

## THE HIGH COURT

[2008 No. 6883P]

## BETWEEN

**ELITE LOGISTICS LIMITED (FORMERLY ELITE KAMINO INTERNATIONAL TRANSPORT LIMITED) (IN LIQUIDATION)****PLAINTIFF****AND****PATRICK MCNAMARA****DEFENDANT****Judgment of Ms. Justice Laffoy delivered on 20th day of June, 2012.****The parties**

1. The plaintiff in these proceedings, a limited liability company which was incorporated in 1994, is now being wound up by the Court on foot of a winding up order made on 5th September, 2007. On that day Mr. Jim Luby (the Liquidator) was appointed official liquidator by order of the Court, having been appointed provisional liquidator by order of the Court made on 31st July, 2007. The plaintiff was wound up on the petition of the defendant.

2. The defendant was at all material times a director of the plaintiff and its company secretary until the winding up order was made on 5th September, 2007. As I understand it, when the winding up order was made, he was the only director of the company.

3. By order of the Court (Finlay Geoghegan J.) made on 31st July, 2008 in the proceedings in the Examiners Court (record No. 2007/330 COS) it was ordered, pursuant to s. 231 of the Companies Act 1963 (the Act of 1963), that the Liquidator was at liberty to institute and maintain these proceedings.

4. From the initiation of the proceedings until after notice of trial was served and the proceedings were set down for hearing the defendant was represented by two firms of solicitors in succession and by counsel. However, before the matter came on for hearing, the solicitors then representing him came off record and the defendant appeared in person at the hearing.

**The plaintiff's case and the defendant's response as pleaded in general**

5. The essence of the plaintiff's claim, as pleaded in the statement of claim, is that the defendant, wrongfully and in breach of his fiduciary duties as a director to the plaintiff, used the funds of the company to acquire in his own name four properties and a Mercedes motorcar, which assets were retained by the defendant for his own use and benefit and in respect of which the plaintiff, being the beneficial owner, obtained no benefit. When the matter came on for hearing on 6th June, 2012 the Liquidator, sensibly in my view, had decided that it was not worth pursuing the claim in relation to the Mercedes, which had been registered in 2005. In relation to one of the properties, an apartment in Spain, in which it was admitted by the defendant that the plaintiff had a twenty per cent beneficial interest, on the previous day the defendant had furnished a bank draft representing twenty per cent of the market value thereof to the Liquidator. In the circumstances, it was unnecessary to proceed with this aspect of the matter. I propose considering what is pleaded in relation to each of the properties which remain in issue separately.

**106, Boyd Street, Glasgow, Scotland (the Scottish property)**

6. It is pleaded in the statement of claim that the defendant caused the plaintiff to purchase this property for his own personal benefit and that of a family member, his mother. It is further pleaded that the property was included in the plaintiff's accounts for the year ended 31st December, 2006, that the defendant informed the Liquidator at a meeting on 15th August, 2007 that this property was purchased through the company as a personal investment for him and that he had intended to purchase it back from the company, but this had not occurred. Further, the solicitors then acting for the defendant confirmed in September 2007 that the defendant, as legal owner of the property, holds the same on trust for the benefit of the plaintiff. However, despite demands on behalf of the Liquidator, the defendant has failed to transfer the property to the plaintiff.

7. The essence of the defence, having excised some pleading niceties, is that it is acknowledged that this property was purchased by the plaintiff and "is held in the legal ownership of the defendant", that it remains entirely in the beneficial ownership of the plaintiff and that the defendant "holds the title . . . in trust" for the plaintiff. As will appear later, as regards the legal title, this is not strictly speaking correct. Such excuse as there is in the defence for the fact that this property has not been transferred to the plaintiff is that the defendant had not being able to finance the repurchase of the property at full market value, which had been intended.

8. As in the case of the other two properties in issue, the plaintiff makes the usual joinder of issue in its reply.

**Apartment No. 16, Block A, Pueblo el Jardin, Arroyo de la Miel, Benalmadena, Spain (the Spanish property)**

9. It is pleaded in the statement of claim that the defendant had confirmed that this property, although registered in the name of the defendant, was owned by the plaintiff. It was shown in the plaintiff's 2006 company accounts at a value of €265,000. It was sold in or around 2005 and the proceeds of sale, €142,500, were paid by bank draft to the defendant. These funds have not been accounted for to the plaintiff.

