

THE HIGH COURT

[2004 No. 10397 P]

BETWEEN

RONALD ALBERT POPELY

PLAINTIFF

AND

JOHN HENRY POPELY, SIMON ASHLEY COULDRIDGE,
CARAGH ANTOINETTE COULDRIDGE, LINDA ENRIGHT,
WILLIAM VAN HEIJNINGEN AND DEREK JOHN MURPHY

DEFENDANTS

Judgment of Ms. Justice Finlay Geoghegan delivered the 5th day of May, 2006.

1. The present application is brought by the first named defendant, John Henry Popely ("John Popely") on a motion issued on the 14th July, 2005, seeking, *inter alia*, orders:

1. that this Court decline jurisdiction in these proceedings or, in the alternative, stay the proceedings pursuant to article 27 of Council Regulation E.C./44/2001 of 22 December, 2000 on jurisdiction and the recognition and enforcement of judgments in civil commercial matters, O.J. L 012/1 16.1.2001, by reason of the fact that proceedings involving the same cause of action and between the same parties had already been brought in England and jurisdiction in those courts has been established; and

2. in the alternative, an order staying the proceedings between the plaintiff and the first named defendant or, in the alternative, declining jurisdiction pursuant to the provisions of article 28 of Council Regulation E.C./44/2001 on the grounds that a related action between the plaintiff and the first named defendant is pending before the English courts.

Background to proceedings

2. The plaintiff, Ronald Popely is the younger brother of John Popely. It appears that the brothers were in business together for some time prior to 1997. The business related to resort accommodation and facilities in the Turkish Republic of Northern Cyprus known as the Long Beach Club and the Hever Golf and Country Club in Kent, England. The brothers appear to have conducted their business through a complex series of companies, many of which were offshore of the United Kingdom and the shares in those companies also appear to have been held through offshore trusts possibly controlled by the brothers and/or their families. I use the term "possibly" as there is now much dispute between the brothers as to the precise arrangements. Insofar as I describe the background facts I am not intending to make any findings of fact. Much of precise factual situation is not relevant to the issues which I have to determine.

3. It also appears that in 1998 the brothers identified a further potential resort in France and for that purpose arranged to purchase Le Chateau de Francport ("the Chateau"). I do not propose expressing any view as to how that Chateau was purchased, save that it appears to have been purchased in the name of a company incorporated and registered in Ireland called Ruislip International Ltd. ("Ruislip"). That company appears to have been incorporated as a shelf company and then acquired by the brothers or one or other of them or by trusts associated by each or either of them in 1998.

4. Prior to the acquisition of the Chateau it is alleged by John Popely that an agreement had been reached between the brothers that the assets within both the Hever resort and Long Beach resort were to be held between the brothers on the basis of a one-third to two-thirds split of beneficial ownership between John Popely and Ronald Popely respectively. It is also alleged that it was agreed that the present value of those assets be realised and be held offshore by Ronald Popely and John Popely. It is further alleged that all future realisations of or accretions to those assets were similarly to be made on the basis of a one-third to two-thirds split.

5. Disagreement between the brothers appears to have commenced in 1999. Attempted resolution appears to have got as far as draft heads of agreement but ultimately there was no agreement. In 2000 there was a purported transfer from Ruislip to a French company, S.C.I. Le Chateau de Francport ("S.C.I."), for a price of FF5.3m. This is alleged to be a company directly controlled by Ronald Popely. It is further alleged that pursuant to further agreements made by Ronald Popely that S.C.I. transferred the Chateau to R.M.I. for a sum in French francs which represents approximately Stg.£3,205,000. Completion of that sale has not taken place and proceedings have been commenced in France by John Popely and by Ruislip (effectively organised by John Popely pursuant to transactions which are the subject matter of these proceedings) seeking to set aside the transfer of the property from Ruislip to S.C.I. Ruislip had been permitted to be struck off the register in Ireland for failure to make returns and John Popely also arranged for the restoration of Ruislip to the register. The French proceedings are ongoing.

6. John Popely commenced proceedings against Ronald Popely in England on the 13th August, 2001. A second set of English proceedings were commenced by him on the 14th March, 2003. Those proceedings appear to have been consolidated. Ronald Popely challenged the jurisdiction of the English courts (the nature of the challenge is in dispute). However, such challenges were dismissed on the 11th November, 2003, and costs awarded to John Popely on those applications. I will be referring to the nature of the English proceedings in greater detail below.

