

THE HIGH COURT

[2011 No. 387 P]

[2014 No. 4129 P]

BETWEEN

ANNE MAYE

PLAINTIFF

AND

ALAN PAUL ADAMS, DENIS J. AGNEW, JULIAN O. BOSTRIDGE, FERGAL P. BRENNAN, GERARD W. BUTLER, GARRETT BYRNE, THOMAS G. BYRNE, AILEEN B. COSGROVE, DARREN N. DALY, WILLIAM B. DEVINE, OLIVE A. DOYLE, MARY DUNNE, RONAN A. EGAN, CATHERINE M. GUY, SIAN L. HARPER, DUNCAN INVERARITY, KIERAN J.J. JOHNSTON, MARK N. KAVANAGH, SINEAD M. KEARNEY, ELAINE P. KELLY, MICHAEL KENNEDY, ROSE MARY KIRWAN, DEIRDRE M. MCBENNET, PAUL M. MCGENNIS, DAVID F. MACSWEENEY, JAMES F. MORAN, DANIEL M. MURPHY, ENDA M. NEWTON, MICHELLE M. NÍ LONGAIN, LOUISE O'DONOVAN, FIONA O'NEILL, EILEEN PRENDERGAST, COLIN SAINSBURY, GAVIN N. A. SIMONS, GAVIN P. SMITH, COLLETE STAUNTON, EOGHAN P. WALLACE, SEAN WALLACE, MICHAEL D. WALSH, HELEN A. WALKINSON PRACTISING UNDER THE STYLE AND TITLE OF BYRNE WALLACE FORMELY KNOWN AS BCM HANBY WALLACE

AND

KIERAN DUGGAN

DEFENDANTS

JUDGMENT of Mr. Justice McDermott delivered on the 5th October, 2017

1. The plaintiff seeks an order pursuant to O. 19, r. 7 of the Rules of the Superior Courts compelling the first to fortieth named defendants (Byrne Wallace solicitors) to furnish replies to a further notice for further and better particulars dated 10th May, 2016 in the above entitled proceedings.

The Proceedings

2. These proceedings were consolidated by order of the High Court made 11th December, 2014 prior to which an order was made joining Kieran Duggan as a defendant in earlier 2011 proceedings. A comprehensive statement of claim was delivered on the 15th December, 2014. A notice for particulars was delivered to the plaintiff by the defendants and replies were furnished on 2nd April, 2015. This was accompanied by appendices and a schedule of documentation. An extensive defence was delivered on the 14th October, 2015. This was followed by a notice for particulars raised by the plaintiff. Replies were delivered by the defendant on the 18th December, 2015. These were considered to be inadequate. Consequently, a Notice for Further and Better Particulars was delivered on 10th February, 2016. These Particulars, it was said, were sought in order to understand the defence raised against the plaintiff and to instruct expert witnesses properly prior to trial. The replies were furnished on 2nd March, 2016. However, the plaintiff considered that these further replies do not constitute substantive replies but rather reasons as to why replies would not be furnished. The plaintiff claims that at this point rather than making an application to court it would make a "constructive and progressive effort" to isolate the "fundamental particulars" required. A further Notice for Further and Better Particulars was delivered following this exercise on the 10th May, 2016. It is claimed that the further replies furnished on 16th June, 2016 did not provide any additional information. In effect, the further replies, for the most part, referred to the replies previously furnished on the 2nd March, 2016. This motion was then issued on 28th June, 2016.

Background

3. The plaintiff is the widow of the late Liam Maye who died on the 5th May, 2008. She was appointed as sole executrix and is the sole beneficiary of her late husband's will. On 12th June, 2008 a Grant of Probate in respect of her late husband's estate issued from the Probate Office to the plaintiff. Subsequently, in circumstances which will be outlined below, an order was made by the High Court pursuant to s.26(2) of the Succession Act 1965 revoking that Grant of Probate.

4. As set out in the statement of claim at the time of his death the late Mr. Maye held a number of assets as joint tenant or otherwise jointly with the plaintiff which did not form part of his estate on his death and passed directly to the plaintiff. At the time of his death cash in the amount of €97,461,475.00 together with real property valued on 5th May, 2008 at approximately €12.5 million passed by right of survivorship to the plaintiff. This cash sum was held between two joint bank accounts at Anglo Irish Bank and a Maye Client Account held with Byrne Wallace.

5. The plaintiff claims that in the weeks following her late-husband's sudden death a number of meetings took place between her and Byrne Wallace solicitors at a time when she was "grieving and vulnerable". On 12th May, 2008 she was contacted by Mr. Brian Wallace who had previously acted for Mr. Maye seeking an urgent meeting concerning banking and probate matters. She claimed that she was informed that her late husband had provided a number of personal guarantees in relation to borrowings which the banks would seek to enforce against the plaintiff and the estate. Mr. Wallace, solicitor, it is said, emphasised to the plaintiff the importance of taking steps to have the will admitted to probate.

6. The plaintiff claims that as a result of this meeting she had concerns in relation to her ability to manage her affairs and therefore decided to retain a team of advisors to deal with all issues arising from the late Mr. Maye's death. On 22nd May, 2008 Ms. Carolyn Wallace attended at the plaintiff's home and advised her that it was very important to extract a Grant of Probate as soon as possible in order to safe-guard the plaintiff from any enforcement action by the banks that could arise if the plaintiff was unable to administer the loans pending probate issuing to her as executrix. The plaintiff claims that Byrne Wallace failed to advise her in relation to the requirement to determine the exact net value of the late Mr. Maye's estate and advised that a simple Grant of Probate could be urgently extracted by filing a revenue affidavit which could be corrected at a later date when all relevant information had been gathered.

7. On 24th May, 2008 the plaintiff claimed that she was advised by Mr. Paul McGennis, Solicitor, that Byrne Wallace who had acted on behalf of the late Mr. Maye and had been intimately involved in his business dealings would look after and advise on all issues arising out of or in connection with his death. Mr. McGennis would act as her primary legal advisor and would designate the

appropriate team of advisors to advise her on all issues. It is claimed that Mrs. Maye was still in an emotionally vulnerable state at this time.

8. The plaintiff claims that by an agreement made orally on 24th and 29th May, 2008, and later confirmed by letter of retainer dated 17th June, 2008 she retained Byrne Wallace solicitors to advise and act for her in relation to all issues arising out of or in connection with the death of her late husband. She executed a power of attorney in favour of Mr. McGennis on the 29th May.

9. The plaintiff claimed that Byrne Wallace were retained to advise and act for her in her capacity as the executrix of estate of the late Liam Maye, in her capacity as a beneficiary under the will and in her personal capacity as the surviving owner of the jointly held assets.

10. The statement of claim particularises a series of matters in respect of which it is said the defendants were retained to act and advise her:-

- (i) Her role and duties as an executrix, the consequences of taking on that role and her responsibility as an executrix to discharge the debts of the estate;
- (ii) The distinction between her role as executrix and her roles as sole beneficiary under the will and her rights when acting in a personal capacity as the surviving owner of joint assets;
- (iii) The distinction between the assets and liabilities of the estate on the one hand and the personal assets and liabilities to the plaintiff on the other;
- (iv) The requirement to clearly identify the assets and liabilities of the estate and the value of those assets and liabilities at the time of her late husband's death;
- (v) The distinction between assets passing through the estate which ought to be applied to discharge liabilities of the estate and those assets which passed to the plaintiff outside the estate under the right of survivorship which were not required to be made available to discharge liabilities of the estate;
- (vi) The consequences of the vesting of estate assets in the beneficiary and the on going liability of those assets for the debts which remained secured on them or otherwise for unsecured debts of the estate;
- (vii) Potential conflicts of interest that arose for the plaintiff due to the numerous roles and capacities in which she required advice; and
- (viii) The need to fully value and account for all assets and liabilities in the estate.

11. Paragraphs 11 to 15 of the statement of claim outlined the duties of professional care said to be owed by Byrne Wallace, as solicitors to the plaintiff and their duty to disclose to the plaintiff any conflicts of interest which arose during the course of the retainer. It is claimed at para. 13 that the plaintiff instructed Byrne Wallace as part of their retainer to select a team of advisers to give her the best co-ordinated advice regarding all matters arising from her late husband's death and to procure for her the best team of property, taxation, pension and commercial advisers. Alternatively, it is said that it was an implied term of the retainer that Byrne Wallace would ensure that such advisers as were selected and retained by them had the necessary professional skill and expertise to exercise reasonable professional care, skill and diligence in carrying out tasks assigned to them. The plaintiff claimed that Byrne Wallace also had a duty of care to protect her personal assets and not to expose them to undue risk.

12. The plaintiff claims that on 5th June, 2008 Kieran Duggan was engaged by Byrne Wallace on behalf of the plaintiff as a "consultant generally in relation to all matters arising in relation to the various assets held by the Estate of Liam Maye of which Anne Maye is the sole Executrix beneficiary". It is alleged that it was a term of his engagement that he identify which assets of the late Mr. Maye constituted assets of the estate, determine the ownership and value of such assets and advise in relation to negotiations with third parties in respect of same.

13. It is alleged at paras. 19 and 20 that Mr. Duggan was required to identify and value the assets held by the estate but that he failed to do so. If he had fulfilled his duty in this regard it is alleged that he would have established that the estate had a significant net value in excess of €190 million but that it also had significant liabilities (including contingent liabilities) and that the estate had insufficient liquid assets to meet its liabilities. Furthermore, it is alleged that insofar as additional funds were required to meet the estate liabilities, Mr. Duggan failed to advise the plaintiff that these funds ought to have been raised by the estate rather than by the plaintiff in her personal capacity.

