

## THE HIGH COURT

[2017 No. 2361 P.]

BETWEEN

PHILIP MORRISSEY

PLAINTIFF

AND

DAN MORRISSEY (IRELAND) LIMITED (IN RECEIVERSHIP), STEPHEN TENANT, PAUL MCCANN AND PLAZAMONT LIMITED

DEFENDANTS

**JUDGMENT of Mr. Justice Brian McGovern delivered on the 17th day of January, 2018**

1. In this case, a number of motions for discovery have been brought by various parties. At the hearing before me on 12th January, these had reduced to a number of categories of discovery sought in two motions. The first was a motion dated 11th October, 2017, brought by the plaintiff against the first, second and third named defendants in respect of five categories of documents and against the fourth defendant in respect of seven categories. The second motion dated 18th October, 2017, is brought by the first, second and third named defendants seeking discovery against the plaintiff in respect of five categories of documents.

**Motion dated 11th October, 2017**

2. By letter dated 3rd October, 2017, the solicitors for the first, second and third defendant made various offers with respect to the discovery sought. They indicated they were prepared to make discovery of category 1 in the following terms:-

*"The agreement (as supplemented, varied or replaced from time to time) made between the first, second and third named defendant and the fourth named defendant."*

This has now been accepted by the plaintiff and is agreed.

3. With regard to paras. 2, 3 and 4, the solicitors for the first, second and third defendants point out that the central issue in these proceedings is whether the defendants or any of them are entitled to extract limestone from the Clonmelsh Quarry. It is not in dispute that since August 2014, blasting and excavation, crushing and grading of rock have been carried out at the quarry under the agreements to be discovered under category 1. The question is whether this is lawful under the 1985 lease. As the plaintiff has no interest in the property of the first named defendant and his claim in these proceedings is based on his status as registered owner of the quarry, the solicitors for the first, second and third named defendants argue that categories 2 and 3 are irrelevant to the matters in dispute. I agree with that submission and I refuse the application in respect of categories 2 and 3.

4. I am satisfied that the offer made by the solicitors for the first, second and third defendants in respect of category 4 is adequate and will, therefore, direct the first, second and third named defendants to make discovery with respect to that category in the manner offered, namely:-

*"A statement of account from the first and second named defendants recording payments made by the fourth named defendant under the Agreement (as supplemented, varied or replaced from time to time) made between the first, second and third named defendants and the fourth named defendant."*

5. With regard to the position of the fourth named defendant, categories 1 and 5 are agreed. I refuse categories 2 and 3 on the basis that they are not relevant or necessary to determine the issues in dispute between the parties.

6. Category 4 is too broad in its terms and the fourth named defendant has offered to make discovery of *"all invoices and receipts evidencing the sale or disposal of limestone from the Clonmelsh Quarry in the period from August 2014 to 14th March, 2017"*. In my view this is perfectly adequate and I will make an order for discovery under category 4 in those terms.

7. So far as category 5 is concerned, the fourth named defendant has agreed to make discovery of the profit and loss account and balance sheet of the fourth named defendant for the years ending 2014, 2015 and 2016 and the management account profit and loss accounts and management account balance sheet of the fourth named defendant for the period from January 2017 to March 2017. In my view, this is sufficient, and is now agreed, and I will order discovery under that category accordingly.

8. The fourth named defendant is agreeable to make discovery of category 6 and 7 and has suggested the terms in which that discovery will be made. The offer of discovery in respect of these categories appears to be reasonable and I will make an order on that basis. Therefore, discovery with regard to category 6 will be in the following terms:-

*"A statement of account from the fourth named defendant recording payments made by the fourth named defendant to the first, second and/or third named defendants under the license agreement (as supplemented, varied, or replaced from time to time) made between the first, second and third named defendants and the fourth named defendant in the period from 1 August 2014 until 31 March 2017."*

9. With regard to category 7, the discovery will be in the following terms:-

*"The fourth named defendant's stock records relevant to the period from August 2014 to March 2017 evidencing the amount of limestone stockpiled at the Clonmelsh Quarry."*

**Motion dated 18th October, 2017**

10. This motion is brought by the first, second and third named defendants seeking discovery of five categories of documents from the plaintiff. Categories 1 – 4 have now been agreed. Category 5 remains in dispute. This category comprises *"all documents vouching the plaintiff's alleged loss and damage"*.

11. I refuse discovery under that heading as this is more appropriate for a request for particulars of the plaintiff's loss and damage including vouchers in support of the claim.