10. In the defence, it is admitted that this property was beneficially owned by the plaintiff, and that the proceeds of sale amounting to €142,500 were paid to the defendant as legal owner by way of bank draft on 27th October, 2005. However, it is denied that the defendant has failed to account for the proceeds of sale. It is asserted that, while the bank draft was lodged to the defendant's own bank account, thereafter the proceeds of sale were reimbursed by the defendant to the plaintiff.

**33, Golf Links, Malahide, County Dublin (the Irish property)**

11. It is pleaded in the statement of claim that this property is the private residence of the defendant. In the defence it is referred to as "the Defendant's Family Home". On the basis of questions I put to the defendant at the hearing of the action, I am satisfied that the provisions of the Family Home Protection Act 1976 have no application to this property. The property is registered with the

12. The plaintiff's case is that this property was purchased in or around late 2002 with the support of €751,928 of the plaintiff's funds, in return for which a declaration of trust executed by the defendant acknowledged that the plaintiff has a forty per cent beneficial interest in the property. The defendant was registered as owner of the property on 7th February, 2003. On the same date a charge in favour of the Governor and Company of the Bank of Ireland, which has not been satisfied, was registered. As will appear later, that latter plea is no longer accurate. No rent or any other form of benefit was derived by the plaintiff in return for its forty per cent interest in the property.

13. There is then pleaded the Liquidator's analysis of a transaction which was recorded in the books of the plaintiff in the run up to the presentation of the petition to wind up the plaintiff by the defendant as petitioner. It is pleaded that on 24th May, 2007 an entry was made in the directors' loan account debiting the plaintiff in the sum of €1,200,000 under the description "Sale Proceeds House". On 21st July, 2007, just ten days prior to the presentation of the petition, that transaction was reversed and the plaintiff was debited in the sum of €840,000, but no explanation has been provided for the reversal. It is acknowledged by the plaintiff that, separately, at various times in the year prior to the liquidation of the plaintiff, the defendant advanced monies to the plaintiff by way of loan. It is pleaded that the effect of the transaction on 21st July, 2007 was to transfer the plaintiff's principal asset, its forty per cent interest in this property, at a value of €840,000, thus reducing the balance owed to the defendant by the plaintiff as recorded in the directors' loan account from €923,926.70 to €83,926.70. The plaintiff asserts that the sums advanced to the plaintiff by the defendant prior to the liquidation were not advanced to purchase the plaintiff's forty per cent interest in this property, but rather were loans made by the defendant to the plaintiff. It is expressly pleaded that the transaction on 27th July falls within s. 286(1) of the Act of 1963 as a fraudulent preference done within six months of the date of the liquidation of the plaintiff.

14. In the defence, the defendant admits that the plaintiff was the beneficial owner of forty per cent of this property from the time of its acquisition in 2002 and admits that no rent was derived by the plaintiff, but denies that no form of benefit in return for its forty per cent beneficial interest was derived by the plaintiff. It is contended that the plaintiff enjoyed a profit upon disposal of its interest, which reflected an appreciation of its interest in the asset, which I understand to mean the difference between the sum of €751,928 of the plaintiff's money used to acquire the property and the "consideration" of €840,000, being the reduction in the amount owed by the plaintiff to the defendant on the directors' loan account. As regards the transaction whereby the defendant contends he acquired the plaintiff's beneficial interest in this property, the "plot thickens" in the defence, in that it is pleaded that on 15th December, 2006, by a resolution of the board of directors, the plaintiff resolved to transfer its interest in this property to the defendant in consideration of the sum of €840,000, but the defendant was unable to pay the agreed consideration and his directors' loan account was reduced by the appropriate amount. It is specifically pleaded that, in the absence of funds advanced by the defendant, the plaintiff would not have been in a position to continue to trade, that the defendant consistently made up the shortfall in the plaintiff's working capital required to meet its liabilities, and that "such payments were always to be set off against the beneficial interest" of the plaintiff in this property. It is denied that the "redemption" of the plaintiff's beneficial interest in this property is a transaction which comes within s. 286(1) of the Act of 1963. Emphasis is laid on the fact that the transaction occurred on 15th December, 2006 and not within a period of six months of the date of liquidation of the plaintiff, albeit that it is not recorded as having occurred at that date. It is further denied that the transaction was made with a view to giving the defendant a preference over other creditors. It is further denied that at the date of the transaction the plaintiff was unable to pay its debts as they fell due.