14. The plaintiff also identifies a series of transactions and dealings in respect of which she alleges that the solicitors failed in their professional duty of care to her under a number of separate headings:

- (a) Administration of the estate paras. 28 to 38
- (b) The Costelloe Agreement paras. 39 to 55
- (c) Costs and expenses of the estate paras. 56 to 60
- (d) Socnule transactions paras. 61 to 69
- (e) Friends First Finance Ltd. paras. 70 to 80
- (f) Lenridge Loans paras. 81 to 95
- (g) National Asset Management Agency paras. 96 to 109

15. The pleadings to date in this case are voluminous as are the particulars set out in the statement of claim and defence and sought and given by the respective parties. Pursuant to an order made 31st July, 2015, (Kennedy J.) the defendants were granted inspection of a National Assets Management Agency (NAMA) settlement agreement concerning a compromise between the plaintiff and NAMA in respect of proceedings initiated by NAMA against her. In addition it is clear that the plaintiff has had possession of the defendants'

files concerning all relevant matters for a considerable time.

The Law

16. Order 19, r. 7(1) of the Rules of the Superior Courts provides as follows:-

"A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just."

17. The purpose of pleading is to define the issues between the parties and confine the evidence at trial to matters relevant to those issues. It is also to ensure that the trial may proceed without placing either party at a disadvantage by the introduction of matters which are not fairly to be inferred from the pleadings. Each party should know in advance the "broad outline the case he would have to meet at the trial" (per Fitzgerald J. in *Mahon v. Celbridge Spinning Company Limited* [1967] I.R. 1).

18. The extent to which further particulars may be required in any particular case will vary. There is a balance to be struck in a reasonable way between what might be regarded as a litigant's "enthusiasm to interrogate every possible detail of their opponent's claim" (as considered by Hogan J. in *Armstrong v. Moffatt* [2013] I.R. 417 of paras. 48 and 49) and the situation that may arise in complex litigation where somewhat more extensive particulars may be required in order to ensure the interests of justice and the efficient use of court time and resources (as considered by Baker J. in *Playboy Enterprise and National Incorporated v. Entertainment Media Networks Limited* [2015] IEHC 102).

19. The contrast in those cases is between prolix and unnecessary particulars sought in respect of a personal injuries claim and detailed particulars sought in respect of more complex litigation related to breach of contract or confidentiality where it may well be in the interest of the parties and the interests of justice that the issues be reduced and identified prior to trial or the making of discovery which can be very onerous in such cases. It is also important to ensure when particulars are provided for "illustrative purposes" to take into account the judgment of Finnegan J. in *ASI Sugar Ltd. v. Greencore Group plc.* [2003] IEHC 131. It is not normally sufficient for a party to reply or furnish particulars by way of example and to expressly reserve a right to rely on other unrelated factual scenarios. However, in this case the examples relied upon in the defence of occasions when advice was furnished and the nature of that advice assists in an understanding of the central points of the defence which are clearly set out. As already noted the plaintiff has been in possession of the solicitor's files in this case for a considerable time and also had the advantage of inspection or the NAMA settlement terms in litigation which is the subject of the claim. In my view the mischief addressed by Finnegan J. cannot reasonably be said to arise in this case.

20. The principles applicable were summarised by Costello J. in *Quinn Insurance v. PriceWaterhouse Cooper (a firm)* [2015] IEHC 303:

"40. ... the defendant is entitled to particulars of the plaintiff's case as the plaintiff wishes to advance it. The defendant is entitled to know the facts as the plaintiff alleges them to be. If the particular sought does not arise from the pleading then the question is, is the furnishing of the particular necessary to ensure fairness between the parties? If the particulars are not necessary or desirable for the purposes of a fair hearing, then they should not be ordered. In complex litigation the requirement for precision is of particular importance. Nonetheless a party is entitled to know the broad outline of its opponent's case and the issues in the case; it is not entitled to know the evidence its opponent intends to adduce and it is not entitled to seek this by way of particulars.

It is thus necessary to assess the case the plaintiff wishes to advance. It is then necessary to assess whether or not it has been pleaded so that the defendant can understand the case it has to meet and understand the issues in the case. The plaintiff says that it has given very extensive particulars of its case and particulars now sought ought to be refused. The defendant is entitled to know the plaintiff's case but, it is not entitled to particulars of facts or information which do not form part of the plaintiff's case even if the information sought will assist its defence. They are not particulars of the claim. While frequently there will be no distinction between these two points, nonetheless it is important to be clear about the purpose of providing further and better particulars and therefore the scope of the particulars to which any party is entitled."

21. It is therefore necessary to consider the pleadings to date and the extent to which the issues have been appropriately defined in order to ensure that a fair trial may be facilitated and that each party has a clear understanding of the issues raised by way of claim and defence. The court will examine some of the more general issues raised in respect of which particulars are sought and then the particulars furnished, sought and refused in respect of the defence under the individual headings pursuant to which the claim is pleaded in the statement of claim and which are in issue in this motion.

General Denial

22. In the consolidated defence delivered on the 14th of October, 2015 it was admitted that at the time of Mr. Liam Maye's death, the plaintiff and the deceased held a number of assets jointly but no admission was made with regard to the extent and nature of those assets and the particulars of assets allegedly held jointly or otherwise was denied. It was contended that at all material times the plaintiff was capable and competent to manage the affairs of her late husband which she duly did. It was averred that the plaintiff made an overall financial and business assessment in reaching an informed decision to enter into each of the transactions or undertake each of the acts in respect of which the plaintiff now maintains the proceedings. It is claimed that the plaintiff knew and understood the legal and financial consequences of each of the transactions the subject matter of the proceedings and gave express and unequivocal instructions to Byrne Wallace that it was her wish to carry them out (see paras. 7(a) to (k)). The defendants in the particulars furnished state that at all times the plaintiff understood the distinction between assets and liabilities of the estate and her personal assets. By way of example a letter is referenced dated the 29th June, 2013 to NAMA in which the plaintiff explained at paras. 4.6 and 4.10 that she made a cash distribution to herself in August 2008 from the estate which she deemed to be appropriate and proper given that the estate had a positive net value. It is also alleged that the plaintiff gave clear instructions that all payments due and owing by her late husband were to be paid in full and on time. She was at all times advised that money held on joint account did not form part of the estate that she was free to deal with it as she saw fit. It is claimed that in respect of each relevant debt and other liability to a lender the solicitors advised the plaintiff that this was a liability of the estate and not a matter in respect of which she personally had any liability. The solicitors were expressly instructed to make repayments from a cash balance representing sums which had been held in a joint account that did not form part of the late Liam Maye's estate. They claim that the plaintiff was concerned to protect her husband's reputation and instructed that all debts due by him were to be fully discharged so that it could not be said that the debts of the late Liam Maye were not being paid or that there was any other financial difficulty arising from his death.

23. In addition, the defendants claim that the plaintiff gave express instructions notwithstanding the legal advice given that all loan

repayments were to be made in full. She was aware of the potential consequences for her, her family and the estate for investments, including those not linked to those arising out of the Costelloe investments (addressed below) should there be a default in any loan agreement to which the late Mr. Maye had been a party. In particular, it is claimed that the plaintiff was fully aware of the expiry date for certain facilities, the 'on demand' nature of some of them and the fact that the death of the borrower constituted an event of default in respect of those facilities and that the lenders had the right to call in the loans forthwith. The plaintiff was anxious to ensure that this did not happen.

24. It is also claimed that the plaintiff was aware that her late husband had provided personal guarantees for loans taken out by their three daughters either in their own names or through corporate vehicles set up for their respective business enterprises. The plaintiff was very conscious of the Maye family reputation in business and with the banks and the potential damage to the family name and business interests if the family name were to become associated with any default.

25. The defendants at para. 7(k) also contend that the plaintiff was aware of the long association of her husband with other investors in successful enterprises such as Castlethorn Construction and Dundrum Town Centre and of the potential uplift in values associated with those properties and investments as perceived at that time. It was expected that on completion of a first rent review at the Dundrum Town Centre in the first quarter of 2011 there would be an increase in value. The plaintiff considered it important that those assets and relationships should not be tainted by potential banking difficulties arising from any potential default and by continuing a business and banking association with a Mr. Bernard Costelloe.

26. It is also claimed that the plaintiff had a full valuation report available to her which had been prepared for her and her late husband dated 25th March, 2008 in respect of the assets of her late husband which also included those jointly held with the plaintiff. It valued those assets at in excess of €0.5 billion. This was less than a month before the late Mr. Maye's death. This report was updated following his death on 27th May, 2008 and 3rd June, 2008. In addition, two further valuations were obtained in relation to two other properties. It is claimed that it was reasonable for the plaintiff and her advisers (including the defendants) to rely on these valuations which were made by independent expert valuers to assess the net value of her late husband's assets. This indicated that he left a very substantial estate with long term potential for increasing value.

27. The defendants also claim at para. 36 of the defence that the plaintiff was at all material times advised concerning the assets held in joint names with the late Liam Maye and that such assets passed to her by right of survivorship. Paragraph 36 sets out that such advice was given on the 29th May and 20th June, 2008 and reaffirmed on 4th June, 2008 prior to a decision made by the plaintiff to make a payment of £750,000.00 to Irish Nationwide Building Society in respect of the property Oakley Court Hotel. The examples furnished were "illustrative" and the defendants reserved the right to adduce evidence at the trial of the action of "each and every occasion on which the plaintiff was advised of assets held jointly with Liam Maye and/or that such assets passed to (her) by survivorship ... and/or that the plaintiff was free to use such assets as she required or desired".

28. Paragraphs 5, 6 and 7 of the defence are said to relate to "matters common to all pleaded issues". In para. 5 the defendants aver that the plaintiff was "capable and competent" to manage the affairs of her late husband. Para. 6 states that the plaintiff made a number of financial and business assessments in reaching "an informed decision" to enter into each of the transactions the subject matter of the claim and that the plaintiff "knew and understood the consequences legal and financial of each of the transactions" the subject of the proceedings. It is said that in respect of each transaction concerning which she was advised by the defendants, the plaintiff gave express and unequivocal instruction to Byrne Wallace that it was her wish to carry them out. In para. 7(a) and (b) of the defence it is claimed that the plaintiff "knew and understood" when she was discharging a liability of the estate from her personal assets and "understood" the distinction between the assets and liabilities of the estate and her personal assets.