Irish proceedings

7. These proceedings were issued by Ronald Popely by plenary summons on the 2nd July, 2004. The notice of the summons was served on John Popely on the 6th July, 2004. An unconditional appearance was entered on behalf of John Popely on the 6th October, 2004. A statement of claim dated the 6th July, 2004, was served on John Popely. Notice of motion for judgment in default of defence was issued on the 2nd December, 2004, and by order of the High Court (Clarke J.) judgment was given against John Popely on the 20th December, 2004. On the 18th January, 2005, a motion was issued on behalf of John Popely seeking to set aside the order and judgment of Clarke J. Affidavits were filed on both sides and this was adjourned from time to time. On the 25th April, 2005, the High Court (Gilligan J.) set aside the order of Clarke J. and gave liberty to John Popely to deliver a defence. The defence was delivered on behalf of John Popely. On the 17th May, 2005, two motions were issued on behalf of Ronald Popely, one seeking injunctive relief and the other seeking liberty to join Ruislip as a co-defendant. On the 23rd June, 2005, notice of change of solicitor was served on behalf of John Popely. In the replying affidavits to the May motions of Ronald Popely reference was made to the intention of John Popely to bring this application. Those motions have not yet been heard or determined pending the determination of this application.

8. In relation to the other defendants, the position appears to be as follows. The second and third named defendants are persons resident in the Channel Islands and were the persons to whom the issued shares in Ruislip were transferred on its acquisition for the

purpose of purchasing the Castle and were also appointed directors. Leave has been granted to serve them with a notice of the summons. The fourth and fifth named defendants are persons whom it is alleged were appointed directors of Ruislip in July, 2001. A defence has been delivered on behalf of the fourth named defendant. Judgment has been obtained (in default) by order of the High Court (Macken J.) on the 31st January, 2005, against the fifth named defendant. The sixth named defendant is a person who is alleged to have been appointed a director and the secretary of Ruislip. He was subject, with John Popely, to the orders of the High Court of Clarke J. of the 20th December, 2004, and Gilligan J. of the 25th April, 2005. A defence has been delivered on his behalf.

9. A further procedural complication in this lengthy saga is that John Popely was adjudicated a bankrupt in England on the 23rd September, 2005. In accordance with the English Bankruptcy procedure the Official Receiver then became receiver and manager of the bankrupt's estate. Following a meeting of creditors an insolvency practitioner, Mr. G.J. Johnston was appointed the trustee of the bankrupt's estate. By consent a letter dated the 15th February, 2006, from his solicitors was handed into Court. He determined not to be represented before the Irish courts as his appointment was then under challenge before the English courts and a full hearing likely in March.

10. Following submissions, this Court determined to proceed with the jurisdiction motion as it appeared necessary that this be determined having regard to Article 27 of Council Regulation E.C./44/2001 and if the decision was that the claim against John Popely should continue in this jurisdiction the consequences for some of the bankruptcy could then be considered after the position of the Trustee clarified in England.

Issues

11. Having regard to the facts herein and the submissions made by counsel on behalf of the parties the issues to be considered appear to be:

1. Does the entry by John Popely of an unconditional appearance in the Irish proceedings mean that this Court has jurisdiction pursuant to article 24 of Council Regulation E.C./44/2001 and that it is not bound by article 27 to stay the proceedings, even if there is an identity between the cause of action and parties in the Irish proceedings and the English proceedings.
2. Are the Irish proceedings and English proceedings such that they are proceedings "involving the same cause of action and between the same parties" within the meaning of article 27 of Council Regulation E.C./44/2001.
3. Are the Irish proceedings ones for which the Irish courts have exclusive jurisdiction pursuant to article 22.2 of Council Regulation E.C./44/2001.
4. Are the Irish proceedings and English proceedings "related actions" within the meaning of article 28 of Council Regulation E.C./44/2001.
5. Insofar as the answers to the above issues entail obligations or discretions for this Court under articles 27 or 28 of Council Regulation E.C./44/2001, the form of orders which should now be made.