#### **Reliefs sought by plaintiff**

15. As regards the Scottish property, the plaintiff seeks a declaration that the defendant holds the legal interest in it on trust for the plaintiff and an order directing the defendant to transfer the legal interest therein to the plaintiff, in addition to all necessary accounts and inquiries.

16. In relation to the Spanish property, the plaintiff seeks all necessary accounts and inquiries.

17. In relation to the Irish property, the plaintiff seeks an order declaring that the transaction entered into on 21st July, 2007 constituted a fraudulent preference within the meaning of s. 286 of the Act of 1963 as amended, and is invalid accordingly and an order pursuant to subs. (1) of s. 286 voiding the transaction entered into on 21st July, 2007. The plaintiff also seeks a declaration that the plaintiff is entitled in equity to a forty per cent interest in the Irish property and, if necessary, an order directing the partition and sale of the property in accordance with the legal and equitable interests so declared. Finally, the plaintiff seeks all necessary accounts and inquiries in relation to the Irish property.

18. The defendant denies that the plaintiff is entitled to any of the foregoing reliefs and, additionally, seeks to set off against any liability of the defendant such sums as may be awarded on foot of his counterclaim.

#### **The defendant's counterclaim**

19. The basis of the defendant's counterclaim is that at the date of the winding up there remained due and owing by the plaintiff to the defendant the sum of €41,726, as particularised in the Statement of Affairs. The defendant has counterclaimed for this sum. The defendant has also counterclaimed for an indemnity from the plaintiff in respect of his joinder in proceedings instituted by Wyeth Medica Ireland Ltd. (Wyeth) against the plaintiff in which, it is asserted, the defendant has been joined solely by virtue of his status as a director of the plaintiff.

20. In the plaintiff's reply and defence to counterclaim, while it is admitted that €41,726 is due to the defendant on foot of the directors' loan account, it is stated that the failure of the company to discharge that sum arises directly from its insolvency and liquidation. It is also denied that the defendant is entitled to any indemnity from the plaintiff in respect of the Wyeth proceedings.

#### **Evidence**

21. The Liquidator testified and put such documentary evidence as is available to him in relation to the properties in issue before the Court. The defendant also testified. I propose outlining what I consider to be the relevant evidence in relation to each of the properties in issue in setting out my conclusions.

#### **Conclusion in relation to the Scottish property**

22. The Liquidator established that on 2nd December, 2002 the defendant executed a declaration of trust wherein he acknowledged and declared that he held the Scottish property "upon trust and all income accrued and to accrue, if any, upon the same trust as bare nominee for" the plaintiff, which is referred to as "the Beneficial Owner" and wherein he agreed to transfer the property in such manner as the plaintiff should from time to time direct and undertook, when called upon so to do by the plaintiff, to transfer the property. The execution of the declaration of trust by the defendant was witnessed by an accountant. Before these proceedings were initiated, by letter dated 14th May, 2008, the plaintiff's solicitors called on the defendant, pursuant to the declaration of trust, to transfer the Scottish property to the plaintiff, which the defendant has not done. Even absent the declaration of trust, there is

overwhelming evidence before the Court that the plaintiff is the beneficial owner of the Scottish property. A statement of an account of the plaintiff with Bank of Ireland Treasury & International Banking put in evidence shows that on 26th March, 2003 the sum of €201,695.94 was transferred out of that account to acquire the Scottish property. Even if the defendant had not executed the declaration of trust expressly acknowledging that the plaintiff is the beneficial owner, the fact that the property was purchased with the plaintiff's money would have given rise to a resulting trust in its favour.

23. There is a problem, however, in that the evidence before the Court includes a copy of the result of a search in the Land Register in Scotland conducted on 7th May, 2007 which records the "proprietor", which I assume is the equivalent of the registered owner in this jurisdiction, as "Margaret MacNamara ... and Patrick MacNamara ... and the survivor of them". The defendant's evidence is that his elderly mother, who is eighty years of age, has been allowed to use the Scottish property. The defendant testified that when the plaintiff company was being set up, his mother gave him £45,000 as working capital on the basis that, when he would have money, he could pay it back to her, which he has not done. Although the Scottish property is in joint names, the defendant acknowledged that he held it in trust for the plaintiff, because, as I understand his evidence, to get an advance from the plaintiff's bank, it had to be seen to be the property of the plaintiff.