29. The plaintiff sought particulars of the basis upon which the plaintiff was said to have been assessed as "capable and competent" to manage her late husband's affairs. In respect of para. 6, particulars were sought of who or what is alleged to have "informed" decisions allegedly taken in respect of each transaction. In respect of para. 7 particulars were sought as to whether it was alleged the plaintiff knew and understood the consequences, legal and financial of each transaction prior to the execution of each transaction and the precise financial consequences it is alleged she knew and understood. Particulars were also sought of the precise terms of the instructions allegedly provided to the defendants by the plaintiff that she wished to carry out each transaction.

30. The particulars sought in respect of para. 5 are set out in the notice for further and better particulars at paras. 1(a), (c) and (d). The court is not satisfied that the competence and capacity of the plaintiff to manage her late husband's affairs is an issue in this case. There is no claim of duress. There is no claim that the plaintiff lacked the capacity to carry out her role as executrix. The statement of claim suggests that at the time that she initially engaged with the defendants and for some time thereafter the plaintiff was distressed by reason of her bereavement but there is no suggestion that she was not otherwise competent in the legal sense and of full capacity as an adult to deal with her own affairs and/or business affairs and her late husband's estate. Her claim is that as a lay person who is unfamiliar with the law she sought legal advice and professional assistance from the defendants who owed her a duty of care which they failed to fulfil as a result of which she suffered damage. She does not claim that she ought to have been assessed medically or that she was medically unfit to understand or receive advice given to her. The replies furnished in respect of this matter are adequate. The order sought in respect of this particular is refused.

31. In relation to para. 6 of the defence the plaintiff seeks particulars of the claim that the plaintiff made an overall financial business assessment in reaching her informed decision to enter into each of the transactions and to undertake each of the acts the subject matter of the claim. The plaintiff sought particulars at paras. 2(a) (i) to (vi) and 2(c). The plaintiff sought clarification as to whether it was alleged that Byrne Wallace provided any advice to the plaintiff before she made the alleged "overall financial and business assessment" in respect of each transaction and detailed particulars of such information as was allegedly available in making such assessments including the person or persons providing same, when it was given, whether it was given orally or in writing and whether Byrne Wallace played any role in the overall financial business assessment made by the plaintiff. The defendant claims that each of the transactions the subject matter of the proceedings have been fully pleaded and particularised in the defence and in earlier replies to particulars. The plaintiff claims that this information is necessary in order to determine the extent to which it can be said that the plaintiff made an overall business and financial assessment to enter into each of the transactions.

32. The court is not satisfied that it is necessary to furnish a reply to this particular. Whether the plaintiff made an overall financial and business assessment in reaching an informed decision is to be determined in the course of proceedings on the basis of the evidence adduced in respect of the particular transactions which are the subject of the proceedings in respect of which extensive particulars have been furnished. It seems to me that the furnishing of any further particulars outside the scope of the particular transactions itemised in the statement of claim and specifically addressed in the defence would give rise to prolix pleading, and repetition and would not serve to clarify the issues between the parties. The defendant stated clearly that it is alleged that the decisions taken in respect of these transactions were informed by legal advice provided by them but that anything further was a matter for evidence. Since these matters are specifically addressed later in the pleadings both by way of particulars furnished in the

defence in respect thereof and additional particulars it does not appear to me to be appropriate to direct further particulars in respect of 2(a) and 2(c).

33. Paragraph 7 contains a further general plea that the plaintiff "knew and understood the consequences legal and financial of each of the transactions the subject of the within proceedings". The defendants claim that the plaintiff gave express and unequivocal instructions to them that it was her wish to carry out each such transaction. Extensive particulars were set out at para. 7(a) to 7(k) of the defence in respect of this knowledge and understanding. These particulars outline the defence based on the proposition that the plaintiff was advised by the defendants and understood the distinction between the assets and liabilities of the estate and her personal assets. She was advised that money held on joint account did not form part of her late husband's estate, about any debt or liability that was a liability of the estate and not her personal liability and that she had no liability to discharge personally debts which were those of the estate. Nevertheless, it is claimed that notwithstanding this advice, the plaintiff gave instructions to the defendants that repayments were to be made from a joint account following her husband's death. The plaintiff was concerned to protect her late husband's reputation and instructed her solicitors that his debts were to be paid and all loan repayments were to be made in full in order to avoid reputational damage and damage to relationships with lenders. In particular, the plaintiff considered it important that loan repayments be made and that her late husband's long association with other investments and successful enterprises like Castlethorn Construction and Dundrum Town Centre should be respected and protected given the potential uplift in values associated with those properties which was anticipated. It is claimed that the plaintiff considered it important that those assets and relationships should not be tainted or damaged by potential banking difficulties arising from problems caused by default in any payment due or by continuing in a banking association with Mr. Costelloe. Thus it is claimed that the plaintiff was advised and therefore understood when she was discharging a liability of the estate from her personal assets.

34. Particulars were raised in respect of para. 7 of the defence at paras. 3(b),(c) and (d). The plaintiff sought particulars in respect of the legal consequence of which the plaintiff allegedly knew concerning each transaction. She sought confirmation of whether it was alleged that the plaintiff was advised by Byrne Wallace in respect of each transaction and the nature of any legal advice provided. This included queries in relation to the person supplying the advice, the dates when it was given, the context in which legal advice was given, whether it was given orally or in writing and the capacity in which it was given to her. The defendant indicated that these were not proper matters for particulars and were not required to enable the plaintiff to know the case the defendants would make at trial or to avoid being taken by surprise at trial.

35. The plaintiff submits that having requested a complete copy of her client file from the defendants she was furnished with what was said to be a complete file. However, it is contended that the instructions which Byrne Wallace allege were given by the plaintiff are not reflected in the attendances on those files. It is said that there are no written advices given evident in the file. The plaintiff therefore presumes that any advices given were oral advices of which she has no notice. In those circumstances she would be taken by surprise at trial if evidence of oral advice is led.

36. The particulars set out at 7(a) to (k) of the defence are quite specific. If it is sought to establish that such advice was given orally, such evidence would clearly be open to the criticism that it was never made the subject of an attendance and was never recorded by the defendants. This may have serious consequences for the credibility of any such testimony. In addition, a series of witness statements will have to be prepared and submitted on behalf of the defendants in advance of the trial outlining the proposed evidence to be given in relation to these matters addressing these issues. Whether the plaintiff understood the legal consequences of any particular transaction arising out of advice given depends on what that advice was and if it was given at all. It is clearly the defendant's case that the advice was given. It remains for the evidence to be heard at trial as to what the plaintiff contends she received by way of advice and what evidence is adduced on behalf of the defendants as to what advice was given. It seems to me that the issue is clearly defined between the parties. It seems to me that the necessity for any further particulars raised is more usefully addressed in the context of the particular transactions which are the subject of the pleadings rather than the generalised format proposed in the notice for particulars. The court does not consider that the particular sought at para. 3(b) is appropriate.

37. The particulars raised at para. 3(c) relates to the precise financial consequences which it is alleged the plaintiff "knew and understood" in relation to each transaction. It appears to me that similar considerations apply as apply in relation to 3(b): this is not an appropriate particular. It seems to me that the plea at para. 7 is clear and that the plaintiff will not be taken by surprise in relation to the substance of what is averred in para. 7. In addition, the court is satisfied that these matters are more appropriately to be considered in the context of each of the transactions itemised in the statement of claim.

38. Paragraph 3(d) of the particulars seeks further details of the "express and unequivocal instructions given to Byrne Wallace that it was [the plaintiff's] wish to carry out each transaction" the subject matter of the proceedings. The precise terms of the advice allegedly provided by the plaintiff was sought in respect of each transaction and of the instruction allegedly given. The identity of the person and the defendants was also sought and the date time and place in which it was alleged the instructions were given and whether these instructions were oral or in writing. The replies stated that the defendant had already furnished adequate particulars in the defence and that any further material was not required in order to understand the defendants' case. However, a further response was given as follows:

"Without prejudice to that position, and by way of example only, the following are occasions when such instructions were given:

Number Description Detail

1 Extraction of a grant of probate Specific instructions given by the plaintiff to Byrne Wallace to extract the grant on the basis of the fast track process. Instructions confirmed to Paul McGennis on 26th May, 2008.

2 Payment of state liabilities from personal funds Special instructions given by the plaintiff to Paul McGennis and subsequently Catherine Guy to discharge a state liability from personal funds. The first example of this is on 3rd June, 2008 and 4th June, 2008 and the plaintiff gave instructions to Paul McGennis to discharge the sum of Sterling £750,572 to Irish Nationwide Building Society in respect of loan repayment due on joint Liam Maye/Bernard Costelloe borrowing.

3 Costelloe agreement. The plaintiff having received advice from Byrne Wallace and Kieran Duggan negotiated herself the terms of the agreement with Bernard Costelloe and subsequently gave instructions in relation to the terms of that agreement.

4 Socnule After a number of meetings involving the plaintiff, Byrne Wallace and Kieran Duggan, and also meetings involving personnel from Castlethorn Construction/Socnule, the plaintiff in consultation with advisors and family made the decision to stay in Socnule Castlethorn for a period of five years and reinvested in Socnule on that basis. The plaintiff then instructed Byrne Wallace and Kieran Duggan in relation to that decision and to draw up the necessary legal agreement(s) to reflect that decision.

5 Payments in respect of investments. Having received advice from Byrne Wallace and Kieran Duggan, the plaintiff made the decision to invest further funds and certain investments such as RQB Diswellstown with a view to protecting the investment which had already been made in these projects.

6 Friends First The plaintiff gave instructions to Byrne Wallace:

(i) to make payment from her personal funds in order to meet interest payments on the loans which had been provided by Friends First to her three daughters;

(ii) to implement revised loan agreements for her three daughters following an agreement negotiated with Friends First on 30th October 2008;

(iii) to proceed to completion in respect of the terms of the revised loan facility letters to her three daughters incorporating her personal guarantee.

7 Lenridge Loan Facility – March 2009 and September 2009. The plaintiff provided no instructions to and did not seek legal advice from Byrne Wallace before signing the facility letters dated 6th March 2009 and 15th September 2009.