Articles 24 and 27 of Council Regulation E.C./44/2001

12. These articles provide:

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

13. It is common case that John Popely entered an unconditional appearance to these proceedings in this jurisdiction. Accordingly, in accordance with article 24 the courts of Ireland have jurisdiction to hear and determine the present proceedings. It is not suggested that any other court has exclusive jurisdiction under article 22.

14. Counsel for Ronald Popely submits that, as article 24 expressly excludes its application either to the entry of an appearance to contest jurisdiction or where another court has exclusive jurisdiction under article 22, that it must follow that these are the only circumstances in which the entry of an appearance does not confer absolute jurisdiction on a court both to hear and determine proceedings. It is submitted that if the intention was that jurisdiction was not to be conferred by the entry of an appearance in circumstances where article 27 applies that article 24 would have expressly so stated.

15. Counsel were not able to refer me to a decision where the relationship between articles 24 and 27 has been expressly decided. Having carefully considered the entire scheme of Council Regulation E.C./44/2001 and the purposes both of article 24 and article 27, I have concluded that the submission of counsel for Ronald Popely is not correct. Rather it appears to me, as was submitted by counsel for John Popely, that article 24 is directed to the circumstances in which jurisdiction may be conferred on the courts of a Member State whilst article 27 is concerned with the entitlement of courts of a Member State to continue to hear and determine proceedings which, when viewed in isolation from any other proceedings, they have jurisdiction to entertain. Article 24 forms part of the rules according to which jurisdiction may be established. Article 27 forms part of the provisions of Council Regulation E.C./44/2001 aimed at avoiding parallel proceedings in two Member States with jurisdiction with potentially irreconcilable judgments.

16. I appear to be confirmed in the view which I have formed by two leading texts to which I was referred. Briggs and Rees, *Civil*

Jurisdiction and Judgments, 3rd Ed., (Informa Books, 2002) at p. 77 states:

"If the defendant enters an appearance before the courts of a Member State, those courts have jurisdiction, and may exercise it subject to the rules on *lis alibi pendens*."

17. Layton and Mercer, *European Civil Practice*, 2nd Ed., (Sweet and Maxwell, 2004) at p. 745 state:

"Accordingly, once the defendant has entered an appearance without contesting the jurisdiction, the court can only decline jurisdiction under article 25 (i.e. where the case is principally concerned with a matter falling within Art. 22) or under Arts. 27-30, in the case of *lis pendens* or related actions."

18. Accordingly, notwithstanding that this Court has jurisdiction under article 24 in relation to the Irish proceedings by reason of the unconditional appearance, it is necessary to consider whether in accordance with article 27 it is now obliged either to stay the proceedings or decline jurisdiction in favour of the courts of England and Wales.

Article 27

19. There was substantial agreement as to the legal principles applicable to a consideration as to whether article 27 applies on the facts herein to the Irish and English proceedings. The Court was referred to the relevant portions of Briggs and Rees and Layton and Mercer and in particular the decisions of the Court of Justice in *Gubisch Maschinenfabrik KG v. Palumbo* (Case 144/86) [1987] ECR 4861; *The Tatry* (Case C-406/92) [1994] ECR I-5439 and *Gantner Electronic GmbH v. Basch Exploitatie Maatschappij BV* (Case C-111/01) [2003] ECR I-4207. The following are the principles which I would derive from those decisions and comments in the texts insofar as relevant to the facts of this application.

1. The obligation on a court under article 27 to consider whether it must stay the proceedings before it or decline jurisdiction by reason of alleged prior proceedings with the same cause of action and between the same parties in another jurisdiction continues throughout the proceedings. Neither the entry of the appearance nor any delay in raising the issue alters the obligation on the court as it is obliged to do this "of its own motion".

2. The fact that in the Irish proceedings there are additional parties to those in the English proceedings is no bar to the application of article 27. However, article 27 only applies to so much of the claim in the proceedings before the courts secondly seised as is between the same parties to the proceedings before the courts first seised. Article 27 does not prevent the proceedings continuing between the other parties. (See *The Tatry* para. 36).

