.

9.6 While it is not possible to reconcile the content of the email of 2nd March, 2005 and the figure of €28,800 which appeared in the second draft contract furnished by Mr. Lancaster with the amount actually paid to Ms. Farrell over 31 months, I am of the view that the evidence overwhelmingly favours the conclusion that the contract price was €3,200 per month plus VAT, notwithstanding that Ms. Farrell did not deny the plea in the statement of claim that the contract price was €28,800. Therefore, the third element of the plaintiff's claim, that is to say, the allegation of overcharging by reference to the correct contract price, fails.

9.7 In relation to the other terms of the contract between the plaintiff and Ms. Farrell and, in particular, the terms as to the number of cleaners she was to provide and the days and hours over which they were to be provided, I accept the evidence of Mr. Halpenny and Mr. Gleeson that Ms. Farrell's obligation was to provide two cleaners everyday from Monday to Friday in the morning from 9am to 1pm. The most compelling evidence in support of that finding is that Ms. Farrell obviously thought it necessary in January 2006, when she became aware that her conduct was being reviewed and monitored by the plaintiff, to remove the concierge logs, which were not her property, from Hollybrook and to alter the entries of the attendance of her cleaners at Hollybrook. The only reasonable inference which can be drawn from her admission that she altered the logs is that her intention was to give a false impression as to what each concierge had originally recorded about their attendance. The evidence afforded by the logs in their altered form supports two conclusions: that Ms. Farrell was under contractual obligation to have two cleaners in attendance to provide cleaning services for the common areas at Hollybrook every weekday from 9am to 1pm; and that she did not always comply with that obligation and, accordingly, was in breach of her contract with the plaintiff. Although the invoices, as set out in column 4 of the table above, which I have found represented duplicate charging in respect of the common areas to DCD referred to the supply of one cleaner, Mr. Fox, who authorised payment of those invoices, was not involved in any way in the creation of the agreement in relation to cleaning services for the common areas at Hollybrook or agreeing the terms thereof on behalf of the Plaintiff with Ms. Farrell.

9.8 As Mr. Wallace's implicit *caveat* indicates, it is not possible to assess forensically the extent of Ms. Farrell's breach of contract unless one assumes that the unaltered concierge logs tell the whole story. Accordingly, it is very difficult to fairly assess the loss to the plaintiff as a result of Ms. Farrell's breach of contract. As I have already recorded, there was very little complaint from the apartment owners and occupiers in relation to the quality of the cleaning services she was providing in relation to the common areas. Indeed, Mr. Wallace in his report stated that "[i]n interview the concierges did confirm that the common areas were cleaned everyday", although during cross-examination his evidence was that only one of the available concierges who were interviewed had said that. Mr. Gleeson's evidence was that the cleaning was done by Ms. Farrell to a high standard. Therefore, as a matter of probability, there must have been at least one cleaner in attendance everyday, even if that was not recorded by the duty concierge, who, as a matter of probability, would not have been constantly at his desk. While I have considered whether it is appropriate to adapt Mr. Wallace's forensic methodology to the quantification of the loss over the whole period from August 2003 to February 2006, given that I have found that the plaintiff is not entitled to recover on the first element of its claim in relation to duplication of charging. I have come to the conclusion that it is not, because, having regard to the totality of the evidence, I do not think it is appropriate to rely solely on the evidence of attendance recorded on the logs in their original unaltered form. Although there is no scientific basis for this approach, I think a fair method of assessment of the loss to the plaintiff as a result of the plaintiff's breach of contract is on the basis that it is equivalent to one fifth of the aggregate of the monthly payments made to her inclusive of VAT over the 31 month period from August 2003 to February 2006 (€112,592). Accordingly, on the second element of the plaintiff's claim, I assess damages for breach of contract at €22,518.40.

10. Pre-judgment interest

10.1 The entitlement of a litigant to pre-judgment interest is derived from s. 22 of the Courts Act 1981. That section confers jurisdiction, if the court thinks fit, to order payment of interest at the court rate on the sum ordered by the court to be paid in respect of the whole or any part of the period between the date when the cause of action accrued and the date of judgment. I see no justification whatsoever for awarding pre-judgment interest to the plaintiff in this case, having regard to the history of the proceedings to which Ms. Farrell was not joined as defendant until almost two and a half years after her contract with the plaintiff had expired and the very limited degree to which the plaintiff has been successful.