8 Ashfield College On the instructions of the plaintiff of 4th March 2009 the sum of €100,000 was paid by the plaintiff to discharge monies due by Ashfield College. A further sum of €206,067 was paid on 26th March, 2009. A further sum of €105,000 was paid by the plaintiff to Ashfield College on 9th April 2009. These funds were paid out of the plaintiff's personal resources without any liability on her part in respect of those sums.

9 Pharwell On the instructions of the plaintiff on 25th February 2009, the sum of €131,949.43 was paid to A&L Goodbody Solicitors for John Paul Construction in respect of monies due by Pharwell Limited to John Paul Construction, which sums the subject of a petition to wind up Pharwell Limited.

Further evidence will be provided at the hearing of the action.

39. Some of the matters referred to at 1 – 9 are the subject of detailed pleading in later parts of the statement of claim and in the defence. Thus the administration of the estate, the Costelloe agreement, costs and expenses of the estate, the Socnule transaction, Friends First Finance and the National Asset Management Agency issues are all addressed in detail elsewhere in the pleadings. If there are other matters in respect of which advice was given and action taken by the defendant outside those transactions these would have to be specifically pleaded. However, the court is satisfied that the more generalised particulars raised in respect of the transactions in particulars 3(b) (c) and (d) are more appropriately raised and considered by the court in respect of each of the respective headings of grievance raised by the plaintiff in respect of which detailed particulars have already been furnished. Therefore, I do not consider that I should order that the particulars raised at 3(b) (c) and (d) require to be addressed further.

40. In para. 16 of the defence it is claimed that the plaintiff was generally well informed about her husband's business affairs and involved in decisions taken in relation to assets before and after his death. Particulars are then given in subparas. (a) to (h). In particular at para. 16(b) it is claimed that the plaintiff was involved in the management of rent and monies in relation to the property assets of the late Liam Maye. Particular 19(e) requests details of the property assets to which reference is made. Initially details were not supplied but in response to para. 19(e) of the further notice though asserting that this was a matter for evidence details were given that without prejudice to that assertion properties managed by Lets Move on behalf of the plaintiff included 9(c), 9(d), 158, 163 Carysfort Park, 8 Avalon and 21, La Bousionnette. It added that properties managed by Lawford Estates on behalf of the plaintiff included 9 Temple Road, Blackrock, Co. Dublin, 5 Aideen Place, Terenure and 16 Portobello, Harolds Cross. Properties managed by Wise Property on behalf of the plaintiff included 6 units at Northumberland Road and 10 units at Riverwood Hall. A further particular requiring details of "the precise role allegedly played by the plaintiff in managing the rental monies in relation to the said assets and precisely what this entailed" was deemed not to be a proper matter for particulars, did not arise out of the pleadings and was a matter for evidence. The court is satisfied that the particulars furnished in relation to this aspect of the defence are adequate for the plaintiff to understand the defence offered. This particular is refused.

41. Particular 23(c) arises out of para. 26 of the defence and seeks clarification as to whether any advices were provided to the plaintiff by Byrne Wallace concerning the selection and retention of advisors to act on behalf of the plaintiff. The statement of claim under the heading "Retainer of Byrne Wallace" alleges that the defendants undertook to designate an appropriate team of advisors to advise her on all issues (paragraph 9). In addition it is alleged at paras. 13, 14 and 15 that the solicitors as part of their retainer were to select a team of advisors to give the best coordinated advice concerning all matters arising from the late Mr. Maye's death. This included "the best team of property, taxation, pension and commercial advisors." At para. 26 of the defence it is denied that the plaintiff instructed Byrne Wallace to select or procure a team of advisors. It is stated that the selection and retention of advisors on property taxation, pension and commercial issues was a matter for her alone. It is alleged that it was her decision to engage KPMG (Mike Gaffney) as tax advisors and to dispense with Warren and Partners who had acted as the deceased's tax advisors. The defendants state that their role was limited to suggesting potentially suitable persons that she might wish to consider and that persons suggested by Byrne Wallace to the plaintiff included Mr. Duggan and Joe Bannon who had previously been retained by Mr. Maye, and for tax advice KPMG with whom the plaintiff met prior to her decision to appoint them. It is denied that any advisors were selected or retained by Byrne Wallace to act on her behalf.

42. Particulars are sought of the precise terms of the advice allegedly provided by Byrne Wallace to the plaintiff in this regard, when it was provided, who provided it and whether it was oral or in writing and in what capacity she was so advised. The defendants replied that although the matter was not a proper matter for particulars and it was said not to arise out of para. 26 of the defence, it was information which was within the knowledge of the plaintiff. However, they confirmed that Mr. Paul McGennis and Ms. Catherine Guy had discussions with the plaintiff about appointing advisors. It is clear from the particulars furnished by the plaintiff to the defendants in relation to the statement of claim set out how it is alleged the various advisors came to be appointed at paragraph 8 of the Plaintiff's Replies to Particulars in February 2015. It is acknowledged at para. 8.3 that the plaintiff retained each advisor in the sense that her instructions which she gave were required in order to retain any advisors. However, it is said that Byrne Wallace undertook responsibility for the selection of appropriate advisors and the plaintiff acted in accordance with their advice in confirming instructions to retain the advisors selected by Mr. McGennis. I am satisfied having regard to the claims made by the plaintiff and the defence furnished and the particulars that have been exchanged to date between the parties that the issues arising in respect of the retention of advisors between the parties relevant to the plaintiff's claim are clear and that the plaintiff will not be taken by surprise in relation to any issue that may arise during the course of the proceedings relevant to the retainer of these experts.

43. The court accepts the proposition that a simple assertion that another party well knows relevant facts will rarely be a sufficient answer to what would otherwise be a proper request for particulars. However, what is required is that the defendants set out in reasonable detail the relevant facts alleged as stated by Clarke J. in *Moorview Developments Ltd. v. First Active plc.* [2005] IEHC 329 at para. 7. It should also be noted that in *Moorview* a dispute arose as to the sufficiency of replies to particulars concerning agreements alleged to have been made between the plaintiff and the defendants. Particulars furnished in relation to agreements said to have been made and relied upon by the plaintiff indicated the existence of "other oral agreements" alleged to have been made at a meeting on a particular date. The court directed that the request for details of the relevant other oral agreements were reasonable and there had been a failure to reply in a meaningful way. I am not satisfied in this instance having regard to the extensive pleading in this case that there has been a lack of a meaningful reply or that the issues have not been fairly and clearly defined between the parties on this matter. Clearly there was interaction between the parties which was oral which will be given in evidence during the course of the trial in the context of the relationship between solicitor and client. As noted the plaintiff has a considerable amount of documentation including the solicitors' files which will indicate where appropriate attendances recorded by the solicitors of the meetings which occurred at which advice was given. The oral evidence to be given will be set out in statements to be furnished in

the course of the pre-trial procedures. I am satisfied that the plaintiff is not simply faced with a bald assertion that such advice was given. Indeed, the nature and extent of that advice forms a substantial part of her pleading in the case to date based on the files furnished by the solicitors. The defendants' replies in this matter as in other matters raised in this application are regarded as reasonable by the court.

44. Thus the defence clearly addresses the issues raised in respect of the retainer of Kieran Duggan at paras. 35 to 43. It claims that the plaintiff alone made the decision to engage Mr. Duggan who was personally known to the plaintiff and had previously advised the late Mr. Maye. It states that Byrne Wallace acted as agent for the plaintiff in relation to the retainer of Kieran Duggan and at all times acted on her instructions in relation thereto. The court will not direct further replies on this matter.

45. At para. 36 the defendants set out for the avoidance of doubt that the plaintiff was at all material times advised by Byrne Wallace of assets which were in the joint name of the plaintiff and the late Mr. Maye and that such assets passed to her by survivorship. This is followed by particulars at subparas. (a) to (d) inclusive. It is stated in these particulars that Mr. McGennis advised the plaintiff as early as 29th May, 2008 of the assets in joint names that passed to her by right of survivorship and confirmed to her that she was free to use them as required. On the 20th June she was advised that the family home was solely in her ownership having previously been in joint names. It is claimed that this advice was reaffirmed to the plaintiff prior to the decision made by her on the 4th June, 2008 to make the payment of £750,000.00 to INBS in respect of Oakley Court Hotel. Item 26 of the particulars seeks further details of these matters. It is said that the examples furnished are illustrative only and that Byrne Wallace reserves the right to adduce evidence at the trial of the action of each and every occasion upon which the plaintiff was advised of assets held jointly with Liam Maye and/or that such assets passed to the plaintiff by survivorship and not as part of the estate of Mr. Maye and/or the plaintiff was free to use such assets as she required or desired.

46. The plaintiff seeks particulars as to the precise terms of the advice allegedly provided by Byrne Wallace to the plaintiff in respect of joint assets passing to her by survivorship. It is claimed that these matters are set out at para. 36 of the defence and a previous reply at 7(b)(i). It seems to me appropriate that the defendants should give details of the particulars of the properties said to have been in joint ownership of the plaintiff and her late husband. It appears to the court that this would be a finite group of properties. The advice to be given in relation to the right of survivorship is direct, is simple and straightforward. The examples given in the defence at para. 36(a), (b) and (c) are said to be illustrative. There is no reason why this should be so. The court will direct that particulars in relation to each such item of property should be furnished. If advice was given in relation to the right of survivorship to the plaintiff in respect of any such property, the occasion of such advice should be designated. The issue between the parties is whether she was advised about the right of survivorship in respect of these properties and its legal consequences and that is a matter for evidence and a determination of the court in respect of each property.

47. The administration of the estate is dealt with in the statement of claim at paras. 28 to 38 as pointed out above. At para. 32 it is alleged that by reason of the failure of Byrne Wallace and/or Kieran Duggan to advise the plaintiff of the requirement or advisability of obtaining the valuation of the estate at the earliest opportunity the plaintiff was not aware that the estate was at risk of insolvency as the property asset values reduced during the course of the administration of the estate. It is alleged that the plaintiff was never advised that distribution should not be made from the estate until the solvency of the estate had been positively established nor was she advised of the implication of the risk of the estates insolvency.