3. The phrase "the same cause of action" in article 27 must be given an autonomous meaning for the purposes of article 27. This must be construed in accordance with all the language versions of the Regulation. In the French and Italian texts the concept of the same cause of action is expressed in a double form. In French, the phrase used is "*le même objet et la même cause*". Notwithstanding that the English language version of article 27 does not distinguish between the "object" and the "cause" of action in the same way as the French, Italian and other language versions, it must be construed in the same manner. The European Court of Justice so held in relation to the German version in *Gubisch* (para. 14). Accordingly, to constitute the "same cause of action" within the meaning of Article 27 two actions must have the same "cause" and same "object" as defined by the European Court of Justice. In *The Tatry* the European Court stated at para. 39:

"For the purposes of article [27] ... the 'cause of action' comprises the facts and rule of law relied on as the basis of the action."

Further in the same judgment it also stated:

"The 'object of the action' for the purposes of article [27] means the end the action has in view."

4. The national court in considering whether the two sets of proceedings have the same cause of action should consider only the claims made by the applicant in each of the relevant proceedings to the exclusion of a defence made by the parties. This issue was considered by the European Court of Justice in *Gantner* in relation to article 21 of the Brussels Convention. However, in its reasoning the European Court of Justice relied upon article 30 of Council Regulation E.C./44/2001 which provides the point at time a court is deemed to be seised including certain circumstances when the document instituting the proceedings is lodged. The judgment must be considered to apply equally to article 27 of Council Regulation E.C./44/2001. The European Court of Justice considered the impact on article 21 of the Convention (27 of the Regulation) if the content and nature of claims could be modified by a defence necessarily lodged at a later date than the date upon which the second court is seised and it stated at paras. 30 – 32:

"30. Finally, the objective and automatic character of the *lis pendens* mechanism should be stressed. As the United Kingdom Government correctly points out, Article 21 of the Convention [Article 27 of Council Regulation E.C./44/2001] adopts a simple method to determine, at the outset of proceedings, which of the courts seised will ultimately hear and determine the dispute. The court seised is required, of its own motion, to stay its proceedings until the jurisdiction of the court first seised is established. Once that has been established, it must decline jurisdiction in favour of the court first seised. The purpose of Article 21 of the Convention would be frustrated if the content and nature of the claims could be modified by arguments necessarily submitted at a later date by the defendant. Apart from delays and expense, such a solution could have the result that a court initially designated as having jurisdiction under that article would subsequently have to decline to hear the case.

31. It follows that, in order to determine whether there is *lis pendens* in relation to two disputes, account cannot be taken of the defence submissions, whatever their nature, and in particular of defence submissions alleging set-off, on which a defendant might subsequently rely when the court is definitively seised in accordance with its national law.

32. In the light of the foregoing, the answer to the first two questions is that Article 21 of the Convention must be construed as meaning that, in order to determine whether two claims brought between the same parties before the courts of different Contracting States have the same subject-matter, account should be taken only of the claims of the respective applicants, to the exclusion of the defence submissions raised by a defendant."

Application of principles to facts herein

20. This Court must now determine whether or not the Irish proceedings come within article 27 of the Regulation, having regard to the existence of the English proceedings. The delay by John Popely in bringing this application and the entry of the unconditional appearance are not relevant considerations. The nature of the claims in the English proceedings must be compared with the claims made against John Popely in the Irish proceedings as identified from the pleadings of John Popely as applicant in the English proceedings and Ronald Popely as plaintiff in the Irish proceedings. The relevant pleadings appear to be the particulars of claims in the English proceedings (which comprise particulars of claim of the 10th August as supplemented by the particulars of claim served on the 2nd May, 2003) and the statement of claim in the Irish proceedings delivered on the 6th July, 2004.

21. In the English proceedings, the claim which is alleged to constitute the same cause of action as the Irish proceedings is the claim made in relation to the Chateau.

22. For reasons which will become apparent it appears convenient to firstly attempt to identify what is "the object of the action" in each of the English and Irish proceedings as that term is used by the European Court of Justice, i.e. the end the action has in view. It is clear from the principles referred to above that there must be an identity of object of the actions if they are to be considered as having the "same cause of action". The claims as pleaded at the end of the particulars of claim or statement of claim must be regarded as a starting point in identifying the object of the action. Those claims must also be construed in the context of the full pleadings. The claim made by John Popely in the English particulars of claim is for:

"(1) All necessary accounts and inquiries to establish the full amount, nature and whereabouts of the monies or assets received by (or for the benefit of) the Defendant or which the Defendant is entitled to receive (or have the benefit of) and which are (or which represent) the jointly-owned assets (as defined in paragraph 20 above).