24. Because of the title position, the orders I propose making in relation to the Scottish property are:

- (a) an order that the plaintiff is the beneficial owner of the Scottish property; and
- (b) an order directing the defendant to transfer his legal interest and to procure the transfer of the legal interest of Margaret MacNamara in the Scottish property to the plaintiff.

I do not propose, at this juncture, to direct any specific accounts or inquiries. However, the Liquidator will be given leave to take such steps in Scotland as are necessary and appropriate to procure the registration of the plaintiff as the proprietor of the Scottish property in the Land Register in Scotland.

### **Conclusion in relation to the Spanish property**

25. It is common case that the proceeds of sale of the Spanish property were paid to the defendant personally by way of bank draft. The Liquidator's evidence was that he could find no evidence in the books and records of the plaintiff of the proceeds of the bank draft going to the plaintiff. The defendant's evidence was that the money was paid to the plaintiff either by payment into its accounts either with Allied Irish Banks or Bank of Ireland, but he did not identify any particular lodgment or lodgments in either account as representing such payment. Accordingly, it is not possible to make a finding that the proceeds of the Spanish property were actually transferred to the plaintiff. In the circumstances, I propose making an order in the terms sought by the plaintiff directing all necessary accounts and inquiries in relation to the proceeds of the sale of the Spanish property.

### **Conclusions in relation to the Irish property**

26. The Irish property is a dwelling house situate at Malahide, County Dublin. The title, as is recorded above, is registered on Folio 98753F of the Register of Freeholders, County Dublin. On 7th February, 2003 the defendant was registered as full owner with absolute title on the folio. On the same day, a charge for present and future advances stamped to cover €508,000 repayable with interest was registered as a burden on the folio, the owner of the charge being the Governor and Company of the Bank of Ireland. That charge was cancelled on 20th November, 2007. Prior to that, on 20th August, 2007, a charge for present and future advances repayable with interest, IIB Homeloans being the register owner of the charge, was registered as a burden on the folio. The Liquidator has put before the Court a copy of a valuation furnished by the defendant's then solicitors to the plaintiff's solicitors on 20th February, 2008, which was obviously obtained for the purposes of an application for an IIB Homeloan. The valuation report was dated 31st May, 2007. The valuer, Peter Redmond, put a value of €2,100,000 on the property in its then condition. As a matter of simple arithmetic, that means that forty per cent of the value of the Irish property as at May 2007, as per Mr. Redmond's valuation, was €840,000.

27. On 2nd December, 2002 the defendant executed a declaration of trust, in the same format as the declaration of trust referred to at para. 22 above, in which he acknowledged and declared that he held a forty per cent interest in the Irish property upon trust for the plaintiff and in which he undertook, when called upon to do so, to transfer that percentage interest in the property to the plaintiff.

28. There is a serious issue of fact as to whether there was an agreement around mid-December 2006 between the plaintiff and the defendant that the defendant would purchase the plaintiff's forty per cent interest in the Irish property in consideration of the reduction of the defendant's loan account. The Liquidator has put in evidence a letter dated 29th June, 2007 from the plaintiff's then accountants, BKR Ormsby & Rhodes, enclosing a number of documents to be signed by the defendant and Adam O'Sullivan, whom I understand was a director of the plaintiff at that time. The documents, each of which is dated 15th December, 2006 but none of which has been signed by either intended signatory were intended to be:

- (a) the minutes of a meeting of the directors of the plaintiff held on 15th December, 2006 at which it was proposed that the plaintiff dispose of a forty per cent interest in the Irish property to the defendant, a director of the company, for €840,000 and it was resolved that the proposal be put to the members of the company in an Extraordinary General Meeting immediately after the directors' meeting to seek approval under s. 29 of the Companies Act 1990 (the Act of 1990) by way of ordinary resolution;
- (b) a consent to short notice of an Extraordinary General Meeting to be convened on 15th December, 2006; and
- (c) the minutes of an Extraordinary General Meeting attended by the defendant and Mr. O'Sullivan at which it was resolved that the plaintiff dispose of its forty per cent interest in the Irish property to the defendant for €840,000 and that the disposal was approved of under s. 29 of the Act of 1990.

The Liquidator's evidence was that there was no signed version of the three resolutions and that there was no contemporaneous evidence that the directors' meeting or the Extraordinary General Meeting took place on 15th December, 2006.

The defendant's evidence was that the paper in relation to the directors' meeting has gone missing. He thought he had done everything legitimately.