48. Paragraph 54 of the defence, addressing para. 32, denies that the plaintiff was unaware of any risk to the estate becoming insolvent due to a reduction in property values or in the course of administration. If she was it is alleged that this was not caused by the act or omission of the solicitors. It is specifically pleaded that any reduction in values and investments in property or otherwise was caused by and attributable to external factors including the global economic downturn in respect of which Byrne Wallace was not responsible in law.

49. The particulars at Item 36 seek clarification as to whether any advice was provided to the plaintiff by Byrne Wallace to identify assets and liabilities of the estate and to carry out a valuation of assets and liabilities as at the date of death. This has already been addressed. On the pleadings and the particulars furnished to date it is evident that Byrne Wallace rely upon the valuation contained in the Warren Reports in respect of the properties which were furnished at or about the time of the late Mr. Maye's death and afterwards. The valuation of these properties is clearly said to be based on the Warren Reports. It is not suggested that any further valuations were obtained or furnished to the plaintiff or given by way of advice in the course of the administration of the estate or when acting in her personal capacity or otherwise other than through the Warren Report valuations apart from other valuations identified in the pleadings. The central issue is whether the solicitors in advising the plaintiff in respect of valuations failed in their duty to her by omitting to obtain further valuations prior to any disposal of properties or the acquisition of assets or payment of liabilities. The issues between the parties in respect of that matter are well defined on the pleadings and in the particulars. I do not consider that it is necessary for an understanding of those issues or clarification thereof that the particulars sought at 36 should be furnished.

Separate Heads of Claim

50. The plaintiff claims that she entered into a series of transactions which resulted in her undertaking personal liabilities which were in essence the liabilities of the estate. Each of these transactions is addressed separately in the statement of claim and the defence. They are:-

(i) an agreement entered into with Mr. Bernard Costelloe, a joint owner of a number of assets with the estate on the 8th August, 2008 (the "Costelloe Agreement"). The plaintiff executed a deed of indemnity in favour of Mr. Costelloe. The plaintiff thereby assumed personal liability for the joint liabilities of the estate and Mr. Costelloe;

(ii) the plaintiff conducted a series of transactions with Socnule, a holding company for Castlethorn Ltd. This involved the distribution of €11 million to the plaintiff as beneficiary of the estate and the advance of a loan by the plaintiff to Socnule (the "Socnule Transactions");

(iii) the plaintiff executed a number of guarantees for loans advanced by Friends First Finance Ltd. to the plaintiff's daughters which were originally guaranteed by the estate ("the Friends First Loan Facilities");

(iv) the plaintiff executed a facility letter in her personal capacity in March 2009 pursuant to which loan facilities granted by Anglo Irish Bank to the late Liam Maye, Joseph O'Reilly, and John Fitzsimons were renewed and increased (the "Lenridge Loan Facilities"); and

(v) the plaintiff discharged liabilities, debts and expenses of the estate totalling approximately €47 million from her personal assets.

51. In June 2013 the National Asset Management Agency (NAMA) issued proceedings against the plaintiff in her role as executrix and alleged that she was not an appropriate person to administer the estate. The plaintiff settled these proceedings on terms which included the making of an order dated 7th October, 2013 revoking the Grant of Probate which had issued to the plaintiff. NAMA claimed in the proceedings that the solvency of the estate was at all times in doubt and that no distribution should have been made to the plaintiff as the sole beneficiary. The plaintiff claims in these proceedings that the acts or omissions which are the subject matter of the NAMA proceedings were the direct result of the negligent advice provided to her by Byrne Wallace and/or Mr. Kieran Duggan. The proceedings concerned, *inter alia*, allegations that the plaintiff had acted in breach of her duty and obligation as an executrix, an alleged conflict of interest which arose between the estate and the plaintiff's personal interest and connection with the Lenridge Loans, and an alleged personal liability of the plaintiff for the Lenridge Loan Facilities. It is claimed that the loss suffered by the plaintiff to NAMA as detailed in the statement of claim and her continuing exposure to future loss and damage arose by reason of the negligence and/or breach of duty of Byrne Wallace solicitors and Mr. Kieran Duggan. The headings under which the plaintiff's claim is framed are set out at paragraph 14 of this judgment.

(a) Administration of the Estate (c) costs and expenses of the estate and (g) National Asset Management Agency

52. This section concerns the matters alleged in respect of the above three issues at paragraphs 28 to 38, 56 to 60 and 96 to 109 of the statement of claim.

53. The plaintiff claims that a Grant of Probate in the late Mr. Maye's estate was taken out on the advice of Byrne Wallace solicitors who failed to advise her that a valuation of the estate at the time of Mr. Maye's death should have been carried out as a matter of urgency. She claims that it was their duty and Mr. Duggan's to ensure that valuations were obtained prior to advising or permitting the plaintiff to enter into any significant transactions on behalf of the estate or to make any distributions from the estate. In particular, it is claimed that Byrne Wallace failed to advise her that one of her primary duties as executrix was to establish the solvency of the estate and failed to advise her concerning the payment of the deceased's debts and liabilities in accordance with s. 45 of the Succession Act 1965 and the potential impact of s. 46 of the Act in the event that the estate was insolvent or, that there was a risk of insolvency, and the rights of the estate's creditors. As a result, the plaintiff was unaware that the estate was at risk of becoming insolvent as real property asset values reduced during the course of the administration of the estate. She claims that she was not advised that distribution should not be made from the estate until its solvency had been established. She was not advised to obtain a valuation of the estate before making any interim distributions or that, for the purpose of such valuation, she was obliged to take all liabilities of the estate (including contingent liabilities) into account. As a result, she made a number of distributions to herself between May 2008 and November 2009 when she was entirely unaware that in doing so she was potentially in breach of her obligations as executrix of the estate and exposed herself to liability. It is claimed that she was never advised in her respective capacities as executrix, beneficiary or in her personal capacity of the consequences for the deceased's estate or for herself in making these distributions.

54. The plaintiff also claims that on 28th June, 2013 the NAMA issued proceedings against the plaintiff in her role as executrix claiming that she was not an appropriate person to administer the estate in the light of the failure to value the assets of the estate and the distributions made by her when the estate was insolvent or was at risk of insolvency. The plaintiff settled these proceedings with NAMA in terms which required the making of an order revoking the Grant of Probate.

55. The defendants deny the plaintiff's claims in respect of the administration of the estate in particular at paras. 44 to 58 of the defence. The defendants accept that they advised the plaintiff who agreed that the Grant of Probate might be extracted by filing an Inland Revenue affidavit (CA24) in nominal terms only. This was done to facilitate the expeditious extraction of the Grant of Probate as required and desired by the plaintiff. It is denied that a failure to file a corrected Affidavit occurred because of any breach by the solicitors of their retainer. The retainer was terminated prior to its filing.

56. Byrne Wallace claim that the plaintiff had available to her and relied upon the valuations made of her husband's properties a month prior to his death and subsequently. In addition, they claim that the plaintiff knew and understood the consequences of each of the transactions set out at paras. 28 to 38 of the statement of claim and in particular that any reduction in values of investments, property or otherwise was caused by and attributable to external factors such as the global economic downturn. The defence addresses these matters in considerable detail at paras. 5 to 38.

57. Byrne Wallace also deny any liability in respect of proceedings brought by NAMA and state that the matters relied upon by NAMA in support of its application for an order revoking the Grant of Probate were grounded on acts or omissions which occurred after the discharge by the plaintiff of her retainer to Byrne Wallace on 4th December, 2009 when advised by others and further that certain transfers were made out of the estate after she had discharged Byrne Wallace. Particulars of these matters are set out at paras. 66 and 67 of the defence. A central issue relevant to these matters concerns the reliance placed by the Plaintiff and the defendants upon the Warren Valuations in 2008 and 2009.

The Warren Valuations

58. The original particulars raised in respect of the Warren Valuations arose from the contents of paras. 9 and 10 of the defence. In para. 9, the defendants claim that the plaintiff had available to her and was satisfied to rely upon valuation reports for the late Liam Maye and Anne Maye on 25th March, 2008, which were sent to Mr. Maye on 10th April shortly prior to his death on 5th May. Reports were also sent on 27th May and 3rd June that valued the assets of the late Mr. Maye in excess of half a billion euro.

59. Particulars of these valuations reports are set out at paras. 9(a) and 9(b). The first report of 25th March, 2008, is said to calculate the value of assets held by the late Mr. Maye including assets jointly held with the plaintiff, net of liabilities at €569m. This is referred to as the "Warren report".

60. The updated Warren report made after the late Mr. Maye's death was a revised report said to have been prepared for the benefit of the plaintiff by "Warren Private Client" on 27th May and is grouped with a further updated report issued on 3rd June, 2008, both of which are referred to as the "updated Warren reports". It is stated that two further valuations were obtained in July 2008 from Bannon concerning the Whitewater Shopping Centre and Cristies in respect of Oakley Court Hotel.

61. Paragraph 10 of the defence states:-

"At all material times it was reasonable for the plaintiff and her advisers (including Byrne Wallace) to rely on the Warren report and/or the updated Warren reports, which reports set out independent expert valuations of the net assets of Liam Maye and/or on the fact that he left a very substantial estate which had very considerable value and long term potential for further uplift"

62. The plaintiff claims that the solicitors were in breach of duty by failing to advise her to obtain a valuation of the estate at the

time of the late Mr. Maye's death. Furthermore, she claims that these valuations should have been obtained prior to advising or permitting her to enter into any significant transactions on behalf of the estate or to make any distributions from the estate. The plaintiff claims that she was not advised in relation to obtaining a valuation of the estate before making any interim distributions and is obliged to take all liabilities into account. Distributions were made between May 2008 and November 2009 but she was unaware that in doing so she was potentially in breach of her obligations as executrix of the estate and exposed herself to liability.

63. The particulars raised in respect of the defence at No. 16(c), 17(c), 17(i), 18(c), 18(f), 18(i), 34(a)(i) and (ii) relate to the Warren valuations.