(2) A declaration that the Claimant is the beneficial owner of a one-third share in the monies and assets found on the accounts and inquiries claimed in (1).

(3) Further or in the alternative, damages for breach of the Agreement.

(4) Interest."

23. The claim is to be the beneficial owner of one-third of the monies and assets found pursuant to the claimed accounts and inquiries. Those assets are those which are alleged to represent jointly-owned assets as defined in para. 20 of the particulars of claim.

24. Paragraph 20 of the particulars of claim states:

"20. At the end of 1998, and by reason of the Agreement, the Claimant had a direct or indirect beneficial interest in the following assets which he owned jointly with the Defendant on the agreed one-third: two-thirds split of beneficial ownership ('the jointly-owned: assets').

a. All the assets of Casterbridge Properties including (1) the monies realised on the sale by Casterbridge Properties to Hever Worldwide of the occupation rights in the Hever Resort and in the Long Beach Resort and also of the miscellaneous occupation rights and (ii) those occupation rights that had not been sold to Hever Worldwide (represented by his one-third shareholding in Casterbridge Properties via Resort Holdings and then The Blue Ridge Trust).

b. All the assets of Hever Worldwide (represented by his one-third shareholding via The Blue Ridge Trust).

c. All the assets of Hever Management (represented by his one-third shareholding via Andrew Popely and Dawn Humphrey).

d. All the assets of Ruislip International, namely the Chateau (represented by his one-third shareholding via The Blue Ridge Trust)."

25. The "Agreement" referred to above is alleged to have been an agreement reached in 1997 and pleaded at paras. 10 and 11 in the following terms:

"The 1997 Agreement

10. In 1997 the Defendant proposed to further develop the Hever Resort on a new basis rather than selling timeshare weeks (which was proving to be increasingly difficult in view of the provisions of the Timeshare Act 1992), the Defendant proposed that, as with Hever Golf Club, a scheme be set up based on the sale to members of the public of shares.

11. The Defendant discussed this proposal with the Claimant during the autumn of 1997: the Claimant and the Defendant both worked in the offices at Hever and met and spoke to each other on a daily basis. The result of those discussions was an agreement ('the Agreement') between the Claimant and the Defendant as follows:

a. It was agreed, first, that the assets within both the Hever Resort and the Long Beach Resort were to be held between the Claimant and the Defendant on the basis of a one-third:two-thirds split of beneficial ownership.

b. It was agreed, secondly, that as much of the present value of those assets was to be realised immediately and held by the Claimant and the Defendant (on the basis of that one-third:two-thirds split of beneficial ownership) offshore.

c. It was agreed, thirdly, that all future realisations of or accretions to those assets were similarly to be made on the basis of the same one-third:two-thirds split of beneficial ownership between the Claimant and the Defendant."

26. The acquisition of the Chateau is alleged to have taken place after the 1997 agreement and therefore presumably, insofar as John

Popely makes a claim to a one-third ownership in the Chateau, it is pursuant to para. 11(c) of the particulars of claim. The acquisition of the Chateau is pleaded at paras. 17 to 19 in the following terms:

"17. In early 1998 the Claimant formed the view, and suggested to the Defendant, that a resort in France should be acquired and developed in order to provide the members of the Hever Vacation Club with a further holiday destination, in addition to the Hever Resort and the Long Beach Resort. The Defendant agreed to the Claimant's suggestion and in April 1998, both the Claimant and the Defendant having inspected the property, a contract to purchase Le Chateau de Francport, Rue du Victor Hugo, Choisy-au-Bac, Compeigne, France ('the Chateau') was entered into.

18. The deposit (equivalent of £50,000) was provided by Hever Worldwide but subsequently (prior to completion) the Defendant procured that the Chateau be acquired by a company incorporated in the Republic of Ireland, Ruislip International Limited ('Ruislip International'). Ruislip International was incorporated on 28 April 1998, on the instructions of the Defendant, at the behest of Mr. Michael Harris, a solicitor. The Defendant's instructions to Mr. Harris (given without any discussion or negotiation between the Defendant and the Claimant) were that each of the Claimant and the Defendant was to be a shareholder (through The Blue Ridge Trust and The Mars Trust respectively), in the proportions one-third:two-thirds

Hever Worldwide was, in consideration of it having contributed the deposit monies, granted on 27 April 1998 a 5 year option to acquire 30 year occupation rights at the Chateau.

