

**THE HIGH COURT
COMMERCIAL**

**[2013 No. 103 COM]
[2013 No. 8 COM]
[2012 No. 6820 P.]
[2012 No. 12409 P.]
[2012 No. 13120 P.]
[2013 No. 6292 P.]**

BETWEEN

SEÁN O'DRISCOLL

PLAINTIFF

AND

IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL RESOLUTION) AND IBRC ASSURANCE COMPANY LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 24th day of April, 2015

1. These motions for discovery were heard on 21st and 22nd January, 2015.

2. I propose to deal with the first defendant's application for further and better discovery first. The disputed discovery had been reduced to two issues by the time of hearing, namely, Issues 8 and 10. I had already made an order for discovery on 7th February, 2014, and this application concerned whether or not a further order should be made in the light of the first defendant's complaints as to the adequacy of the discovery made by the plaintiff in compliance with the original order.

3. Issue 8 relates to the treatment of privileged documents in the plaintiff's affidavit of discovery. The first defendant claims that the schedule does not specify what form of privilege is claimed over each of the documents and secondly, it does not provide any information as to the matters to which each document relates. Issue 10 concerns the absence of any reference to communications passing between the plaintiff and other investors in the investment funds which are the subject of the proceedings. Counsel for the plaintiff informed the Court that full compliance with the original order of discovery had been made and that the legal professional privilege claimed was precisely that and that the nature of the privilege was set out. Counsel went on to state that if a further affidavit of clarification was required, it would be furnished. He also informed the Court that there was no such communication or correspondence contended for in Issue 10 and that this was confirmed on affidavit. Counsel for the first defendant informed the Court that if these matters were clarified on affidavit, he could not look behind that.

4. Subsequent to the hearing, a supplemental affidavit of the plaintiff was furnished which deals with both issues and I am now satisfied that there was full compliance by the plaintiff with the original order on both these points and I will make no order for further or better discovery on Issues 8 or 10.

5. The other motion was brought by the plaintiff against both defendants but counsel for the second defendant took the burden of making the argument on behalf of both defendants. Two issues arose on this motion:-

(i) the nature of redactions to documents, and legal privilege claimed by the defendants; and;

(ii) the adequacy of the discovery in terms of certain documentation not appearing in the discovery that had been ordered.

6. In the course of the hearing, counsel for the plaintiff said that he was not calling into question the defendants' *bona fides* and counsel for the defendant argued that the Court should not look behind the affidavit of the solicitor, Mr. Tiernan if the defendants' *bona fides* was not being called into question. Just because his affidavit was "*terse*" to use the characterisation made by the plaintiff, this does not mean that the affidavit is insufficient. Mr. Tiernan claims that the material sought is irrelevant and commercially sensitive. In para. 19 of his affidavit sworn on 20th August, 2014, he says:-

"Certain documents have been redacted on the grounds that the redacted information is irrelevant to the discovery categories and is commercially sensitive or confidential information and in particular may relate to information on other funds not the subject matter of these proceedings. For example, there are a number of board minutes and corresponding board packs for meetings of the board of IBRCAC and of the Asset Review Committee (being a sub-committee of the IBRCAC board) which are discovered in category 35..."

7. It seems to me that Mr. Tiernan's affidavit deals comprehensively with all the issues raised by the plaintiff. He avers that full discovery has been made in accordance with the order made by this Court on 7th February, 2014.

8. A further affidavit was sworn in the matter by Mr. Kieran Wallace, the special liquidator of the first defendant and he verifies what was set out in Mr. Tiernan's affidavit.

9. I am satisfied that the defendants have complied with discovery directed by me on 7th February, 2014, and that the redactions made in documents discovered are proper and justified.

10. On the issue of legal professional privilege, I have been furnished with a significant quantity of documents to review. I have looked at the documents and I am satisfied that they do properly come within the scope of legal professional privilege and do not require to be produced to the plaintiff.