64. Particular 16(c) asked that the defendants specify the material facts relied upon in support of the contention that the plaintiff was satisfied to rely upon on each of the valuations referred to in paragraph 9. The defendants responded that this was not a proper matter for particulars but was for evidence to be given at the trial. Particular 17(c) seeks full and detailed particulars of the purpose for which the updated Warren report was obtained and 17(i) seeks particulars of the purpose for which the updated Warren report issued on 3rd June, 2008, was obtained. The replies indicate that the Warren report was originally commissioned by Mr. and Mrs. Maye prior to the late Mr. Maye's death. Warren Private Client were wealth management advisers to them and continued to advise the plaintiff on wealth management issues following her husband's death. The defendants maintain that any further particulars are not required to enable the plaintiff to know the case she has to meet in trial or to avoid being taken by surprise.

65. Particular 18(c) in respect of para. 10 of the defence seeks full and detailed particulars of the specific purposes for which it is alleged it was reasonable for the plaintiff to rely on each of the Warren reports or updated reports. These particulars are said to be of particular significance in circumstances where Byrne Wallace advised the plaintiff in her capacity as executrix and in her personal capacity of owner of monies in joint accounts.

66. Particular 18(f) sought clarification of whether it was alleged that Byrne Wallace provided advice to the plaintiff as to whether it was reasonable for her to rely upon the Warren reports or the updated reports and sought the precise terms of any advice allegedly provided to the plaintiff in this regard. The defendants replied that this was not a matter that was necessary to enable the plaintiff to understand the case made at trial or to avoid being taken by surprise.

67. Other ancillary or supplementary particulars are also sought at para. 18(f) in respect of the person or persons who allegedly provided advice to the plaintiff, the dates of advice, the context of the advice, whether it was given orally or in writing and the capacity in which the plaintiff was advised. While the plaintiff acknowledges in the notice for further and better particulars that information was furnished in replies which appears to go to the reasonableness of relying upon the Warren Private Client accounts, replies did not clarify whether advice was provided as to whether it was reasonable for her to rely upon these reports. The following reply was received in respect to this notice:-

"Warren Private Client were (and are) recognised as having specialist expertise in the area of private wealth management. Furthermore, Warren Private Client remained in the role of wealth management advisers to the plaintiff after the death of her husband and knew that the report initially prepared for Liam Maye/Anne Maye was subsequently relied upon by the plaintiff and her advisers in the context of dealing with issues relating to the administration of the estate post Liam Maye's death. Warren Private Client made a presentation to Anne Maye in October 2008 entitled 'Maye Family Investment Exit Strategy Schedule' which contained advice in relation to wealth management."

68. Particular 18(i) requested that the defendants specify the date up to which it was alleged that it was reasonable for the plaintiff and her advisers, including Byrne Wallace, to rely on the alleged fact that the estate had a very considerable value. The defendants replied that:-

"The estate, leaving out the jointly owned assets, had a value of in excess of €450,000,000 by reference to the Warren report/updated Warren reports."

69. In the further particulars sought, it was pointed out that the reply did not respond to the particulars raised. In reply, it was stated that the particulars did not arise in the pleadings and was not a proper matter to raise.

70. Paragraph 48 of the defence also addressed the issue of the Warren reports. It stated that the plaintiff had them and was satisfied to rely upon them and that at all material times it was "proper, appropriate and reasonable for the plaintiff and Byrne Wallace to rely on the said reports". Paragraph 49 states specifically that the plaintiff knew and understood the consequences both legal and financial of each of the transactions the subject of the proceedings and gave express instructions to the solicitors that it was her wish to carry them out.

71. It is in that context that particulars and further particulars were sought in respect of paragraph 48. The defendants in particulars sought at paras. 34(a)(i) and (ii) were requested to identify the precise period during which it was alleged that it was proper, appropriate and reasonable for the plaintiff to rely upon the reports and to identify the specific purpose or purposes for which it was proper appropriate and reasonable to rely upon them. It was said in reply that this was a matter for evidence at the trial.

72. It is clear that the period of the retainer of the defendants as solicitors extended from 24th May, 2008, to 4th December, 2009. The first report was furnished to the late Mr. Maye on 10th April, 2008 and thereafter updated reports were supplied on 27th May and 3rd June, 2008. The grant of probate was extracted on 4th June, 2008. The parties are clear that the allegations against the defendants are confined to the period of their retainer and the consequences of advice given by them. The transactions which were the subject of the proceedings and the distributions made by the plaintiff to herself occurred within the timeframe of May 2008 to November 2009. The plaintiff contends that the duty to value assets was not limited to the time of death but was ongoing and applied prior to entering into any significant transactions and/or prior to the making of any interim distributions. It is part of the plaintiff's claim that the valuations were inadequate to that task. There was no other valuation of the estate during this period on the evidence available to the court. The valuations themselves are in the possession of the plaintiff and have been for some time. The plaintiff is also in possession of the Byrne Wallace files. The court is satisfied that the Warren valuations were furnished to the plaintiff and in her possession at all material times. It is clear from the replies to particulars that for the purposes of their advices during the course of the period of their retainer, no further valuation was obtained and that Byrne Wallace contend that they were entitled to rely upon these valuations as a sufficient basis upon which to furnish the advice given to the plaintiff in respect of the administration of the estate and other matters. It is a matter for the plaintiff to establish that the Warren valuations were an insufficient basis upon which to proceed in the administration of the estate and the various transactions outlined and/or that further valuations ought to have been obtained from time to time and that consequently, the defendants were in breach of their duty to advise the plaintiff to obtain the appropriate valuations at the appropriate time. As a result, it is claimed the plaintiff suffered loss and damage. The issues are clear between the parties. It would appear that further discovery will be made in the course of the

proceedings and the matter will proceed to trial on the basis of witness statements exchanged between the parties. I am satisfied that the issues are clear in relation to this matter and that these further particulars are not necessary. Therefore, I decline to direct further particulars in respect of particulars 16(c), 17(c), 17(i), 18(c), 18(f), 18(i) and 34(a)(i) and (ii).

(b) The Costelloe Liabilities

73. The late Mr. Maye was engaged in a number of joint business ventures with a Mr. Bernard Costelloe referred to in the pleadings as the "Costelloe Assets". He was said to be jointly and severally liable with Mr. Costello in respect of liabilities attaching to these assets. Prior to Mr. Maye's death, it is claimed that the defendants and Mr. Duggan, the 41st defendant, were aware of growing concerns about Mr. Costelloe's ability to fund his share of interest repayments in respect of loans for which he and the late Mr. Maye were jointly and severally liable. In the statement of claim, it is alleged that Mr. Duggan following a meeting on 5th June, 2008, confirmed with Mr. Costelloe that he was unable to fund his share of the obligations held in respect of these assets. It is then claimed that the defendants advised the plaintiff that she was required to fund the entire borrowings personally on the Costelloe Assets as a result of which it is alleged that she made a payment of £750,000 in discharge of interest payments due by Mr. Costelloe and the estate to the Irish Nationwide Building Society (INBS), in June 2008. The plaintiff claims that Byrne Wallace Solicitors failed to advise her that the obligation fell on her late husband's estate to discharge the borrowings on the Costelloe Assets and not on her personally.

74. In June/July 2008, negotiations took place between Mr. Costelloe and Mr. Duggan in respect of the potential acquisition by the plaintiff of Mr. Costelloe's interests in the Costelloe Assets. A meeting then took place on 28th July, 2008, at the office of Byrne Wallace Solicitors which it was orally agreed between the plaintiff and Mr. Costelloe that in consideration of the transfer of his interest in the Costelloe Assets to the plaintiff, the plaintiff would pay Mr. Costelloe the sum of €2m: he would also transfer his interest in a racehorse. It was also agreed that he would be released from all guarantees and liabilities in respect of his loan facilities held in respect of the Costelloe Assets. It was left to the solicitors for each party to draw up the contracts which reflected these terms. This oral agreement was reached between the plaintiff and Mr. Costelloe personally in the absence of legal advisers.

75. It is also alleged that Mr. Duggan at a meeting with the plaintiff on the same date advised her that the banks would not accept the acquisition without an agreement by her to assume personal liability for all liabilities pertaining to the assets. The plaintiff stated that it now appears that the banks were not consulted prior to the execution of the terms of the agreement and had not sought personal indemnity for the plaintiff as advised by Mr. Duggan. It is alleged against Byrne Wallace that the agreement was drafted by them with input from Mr. Duggan and contrary to her interests without any adequate advice as to the implications for the plaintiff in particular in relation to Mr. Costelloe's liabilities in respect of the Costelloe Assets.

76. At para. 46 of the statement of claim it is alleged that on 31st July, 2008, Mr. Duggan informed Byrne Wallace, Solicitors that the plaintiff had agreed to provide an indemnity to Mr. Costello in her personal capacity rather than in her capacity as executrix in respect of all of the liabilities pertaining to the Costelloe Assets including guarantees entered into by the late Mr. Maye and Mr. Costelloe. It is alleged that the full consequences of providing this personal indemnity were not fully explained to the plaintiff by the defendants and that the provision of the indemnity was not envisaged by the oral agreement concluded between the plaintiff and Mr. Costelloe on 28th July. On 7th August, 2008, a written agreement embodying these terms were entered into between Mr. Costelloe and the plaintiff, one provision of which provided that she would "use her best endeavours to procure the release of Mr. Costelloe's ongoing liabilities under certain bank facilities and guarantees and to indemnify Mr. Costelloe in respect of certain specified obligations". At the time this agreement was made, the banks had not agreed to release Mr. Costelloe from the loan facilities and guarantees which were the subject matter of the agreement. The plaintiff executed the deed of indemnity appended to the Costelloe agreement on 8th August, 2008.

77. It is alleged that Byrne Wallace failed to advise the plaintiff adequately or at all in respect of the terms of the Costello agreement and the deed of indemnity.

78. Furthermore, it is alleged that Byrne Wallace solicitors failed to arrange for an appropriate valuation of the Costelloe Assets before advising the plaintiff to enter into the Costelloe agreement. At the time the total loans outstanding on the Costelloe estates were set to exceed the value of the assets of the estate. The plaintiff acquired a net liability of €231,187,452 as a result of the Costelloe agreement. The plaintiff was not advised as to the net value of the Costelloe Assets nor was she advised as to the prudence of purchasing the interest without a proper and informed understanding of the value of the transaction.