11. Aggravated damages

11.1 In seeking aggravated damages on behalf of the plaintiff, counsel for the plaintiff referred the court to the meaning of the expression contained the judgment of Finlay C.J. in *Conway v. Irish National Teachers Organisation* [1991] 2 I.R. 305 at p. 317. There, Finlay C.J. in the context of considering damages in tort or for breach of a constitutional right, identified three headings of

damages in Irish law which are potentially relevant to any particular case: ordinary compensatory damages; aggravated damages; and punitive or exemplary damages. He explained the nature of aggravated damages as follows:-

> "Aggravated damages, being compensatory damages increased by reason of
>
> > (a) the manner in which the wrong was committed, involving such elements as oppressiveness, arrogance or outrage, or
> >
> > (b) the conduct of the wrongdoer after the commission of the wrong, such as a refusal to apologise or to ameliorate the harm done or the making of threats to repeat the wrong, or
> >
> > (c) conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff, up to and including the trial of the action.
>
> Such a list of the circumstances which may aggravate compensatory damages until they can properly be classified as aggravated damages is not intended to be in any way finite or complete. Furthermore, the circumstances which may properly form an aggravating feature in the measurement of compensatory damages must, in many instances, be in part a recognition of the added hurt or insult to a plaintiff who has been wronged, and in part also a recognition of the cavalier or outrageous conduct of the defendant."

11.2 As I have recorded earlier, the first mention of aggravated damages was in the plaintiff's closing submissions. In Conway v. Irish National Teachers Organisation, Finlay C.J. considered whether it was necessary to claim aggravated damages in pleading the plaintiff's case. He stated (at p. 321):-

> "First principles would appear to suggest that the general purpose of pleading, as far as the plaintiff is concerned, is the giving of fair notice to the defendant of the issues which are to be tried and the allegations which are to be made against him and this would make it desirable that any claim being made for damages over and above ordinary compensatory damages should be notified, and the facts upon which reliance might be placed in support of it, should be indicated to the defendant. To such a general principle there would, of course, be exceptions: for example, in relation to aggravated damages in respect of matters which might only arise at the trial or at a stage of the preliminary proceedings subsequent to the filing of the statement of claim, but in general there would appear to be no sound principle for excluding from the general proposition that the claim should fairly make known to the defendant the question of a reliance or proposed reliance upon a right to exemplary damages."

11.3 The basis on which counsel for the plaintiff submitted that it was open to the court to award aggravated damages was that, if the court was satisfied that Ms. Farrell was liable for damages for breach of contract or in tort, the court should look at the manner in which she carried out that wrong and conducted her defence. She acted in a false and deceitful manner in covering up her wrongdoing and she made no admission that she had altered the logs up to the trial. Having regard to the case as pleaded, and having regard to the fact that the admission of falsifying the logs was made on the plaintiff's own evidence on the twelfth day of the hearing, I do not think it is unfair to Ms. Farrell to consider the claim for aggravated damages, although it is not pleaded.

11.4 The only civil wrong which I have found on the part of Ms. Farrell against the plaintiff is breach of contract in not providing cleaning services at Hollybrook strictly in accordance with the contractual terms which I have found governed the contractual relationship between the plaintiff and Ms. Farrell as to the manner in which the cleaning services were to be provided. While recognising the necessity to deprecate the behaviour of Ms. Farrell in falsifying the logs and in denying she did so until she gave evidence at the hearing, it is difficult to discern any countervailing aggravating feature in relation to the impact of that wrong on the plaintiff which requires to be factored into the measure of compensatory damages in order to justly compensate the plaintiff. The plaintiff is a body corporate, the majority of whose members have never had any direct involvement with Ms. Farrell in the creation and implementation of the contractual arrangement between Ms. Farrell and the plaintiff and who, in reality, have personally taken no part in these proceedings. When viewed in the broader context that the cost and expense of these proceedings and, indeed, their very existence, having regard to the order for security for costs and the lodgement of €150,000 in court which obviated the staying of these proceedings, has been underwritten by Mr. Dunne, whatever his motive in so doing, and against the backdrop of the myriad of actions involving Mr. Dunne, either directly or through a company, and Ms. Farrell, which I have outlined earlier, the claim for aggravated damages is wholly untenable.

12. Order

12.1 There will be an order for judgment in the sum of €22,518.40 in favour of the plaintiff against Ms. Farrell.