

**THE HIGH COURT  
COMMERCIAL**

**[2013 No. 6292 P]  
[2013 No. 80 COM]**

**BETWEEN**

**SEAN O'DRISCOLL**

**PLAINTIFF**

**AND  
IRISH BANK RESOLUTION CORPORATION LIMITED  
(IN SPECIAL LIQUIDATION)**

**AND  
IBRC ASSURANCE COMPANY LIMITED**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 7th day of February 2014**

1. The plaintiff has sought discovery from the defendant in this case. The defendant has also sought discovery from the plaintiff. While a certain amount of agreement has been reached between the parties, there are unresolved areas of discovery which I have to deal with.

**The Plaintiff's Application**

2. The outstanding issues of discovery have to be looked at against a background that the defendants have already offered to provide to the plaintiff its file on the plaintiff in connection with his investment in the Woolgate Fund, the European Fund, the UK Banks Fund and the Taurus Fund.

3. Categories 2-12-29 and 37. I refuse the application for discovery under these headings. The fact that the first named defendant approached the plaintiff concerning the funds is not in dispute and the manner in which the funds were sold to the plaintiff is not in issue.

4. Categories 4, 14, 31 and 39. I will allow the discovery sought under these categories. It seems to me that the earlier drafts of the brochures and contractual documents are relevant to the issues in dispute. If the plaintiff establishes that there were material alterations made it may undermine the defendants' case and support the plaintiff's case. It goes to the issue of *bona fides* of the defendants and whether or not they acted in breach of fiduciary duty.

5. Categories 5, 15, 32 and 40. I refuse the discovery sought under these headings. If the plaintiff has drafts of the brochures and contractual documents, that will be sufficient. It seems to me that to order discovery under these headings would be disproportionate since the content of the contractual documents are not in dispute.

6. Categories 7 and 17. I refuse discovery under these headings. The plaintiff has changed the basis of the request. Initially, the plaintiff said that the discovery was sought for the "... purpose of demonstrating that the first defendant made no, or no reasonable effort to verify the accuracy of the content of the external reports ...". Subsequently, the plaintiff offered as a reason for discovery that "*the defendants have, however, objected to this category of discovery on the basis that there is no issue between the parties regarding any obligation on the part of the defendants to verify the accuracy of the material contained in the reports as aforesaid. This is correct, however, this is not the reason why the plaintiff seeks discovery of this category of documentation*". It is not in issue that the Bank recommended that the investments were suitable for the plaintiff. It seems to me that the discovery now sought under these headings is not sufficiently connected to the pleadings.

7. Category 8. I refuse the discovery sought by the plaintiff under this heading. It is not necessary, in my view. The documents were available for inspection prior to the investment being made by the plaintiff and are still available. The defendants have offered to disclose all documents that would have been available if the plaintiff had sought them and inspected them before making the investment. I will direct the modified discovery offered by the defendants.

8. Category 18. I refuse the order sought under this heading but will allow the discovery as offered by the defendants.

9. Category 22. I refuse discovery under this heading. In my view, the request for discovery amounts to a fishing expedition. It would be oppressive, unnecessary and disproportionate to order discovery under this heading having regard to the fact that it would involve a trawl through many thousands of documents and correspondence involving the defendants and the eleven joint venture partners concerning fourteen standalone properties in three portfolio investments.

10. Category 27. I refuse discovery under this heading on the same basis as category 22 above. Such discovery is not necessary in view of the other documents which have been discovered and in view of the documents already made available by the defendants to the plaintiff.

11. Category 42. Taurus Fund. I will refuse the discovery sought by the plaintiff but allow and direct the discovery offered by the defendants in this category.

**Defendants' Application for Discovery**

12. I will allow the defendants' application for discovery as sought under category 3(d). The plaintiff is willing to make discovery limited to the funds in these proceedings. The defendants seek discovery extending to those funds and any other investment opportunity offered by the defendants to the plaintiff. In my view, the entire of the relationship between the plaintiff and the defendants is relevant to the issues in dispute, and in particular, the extent of the relationship between the plaintiff and the defendants. The discovery sought is also relevant to the issue of contributory negligence as the conduct of the plaintiff in dealing with other investment opportunities offered by the defendants to him is relevant.

13. I will refuse the discovery sought in category 4 on the grounds that it is not in dispute that the plaintiff had an appetite for high risk investment. Accordingly, the documents sought are not relevant or necessary.

14. Categories 7, 10, 13 and 16. These categories are grouped together because they are in almost identical terms and refer to the four different investment funds. I will allow the discovery sought under each of these headings but only up to the transaction dates, that is to say, in the case of the Woolgate Fund, 28th September, 2006; the European Geared Property Fund, 15th December, 2006; the AIAC UK Banks Fund, 26th April, 2007, and the Anglo Taurus Retail Geared Property Fund, 10th August, 2007.