79. The plaintiff claims that had she been advised properly she would have understood that the Costelloe agreement would contribute to the insolvency of the estate. She would not in those circumstances have entered the agreement or executed the deed of indemnity. Had an appropriate valuation been furnished to her of the Costelloe Assets she would not have agreed to pay the sum of €2m to Mr. Costelloe. In addition, the defendants failed to put in place a strategy to protect the plaintiff's personal wealth rather than to expose her unnecessarily to liabilities pertaining to the Costelloe Assets by executing a deed of indemnity.

80. Subsequently, by plenary summons dated 11th September, 2009, Mr. Costelloe initiated proceedings against the plaintiff seeking specific performance of the Costelloe agreement and a declaration that he was entitled to be exonerated from the debts and liabilities scheduled to the agreement by the plaintiff. The plaintiff initially sought to defend the proceedings but later compromised them by paying Mr. Costelloe €650,000 (inclusive of VAT) in respect of his costs (amongst other terms). She suffered the loss of €2m paid to Mr. Costelloe and legal costs in defending the cost of the proceedings of some €462,000.

81. The defence addresses the claims in respect of the Costelloe liabilities at paras. 69 – 107.

82. The defendant accepts that the plaintiff made a payment in June 2008 of £750,000 in discharge of interest due and payable by the late Mr. Maye's estate and Bernard Costelloe, jointly and severally to INBS. The defendants claim that in doing so, the plaintiff was at all material times clear and firm in her instructions that all payments due and owing by her late husband were to be paid in full and on time as previously referred to in para. 7 of the defence and the particulars contained therein. The defendants state at para. 76 that Byrne Wallace advised the plaintiff that this payment was a liability of the estate and not a matter in respect of which the plaintiff personally had any liability. Consequently, it is claimed that in making the payment, the plaintiff was not acting on the advice of Byrne Wallace.

83. In addressing the Costelloe Assets, the defendants' solicitors state in the "Particulars of Information Available to the Plaintiff..." for making what they contend was an informed decision about the assets that the executors of the late Mr. Maye's estate and Mr. Costelloe had received a demand on 24th July, 2008, for €57,258,999.95, from Anglo Irish Bank in default of which the bank would commence legal proceedings against both. Mr. Costelloe was not at that time in a position to repay that sum or any part thereof and he had already defaulted in a number of his obligations in respect of the assets. The plaintiff wished to assume complete control of all assets held by Mr. Costelloe. On 28th July, 2008, the plaintiff attended a meeting with Mr. Costelloe without legal advisers. She

wished to conduct the negotiations and reach a binding agreement with him personally. The solicitors were directed to reduce the oral agreement to writing. It is denied by the solicitors that the provision of a personal indemnity by the plaintiff in respect of the Costelloe liabilities related to the Costelloe Assets was not contemplated by the oral agreement. On the contrary, the solicitors claim at paras. 89 and 90 of the defence that the Costelloe agreement and the deed of indemnity drawn up by them were in accordance with express instructions to give full effect to the oral agreement which included the provision for the assumption by the plaintiff of personal liability in respect of Mr. Costelloe's liabilities.

84. It is claimed by the solicitors that the plaintiff was aware that her late husband had already made substantial payments to the banks on behalf of both Mr. Costelloe and himself and that further payments had fallen due and would continue to fall due in respect of joint and several debts. She wanted the estate and/or herself and her children to have the benefit of the payments being made and the full benefit of any equity in the assets including any increase in value in the future. She did not want Mr. Costelloe to have the benefit of any such uplift where he was, in effect, in default in respect of his obligations in respect of the assets. She anticipated that she would experience difficulty in securing cooperation from Mr. Costelloe in reaching decisions concerning the management of these assets which required alternative management systems or structures and she desired to have control of them in the future.

85. The defendant solicitors claim also that the plaintiff was fully aware that it was a condition required by the banks that in return for their consent to any proposed transfer of assets from Mr. Costelloe to the plaintiff she would assume personal liability for the associated liabilities of Mr. Costelloe. In addition, the plaintiff desired to complete the transaction as a matter of urgency and without awaiting formal releases from the banks. In those circumstances, Mr. Costelloe's solicitors required that the plaintiff personally provide him with an indemnity against liabilities in respect of which he remained liable in the default of formal releases from the banks before he would agree to transfer his interest in Costelloe Assets to the plaintiff. Therefore, the provision of the indemnity was in the circumstances essential to complete the transaction and it was denied that the provision of an indemnity was not contemplated by the oral agreement reached between the parties.

86. The defendant solicitors reiterate in the particulars and main paragraphs of the defence that the plaintiff made an informed decision which was taken having regard to the extensive substantial assets of the wider estate of the late Mr. Maye which had been valued in the Warren reports at in excess of half a billion euro. The agreement was also reached in circumstances identified in the Warren reports that Mr. Costelloe was unable to meet his share of liabilities in respect of debts owed jointly and severally by Mr. Maye and Mr. Costelloe. There would be reputational issues for the late Mr. Maye, the estate and the Maye family if there were consistent arrears on facilities jointly borrowed with Mr. Costelloe. This might have resulted in the exposure of the estate to significant liabilities due to Mr. Costelloe's inability or unwillingness to pay the debts on time and in full.

87. The defendant solicitors also state that the plaintiff acting against legal advice met with Mr. Costelloe without her solicitors and conducted negotiations directly with him leading to the oral agreement. She also agreed contrary to legal advice to pay Mr. Costelloe €2m as part of this agreement "in spite of having been advised that it was Bernard Costelloe who should be making a payment to the plaintiff".

88. Particulars were raised in respect of the defence on the Costelloe Assets at paragraph 39(b)(i). The plaintiff seeks full and detailed particulars of the precise terms of the advice allegedly provided by Byrne Wallace to the plaintiff in respect of the payment due to INBS to the effect that it was a liability of the estate and not a matter in respect of which the plaintiff personally had any liability. The court is satisfied that the issue arising in relation to the payment to INBS is clearly pleaded both in para. 76 of the defence, the particulars accompanying same and the particulars previously given at para. 7 of the defence. The terms of the defence are clear and unambiguous. The matter will be the subject of further discovery and exchange of witness statements. The plaintiff is already in possession of the Warren reports and the solicitor's files in relation to the matter. If there are no attendances in relation to the advice given in this regard as suggested, this may give rise to issues of credibility in respect of any evidence given to the effect that such advice was given orally. However, the broad issue is quite clear that the defendants' solicitors claim that they gave appropriate advice to the plaintiff that this was not an amount for which he was personally liable but was, in fact, a liability of the estate. It is also clear that the time span within which this transaction took place is very limited from the date of the late Mr. Maye's death to a date in June 2008.

89. The particulars raised in respect of the transfer of the Costelloe assets at particulars 44 (c) and (d), 45(f) and 46(b) concern events which occurred between 5th June, 2008 and 7/8th August, 2008. Those particulars relevant to the terms of the oral agreement and the drafting of the written agreement and the deed of indemnity relate to the period 28th July to 7/8th August, 2008. They arise from the pleas set out in paras. 85 to 89 of the defence.

90. Particular 44(c) seeks details of any steps allegedly taken by Byrne Wallace or any other party to obtain formal releases from the banks of the Costelloe liabilities and clarification as to whether the solicitors advised the plaintiff that she should not proceed to acquire the Costelloe interests until such time as the formal releases had been obtained from the Bank. The question of whether formal releases were obtained is a question of fact. At issue is whether Mr. Costelloe's advisors sought the inclusion of a term in the agreement that in default of formal releases or because of the absence of formal releases from the Bank, the plaintiff was required to give a personal indemnity in relation to any liability arising from the Costelloe assets from Mr. Costelloe. It would appear that those releases were not available to Mr Costelloe and consequently a deed of indemnity it is said was entered into and a clause was agreed pursuant to which the plaintiff would use her best endeavours to secure the releases. In para. 85 of the defence it is noted that it is expressly acknowledged in para. 45 of the statement of claim that the banks had at all material times stated that they would consider approving the acquisition by the plaintiff of the Costelloe assets provided the plaintiff agreed to assume personal liability and not merely liability in her capacity as executrix to the estate of Liam Maye for the associated Costelloe liabilities. At para. 88 the defendant solicitors deny any failure on their part to explain to the plaintiff the consequences of providing a personal indemnity to Mr. Costelloe as alleged in para. 46. At para. 92 it is admitted that Byrne Wallace gave legal advice to the plaintiff prior to and when entering into the Costelloe agreement and deed of indemnity. It is then stated "Byrne Wallace will refer to the said legal advice at the trial hereof to establish its full terms, true meaning and legal effect". The court is satisfied that the effect of the defence is to join issue with the plaintiff in her contention that she was not advised in relation to the legal consequences of entering into the agreement and deed of indemnity and assuming personal liability in respect of the Costelloe assets in respect of Mr. Costelloe's liabilities. It is clear to the court that the solicitors maintain that they properly advised her about these consequences but that she declined to follow it. The plaintiff seeks details of that advice. However, it should firstly be observed that the plaintiff states that she never got such advice. Secondly, the nature of that advice is limited both as to the consequence of personal liability for the plaintiff and was provided within a short time-frame. The plaintiff has possession of the solicitors' files in relation to this matter which should contain attendances in respect of any such advice. Anything else is a matter for oral evidence. It seems to me that the issue is clear between the parties. I am not satisfied that I should direct the particulars sought at paras. 44(c) and (d).

91. Particular 45(f) which relates to para. 87 of the defence seeks "the material facts relied upon" in support of the contention that the provision of an indemnity was required of Mr. Costelloe. This is a matter for evidence. The defence is that it was a condition

raised by Mr. Costelloe's lawyers that absent a personal indemnity in respect of his liabilities to the banks in the absence of releases from the banks he would not agree to transfer his assets. It is clear from the defence that the solicitors maintain that they advised the plaintiff in relation to the provision by her of an indemnity to Mr. Costelloe and the consequences of her exposure under such an indemnity. It seems to me that the issue raised is clear between the parties and anything else is a matter for evidence. The court is satisfied that particulars insofar as they are required are clear from the terms of the defence and from the further particulars set out at para. 94(a) to 94(k) thereof.