29. For a number of reasons, I think it is highly unlikely that the meetings necessary to comply with s. 29 of the Act of 1990 took place on the 15th December, 2006. First, it seems to be something of a coincidence that the price of €840,000 as representing forty per cent of the value of the property reflects the valuation carried out by Mr. Redmond in late May 2007. Secondly, the balance on the defendant's directors' loan account in December 2006 was approximately €62,000 short of €840,000. Thirdly, there has been no explanation as to why the sum of €1,200,000 was debited from the defendant's directors' loan account on 24th May, 2007 and that

debit was reversed on 21st July, 2007. Accordingly, I consider it appropriate to find, on the balance of probabilities, that the general meeting to approve the acquisition by the defendant of the plaintiff's forty per cent interest in the Irish property did not take place on 15th December, 2006. In fact, there is no evidence that such a meeting took place and such approval was given to fulfil the requirements of s. 29 of the Act of 1990 at any time. Therefore, by virtue of s. 29 the transaction is voidable at the instance of the plaintiff.

30. Apart from that, by virtue of s. 220(2) of the Act of 1963, the winding up of the plaintiff is deemed to have commenced on the date of the presentation of the petition, that is to say, on 31st July, 2007. I think it is reasonable to infer on the evidence that, insofar as there was a "transaction", it was effected on 21st July, 2007, within ten days of the commencement of the winding up, when the entry was made in the defendant's directors' loan account reducing the balance thereon by €840,000. No other evidence whatsoever of the "transaction" whereby the defendant acquired the plaintiff's forty per cent beneficial interest in the Irish property has been adduced, which raises the question as to whether there was a "transaction" at all.

31. Section 286(1) of the Act of 1963, which is the provision which is expressly relied on in the statement of claim, provides as follows

"Subject to the provisions of this section, any conveyance, ... or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor, or of any person on trust for any creditor, with a view to giving such creditor ... a preference over the other creditors, shall, if a winding-up of the company commences within 6 months of the making or doing the same and the company is at the time of the commencement of the winding up unable to pay its debts (taking into account the contingent and prospective liabilities), be deemed a fraudulent preference of its creditors and be invalid accordingly."

Sub-section (3) of s. 286 provides:

"A transaction to which sub-section (1) applies in favour of a connected person which was made within two years before the commencement of the winding-up of the company shall, unless the contrary is shown, be deemed in the event of the company being wound up -

- (a) to have been made with a view to giving such person a preference over the other creditors, and
- (b) to be a fraudulent preference, and
- (c) be invalid accordingly."

In sub-section (5) of s. 286 the expression "a connected person" is defined as meaning a person who at the time the transaction was made was, *inter alia*, a director of the company.

32. Insofar as there was a "transaction" on 21st July, 2007, or, contrary to the finding made above, on 15th December, 2006, whereby the defendant acquired the plaintiff's forty per cent beneficial interest in the Irish property in consideration of the sum of €840,000, which consideration was discharged by a reduction of the balance due by the plaintiff to the defendant on the defendant's directors' loan account, the transaction was invalid under s. 286 of the Act of 1963. I have reached that conclusion because I am satisfied -

- (a) that on 21st July, 2007 the plaintiff was unable to pay its debts as they fell due,
- (b) that at the commencement of the winding up on 31st July, 2007 the company was unable to pay its debts as they fell due,
- (c) as the defendant was a connected person within the meaning of s. 286, there is a presumption that the "transaction" was made with a view to giving the defendant a preference over other creditors of the plaintiff and to be a fraudulent preference, and
- (d) the defendant has not adduced any evidence sufficient to rebut that presumption.

33. Accordingly, I propose making an order declaring that the transaction entered into on 21st July, 2007 constituted a fraudulent preference within the meaning of s. 286 of the Act of 1963 and is invalid and that the plaintiff is, and has at all material times since it was acquired by the defendant been, the beneficial owner of forty per cent of the Irish property. The jurisdiction of the Court to order a partition or sale of co-owned property is now governed by s. 31 of the Land and Conveyancing Law Reform Act 2009. I do not propose making any order for partition or sale at this juncture and I propose adjourning this aspect of the plaintiff's claim generally with liberty to re-enter, so that the plaintiff can consider the appropriate procedure as to invoking the jurisdiction and, in particular, what parties should be on notice of the application.