19. Purchase of the Chateau by Ruislip International was completed on or about 9 July 1998, on which date the balance of the purchase price (equivalent of £450,000) was provided by Casterbridge Properties."

27. Insofar as Ruislip and the Chateau are concerned, the object of the English proceedings appears to be to establish an entitlement of John Popely to a one-third interest in the Chateau or the proceeds of sale of the Chateau. The assertion at para. 20(d) is of an entitlement to a one-third beneficial ownership in "all the assets of Ruislip International, namely the Chateau (represented by his one-third shareholding via the Blue Ridge Trust). The Blue Ridge Trust appears from para. 14(b) of the particulars of claim to be an off-shore trust that it is alleged John Popely can control. The ability to control the Blue Ridge Trust is disputed by Ronald Popely in this application but nothing turns on that. The reference to the Blue Ridge Trust in para. 20(d) is explained by para. 18 of the particulars of claim and the assertion that Ronald Popely gave instructions (without any discussion or negotiation between John Popely and Ronald Popely) that each of them was to be a shareholder in Ruislip International through the Blue Ridge Trust and the Mars Trust (an equivalent trust of Mr. Ronald Popely) respectively.

28. Notwithstanding the reference to this representation it does not appear to me when one considers the English particulars of claim in their entirety, that there is any claim being made by John Popely in the English proceedings to a beneficial ownership of shares in Ruislip or an entitlement for him to be a registered shareholder of Ruislip. The basis of the claim made to be entitled to a one-third in the Chateau is by reason of the 1997 agreement. This is confirmed by paras. 19A, 19B and 29d of the supplementary particulars of claim of the 2nd May, 2003, which are in the following terms:

"19A. By virtue of the facts and matters pleaded at Paragraph 11 herein, and the use of The Blue Ridge Trust as a vehicle for the Claimant's interest, the Defendant was obliged to ensure that if the Chateau were subsequently sold, the proceeds were applied to the Claimant or The Blue Ridge Trust as to one third.

19B. Further, by reason of the matters aforesaid, the Defendant was obliged to deal with the Chateau in a manner in all respects consistent with the agreement pleaded at Paragraph 11.

29d. The Defendant was by reason of the matters pleaded in paragraphs 11c, 19A and 19B obliged to procure that one third of any purchase monies receivable in respect of the Chateau were paid to the Claimant or The Blue Ridge Trust."

29. The object of the Irish proceedings as against John Popely in the sense of the primary claim made is for declarations in favour of Ronald Popely that he is the owner of the beneficial interest in the entire issued share capital of Ruislip and also directing John Popely to transfer the shares now held by him or alternatively setting aside the transfers of the shares to John Popely from two other defendants who it is alleged held shares on trust for Ronald Popely.

"(a) A Declaration that the Plaintiff was and so remains the owner of the beneficial interest in the entire issued share capital of a company named Ruislip International limited."

30. There are a number of consequential claims made against several defendants which include John Popely as first named defendant in relation to the claimed shareholding in Ruislip in relation to which Ronald Popely asserts at para. 10 of the statement of claim that he was and remains the owner of the beneficial interest in the entire issued share capital of Ruislip, having provided "the total finance necessary for the acquisition of the company".

31. Ronald Popely also seeks to set aside the appointment of John Popely as a director of Ruislip and consequential orders in relation to the transfer of the shares in Ruislip now held in the name of John Popely. In the Irish proceedings there is no claim made by Ronald Popely in relation to the assets of Ruislip.