92. Paragraph 89 of the defence deals with the matter of the personal indemnity. Particular 46(b) seeks further details concerning how it is said the provision of the indemnity was essential to the completion of the Costelloe transfer. It seeks details of any advice provided by Byrne Wallace in relation to the provision of the indemnity and the extent of which it was essential to the completion of the transaction. I am satisfied that this is clearly stated in the defence and readily understandable from the terms thereof. The particulars sought at 46(b)(i) to (viii) seek more precise details of the advice allegedly provided. It seeks to identify those in Byrne Wallace who provided it, the dates it was provided, whether it was orally given or in writing, whether it was recorded and the capacity in which it was given to the plaintiff. The circumstances set out in para. 89 in which it is said the personal indemnity arose are clearly stated. Since the terms of the contract and of the deed of indemnity in issue relate to the personal liability of the plaintiff, the capacity in which that advice is given is clear. It could only have been relevant to her exposure personally in relation to the Costelloe advices if she gave a personal indemnity in relation to the Costelloe assets. The dates upon which the advice was given are necessarily limited in time to the period within which the transaction was agreed as set out above. The files are in the possession of the plaintiff. If matters are not recorded by the solicitors in their attendances, there may be oral evidence in relation to the advice given, the nature of which is clear. There may be criticism that such advice is not recorded. If it is contended it was never given to the plaintiff, she may seek to rely upon the absence of appropriate attendances in establishing her case. However, it does not appear to me that the issues between the parties are unclear in this regard.

93. The court therefore declines to direct particulars raised at paras. 44(c) and (d), 45(f) and 46(b).

94. Paragraph 94 of the defence sets out particulars and information available to and relied upon by the plaintiff in making what is said to be an informed decision in deciding to execute the Costelloe agreement and the deed of indemnity. Particular 50(l) seeks details of whether Byrne Wallace solicitors or any other party advised her that it was necessary that she complete the transaction with Bernard Costelloe as a matter of urgency so that she might *inter alia* engage with Anglo Irish Bank in particular and the banks generally in restructuring facilities. It is not claimed that Byrne Wallace gave her such advice or acted negligently in giving such advice in the statement of claim or the particulars furnished in support thereof. It seems to me that this particular seeks to explore the evidence to be relied upon at trial. Consequently, I am not satisfied that the particular should be directed.

95. Particular 52(a) is also directed towards para. 96(b)(ii) of the defence. It states that the plaintiff's independent financial advisor Mr. Duggan had advised the plaintiff that the consent of the banks would be required and that the banks would not release Mr. Costelloe from his obligations without the plaintiff personally and not merely as executrix of the estate of Liam Maye assuming Mr. Costelloe's obligations. The details of the advice given by Mr. Duggan are requested as are the dates and circumstances thereof and whether Byrne Wallace were present or provided any advice to the plaintiff in relation to the advice provided by Mr. Duggan and whether any steps were taken by Mr. Duggan to verify any information or advice provided by Mr. Duggan to the plaintiff.

96. Once again it appears to the court that this is a matter that arises in relation to the evidence at the trial. The file is in the possession of the plaintiff. The issues raised in the defence are clear as between the plaintiff and the defendants concerning the circumstances in which it is said she came to enter the agreement in respect of the Costelloe assets and the reasons for so doing. Mr. Duggan, it would appear, had carriage of discussions with Mr. Costelloe from early June 2008. This led to the agreement made between the plaintiff and Mr. Costelloe in the absence of solicitors. It seems to me that the issue concerning whether Mr. Duggan's advice referred to in para. 96 was verified or verifiable is a matter for evidence in respect of the banks willingness or unwillingness to release Mr Costelloe from his liabilities or to consent to the transfer of assets in the absence of an undertaking or assumption of personal liability by the plaintiff.

97. Paragraph 113 of the defence states that insofar as the plaintiff discharged the estate's debts from her personal assets she made an overall financial and business assessment and reached an informed decision to so act. It is denied that this occurred on the advice or was knowingly allowed by Byrne Wallace solicitors, or without taking any steps to ensure priority for the plaintiff in the repayment of monies advanced to the estate as alleged in para. 57 of the statement of claim. Paragraph 57 alleges that the defendants failed to advise the plaintiff that she had no personal liability for the debts of the estate and that they should have been treated separately and independently of her personal assets. The plaintiff claims that the defendants knowingly allowed the plaintiff to discharge the estate's debts from her personal assets when she had no obligation to do so and without taking any steps to ensure priority for the Plaintiff in the repayment of monies so advanced to the estate. Paragraph 113 must be considered in the context of the full defence entered in relation to allegations concerning "costs and expenses of the estate at paras. 108 to 119 of the defence".

98. The particulars sought at item 54 seek details of the information said to have been made available to the plaintiff in making "the alleged overall financial and business assessment and reaching the alleged informed decision" referred to in para. 113. It seeks to identify persons or person by whom this information was made available, when it was made available, whether it was provided orally or in writing and whether it was recorded. The details set out in the remaining subparagraphs concerning the alleged "informed" decision also seeks details of the precise advice given, who within Byrne Wallace gave it, the dates and context of the advice much of which has been already canvassed in the pleadings considered above. These matters have been fairly and clearly addressed in the pleadings to date and I do not consider that it is necessary to direct further replies.

(f) Lenridge loans

99. Paragraph 84 of the statement of claim in respect of Lenridge loans concerns the claim that Byrne Wallace solicitors represented a Joseph O'Reilly and John Fitzsimons, Crossridge, Lenridge and Anglo Irish Bank as lender in respect of the Lenridge loans. The plaintiff contends that while aware that Byrne Wallace also represented other parties the conflict of interest to which this gave rise was not disclosed and explained to the plaintiff by Byrne Wallace, their servants or agents.

100. The Lenridge loans are addressed at paras. 81 to 95 of the statement of claim. Mr. O'Reilly, Mr. Fitzsimons and the late Mr. Maye were shareholders in Castlethorn Construction Ltd. which developed Dundrum Shopping Centre through a company called Crossridge Ltd. They proposed to develop a second phase of the Dundrum Centre through a company called Lenridge Properties. The company held properties required for the development in trust for the three shareholders. Funding was provided by Anglo Irish Bank to the late Mr. Maye, Mr. O'Reilly and Mr. Fitzsimons pursuant to a series of facility letters. They were jointly and severally liable in respect of the loan covering the project pursuant to a facility letter dated 31st March, 2008. It is said that in early 2009 Mr. Duggan engaged with Anglo Irish Bank concerning the restructuring of the Lenridge loans. A restructuring was approved by the Bank in February 2009 and it is alleged that Byrne Wallace and Mr. Duggan advised the plaintiff that this restructuring should be accepted.

101. A new facility letter was entered into on 6th March, 2009 to renew and increase the loan facility originally granted. It is alleged that Byrne Wallace represented and advised the plaintiff in her capacity as sole beneficiary of the estate, in her personal capacity and as personal representative of the estate in respect of these negotiations and the execution of the facility letter. Byrne Wallace as was previously the case also represented Mr. O'Reilly and Mr. Fitzsimons concerning the facility letter as well as Crossridge and Lenridge. It represented Anglo Irish Bank as the lender in respect of the Lenridge loans. The plaintiff accepts that she was aware that Byrne Wallace represented the other parties. She said that relying upon the advice of Byrne Wallace the facility letter was executed "without specifying whether she was doing so as personal representative, beneficiary or in her personal capacity". It is alleged that Byrne Wallace failed to advise the plaintiff of the significance of the amendment of the "borrowers acceptance" in a draft of March 2009. The facility letter removed wording which provided that the plaintiff would be signing "as executrix and sole beneficiary in the estate of Liam Maye (deceased)".

102. It is alleged that Byrne Wallace failed to provide any advice in relation to the meaning and effect of the March 2009 facility letter including the possibility that she would be exposed to personal liability on a joint and several basis for the Lenridge loans in accordance with its terms.

103. It is alleged that the facility letter was renewed by a later facility letter dated 15th September, 2009 also executed by the plaintiff relying on advice from the defendants and Mr. Duggan. In those circumstances the plaintiff became jointly and severally liable with Messrs. O'Reilly and Fitzsimons to repay loan facilities of €227 million in circumstances where the property assets on which the loan was secured are said to have been worth considerably less than that sum and in circumstances where the late Mr. Maye's estate was insolvent and not in a position to make any distribution of assets to the plaintiff. In addition, prior to the execution of the loan facility the plaintiff had no personal liability in respect of these loans.

104. The plaintiff claims she was given no advice concerning the risk of execution of the Lenridge facility. The plaintiff alleges that there was a failure to obtain a valuation of the assets and advise her in relation to the assets held by Lenridge prior to the execution of loan facilities.

105. The terms of the March 2009 facility letter required the estate's interest in the Lenridge assets to be assented by the plaintiff and required her to enter into co-ownership agreements with Messrs. O'Reilly and Fitzsimons. The defendant solicitors failed to advise that in circumstances where the estate was insolvent or at risk of insolvency the assets should not have been assented by the plaintiff and/or that the said assent of the Lenridge assets exposed her to a potential breach of her duties as executrix of the estate.

106. The defence addresses these matters at paras. 146 to 178. The court is satisfied that this matter is addressed in considerable detail by the defendants sufficient to identify fairly the issues between the parties. The detailed particulars sought at paragraph 150 seek to identify who informed the Plaintiff of the representation by Byrne Wallace of the various parties represented by them and the nature of the information provided. The replies state that Ms Eileen Prendergast, Mr. McGennis, Ms Catherine Guy and Ms Alison O'Sullivan dealt with her on these issues. It seems to me that oral evidence will be provided on these matters. Extensive documentation from the solicitors' files and discovery and a history of representation will be available at the hearing. I am satisfied that this matter is sufficiently and fairly pleaded to give notice of the nature of the defendants' defence.

Conclusion

107. The court is not satisfied to direct further replies to particulars apart those set out at paragraph 46 of the judgment.