#### **The counterclaim**

34. As regards the defendant's counterclaim for the sum of €41,726, which sum is acknowledged by the defendant to be due to the plaintiff as an unsecured creditor, the defendant's only remedy for recovery of that sum is to prove in the winding up. Having regard to the decision of the Supreme Court in *Re Greendale Developments Ltd. (in Liquidation) (No. 2)* [1998] 1 I.R. 8, that sum cannot be properly set off against monies or other assets for which the defendant is liable to the plaintiff. Similarly, as regards the claim by the defendant that he is entitled to an indemnity from the plaintiff in relation to the Wyeth proceedings, even if the plaintiff had established an entitlement to such indemnity, and in my view he has not, his only remedy would be to prove in the liquidation for the quantum of the indemnity.

#### **Section 150 application**

35. In tandem with these plenary proceedings, the Court heard a separate application brought by the Liquidator on foot of an originating notice of motion dated and filed on 3rd February, 2009 (Record No. 2009 No. 330 COS) in which the Liquidator sought a declaration that the defendant be restricted from acting as a director or secretary of a company for a period of five years pursuant to s. 150 of the Act of 1990. The decision on that application is set out hereunder.

36. The factual basis on which the Liquidator sought a restriction order against the defendant, as set out in his grounding affidavit sworn on 2nd February, 2009 is as follows:

(a) that although the financial books and records of the plaintiff have been maintained to an acceptable standard, he has not received any minute book or details of any board meetings for any period of the plaintiff's trading;

(b) the matters which form the basis of the claims in the plenary proceedings, which I have outlined earlier, which the Liquidator averred were the matters of foremost concern to him in relation to the defendant's conduct of the affairs of the plaintiff, in short, the use of the plaintiff's funds for the purchase of non-business related assets, including the Scottish property, the Spanish property and the Irish property; and

(c) the fact that the defendant had recently been added as a defendant in the Wyeth proceedings, in which it was pleaded that the plaintiff had defrauded the plaintiff in those proceedings by overcharging for arranging the air freight of its products.

In determining whether an order should be made under s. 150, I have attached no weight to the matter referred to at (c), because I consider that there is no satisfactory evidence in relation to the Wyeth proceedings before the Court. It is fair to record that it was made clear on behalf of the Liquidator that no issue arises in relation to the honesty of the defendant in the conduct of the affairs of the company.

37. Accordingly, the issue for the Court is whether the defendant has discharged the onus imposed on him by s. 150(2) of the Act of 1990 of proving that he acted responsibly in relation to the conduct of the affairs of the company. In relation to that issue I counsel for the Liquidator referred the Court to the judgment of the Supreme Court in *Re Squash (Ireland) Ltd.* [2001] 3 I.R. 35 and, in particular, the approval by McGuinness J. in her judgment (at p. 40) of the following statement of the law by Shanley J. in *La Moselle Clothing Ltd. v. Soualhi* [1998] 2 ILRM 345 (at p. 352):

"... a director broadly complying with his obligations under the provisions of the Companies Acts and acting with a degree of commercial probity during his tenure as a director of the company will not be restricted on the grounds that he has acted irresponsibly.

Thus it seems to me that in determining the 'responsibility' of a director for the purposes of s. 150 (2)(a) the court should have regard to:

(a) The extent to which the director has or has not complied with any obligation imposed on him by the Companies Acts 1963-1990.

(b) The extent to which his conduct could be regarded as so incompetent as to amount to irresponsibility.

(c) The extent of the director's responsibility for the insolvency of the company.

(d) The extent of the director's responsibility for the net deficiency in the assets of the company disclosed at the date of the winding up or thereafter.

(e) The extent to which the director, in his conduct of the affairs of the company, has displayed a lack of commercial probity or want of proper standards."

Having regard to the outcome of these plenary proceedings, it is impossible to conclude that the defendant has acted responsibly in relation to the affairs of the company. There has been a finding that the purported "transaction" whereby the defendant attempted to appropriate to himself, to the detriment of the generality of the creditors of the company, what appears to be the plaintiff's most valuable asset, that is to say, the forty per cent interest in the Irish property, was in breach of s. 29 of the Act of 1990 and was also in breach of s. 286 of the Act of 1963. The conduct of the defendant, which necessitated the plenary proceedings, amounted to irresponsibility and has exacerbated the insolvency of the plaintiff. In relation to the matters on which findings have been made in the plenary proceedings, I have no doubt that the defendant has displayed a serious lack of proper standards.

38. Accordingly, the order sought by the Liquidator under s. 150 of the Act of 1990 will be made.