32. Insofar as Ruislip and the Chateau are concerned, it appears to me that the object of the English proceedings is to establish as between John Popely and Ronald Popely, whether John Popely is entitled to a one-third beneficial interest in the Chateau or proceeds of sale representing the Chateau. Insofar as the Irish proceedings are concerned, the object of the proceedings is to determine as between Ronald Popely and John Popely whether Ronald Popely is the beneficial owner of all the shares in Ruislip and entitled to have such shares transferred to him as asserted. Even taking a broader view of the claims made, the object of the proceedings might be considered as seeking to determine which of Ronald Popely or John Popely is entitled to control Ruislip. Ruislip is a separate legal person. The fact that Ronald Popely may (and I am in no sense so holding) be entitled to a declaration that he is the beneficial owner of the shares in Ruislip or have the shares transferred to him or would be entitled to control Ruislip, does not in any sense determine the beneficial ownership of the Chateau. It is clear from the particulars of claim in the English proceedings that Ronald Popely and John Popely have arranged their complicated affairs by extensive use of trusts. Ruislip was a company incorporated for the purpose of the acquisition of the Chateau. There is no claim made in the Irish proceedings that Ruislip acquired the beneficial ownership of the Chateau. No issue in the Irish proceedings will require determination of the beneficial ownership of the Chateau.

33. I have concluded from an analysis of the claims made in the English and Irish proceedings that the "object" of each proceeding, as that term is used by the European Court of Justice, is not the same. Having reached that conclusion it follows from the decision of

the European Court of Justice in *The Tatry (Case C-406/92)* [1994] ECR I-5439, that the “cause of action” of each within the meaning of article 27 as construed by the European Court of Justice is not the same.

34. It was submitted on behalf of John Popely, correctly, that the purpose of Article 27 is to avoid irreconcilable judgments. I have therefore also considered whether, as submitted by his counsel, if the Irish proceedings were to be permitted to continue this could lead to irreconcilable judgments. It does not appear to me that this is so. For the reasons already explained, in the Irish proceedings the claim made by Ronald Popely relates to the beneficial ownership of shares in Ruislip and entitlement to be registered as holder of the shares. In the English proceedings, the basis of the claim of John Popely to a one-third beneficial share in the Chateau or the proceeds of sale thereof is based upon the Agreement alleged to have been made in 1997. The claim is not based upon any alleged beneficial ownership by Ruislip of the Chateau or any alleged beneficial ownership of shares by John Popely in Ruislip.

35. Accordingly, a determination by the Irish courts of Ronald Popely’s claim to the beneficial ownership of the shares in Ruislip and consequent claim to be entitled to have shares transferred to him should not include a decision on any issue which would be determinative of John Popely’s claim to a one-third beneficial interest in the Chateau or its proceeds of sale. There would not appear to be a risk of irreconcilable judgments.

Article 28 of Council Regulation E.C./44/2001

36. Article 28 provides:

“1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.”

37. No evidence was adduced on behalf of John Popely that the courts of England and Wales have jurisdiction over the Irish proceedings or that its law would permit the consolidation of the Irish proceedings with the English proceedings. Accordingly, no application was pursued under article 28.2.

38. An application was pursued, in the alternative to the application under article 27, that the Court stay the Irish proceedings pursuant to article 28(1). This Court only has jurisdiction to make such an order if the English and Irish proceedings are “related actions” within the meaning of article 28.1. In accordance with article 28.3 the Court must form the view that they are “so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

39. For the reasons set out above, I have formed the view that there is not a risk of irreconcilable judgments if the English and Irish proceedings are heard and determined separately in their respective jurisdictions. It follows from this that I am also of the view that they are not so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments by reason. As already determined, the overall objective of the Irish proceedings is to determine, as between Ronald Popely and John Popely, who is entitled to control Ruislip. This issue will be determined by the court determining who is entitled to the beneficial ownership of the shares in Ruislip; the persons entitled to be registered as shareholders in Ruislip and the persons who are validly appointed directors of Ruislip. There are five additional defendants joined as necessary parties to determine these issues in the Irish proceedings. For the reasons already stated, these are not issues which arise for determination in the English proceedings.

40. Accordingly, I am refusing the application under article 28 of Council Regulation E.C./44/2001.

41. Having regard to the conclusions reached on the applications under article 27 and article 28 it is unnecessary to determine whether the Irish courts have exclusive jurisdiction under article 22 of Council Regulation E.C./44/2001 to hear and determine the Irish proceedings.

42. By reason of the decision on this application, it is now necessary for this Court to consider the implications for the conduct of the Irish proceedings of the English bankruptcy of John Popely prior to hearing or determining the adjourned interlocutory applications in the Irish proceedings. I will hear counsel as to the appropriate procedure and timing for such.