Neutral Citation Number: [2009] IEHC 360

THE HIGH COURT

2008 8389 P

COMMERCIAL

BETWEEN

NEIL HEALY

PLAINTIFF

AND

ULSTER BANK IRELAND LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 17th day of July, 2009

1. The plaintiff is a medical doctor and at all material times carried on practice in Mullingar, County Westmeath. The defendant is a bank. In or about the year 2005, the plaintiff entered into a partnership with a medical colleague, Dr. Patrick Cullen, whereby they acquired lands and premises at Coole, in County Westmeath, with a view to creating a modern medical centre at a former hospital premises. The plaintiff and his partner borrowed substantial sums of money from the defendant and on 9th August, 2006, the plaintiff executed a guarantee ("the guarantee") in respect of the borrowings. His partner subsequently entered into a guarantee. By December 2006, relations between the partners was deteriorating and there were many disagreements as to how to proceed with the development at the site which included provision for not only a medical centre and ancillary facilities, but also a number of houses. In the spring of 2007, discussions took place between the parties and their advisers as a result of which it was agreed to terminate the partnership. The discussions to dissolve the partnership concluded at the end of July 2007. This involved Dr. Cullen paying a sum of €2,213,607.00 to the plaintiff. Dr. Cullen was to take over the assets and liabilities of the partnership.

2. On 1st August, 2007, the plaintiff lodged the proceeds with the defendant. He claims that he did so following representations made on behalf of the defendant by Mr. Alan Leech to the effect that he was discharged from his guarantee in respect of loans made to the partnership and was freed of any liability to the defendant bank. The plaintiff claims that by lodging the proceeds of the partnership settlement with the bank, he was entering into a commercial relationship under which the defendant agreed to provide various services to him in the nature of "*wealth management*" services which included commercial, investment and banking services. He claims that he would not have done so if he had not been given the aforesaid representations by the defendant.

3. On 14th August, 2008, the defendant exercised its rights on foot of the guarantee setting off the sum then standing in credit to the plaintiff against the debit balance outstanding in respect of the finance extended to the partnership. The funds transferred on foot of the purported set-off were in US Dollars as the plaintiff had funds in that currency in an account. The amount set off was US$993,983.03. The plaintiff alleges that the defendant was not entitled to use these monies and that they were wrongfully set off and converted by the defendant to its own use. He says that as a result of this he suffered loss and damage. He claims various reliefs as set out in the statement of claim, including damages and declarations, and claims that the defendant is estopped from denying the representations made to him on or about 1st August, 2007, to the effect that the plaintiff had no further liability to the defendant on foot of the guarantee executed by him on 9th August, 2006, in favour of the defendant.

Issues

4. There is no dispute between the parties that the defendant set off the sum of US$993,983.03 against the liabilities of the plaintiff on foot of the guarantee. There is really only one issue in this case and that is whether Mr. Alan Leech, on behalf of the defendant, made the representation contended for by the plaintiff, and if he did, whether the plaintiff acted on foot of the representation to his detriment.

The law

5. In *Doran v. Thompson Limited* [1978] I.R. 223, a decision of the Supreme Court, Griffin J. stated at page 230:

> *"Where one party has, by his words or conduct, made to the other, a clear and unambiguous promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, and the other party has acted on it by altering his position to his detriment, it is well settled that the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, and that he may be restrained in equity from acting inconsistently with such promise or assurance. The representation, promise or assurance must be clear and unambiguous to found such an estoppel: see Bowen L.J. at p. 106 of the report of Low v. Bouverie [1891] 3 Ch. 82."*

6. That case was cited with approval by Keane C.J. in *Ryan v. Connolly* [2001] 1 I.R. 627. The Chief Justice said at p. 632:

> *"Applying that general principle to the category of cases in which a defendant may be held to be precluded from relying on a defence otherwise available to him under the Statute of Limitations, the learned judge added: -*
>
> > 'If the defendants insurers had made a clear and unambiguous representation (in the sense I have explained) that liability was not to be an issue, and the plaintiff's solicitor had withheld the issue of

proceedings as a result, I would have held that the defendants were estopped from pleading the Statute of Limitations'.

In an earlier passage at p.230, Griffin J. had pointed out that, for the principle laid down in Low v. Bouverie [1891] 3 Ch. 82, to apply, it was not necessary that the representation should be one 'positively incapable of more than one possible interpretation'.

A party seeking to rely on the principle cannot, in other words, rely on a strained or fanciful interpretation of the words used, he must show that it was reasonable in the circumstances for him to construe the words used by the other party in a sense which would render it inequitable for that party to rely on the defence under the Statute of Limitations."

7. In the same judgment, Keane C.J. continued at p. 633:

"On any view, however, it is clear that a plaintiff who seeks to rely on the law as laid down in Low v. Bouverie [1891] 3 Ch. 82 and Doran v. Thompson [1978] I.R. 223, must be in a position to satisfy the court that there was a clear and unambiguous representation by the defendants that liability would not be an issue from which it was reasonable for the plaintiff to infer that the institution of proceedings was unnecessary. The issue that arises on this appeal is whether the High Court was correct, as a matter of law, in holding that in this case the principles to which I have referred applied."

8. It seems to me that these are the relevant legal principles which apply in this case.

The plaintiff's case

9. The plaintiff claims that after he received the proceeds of the sale of his interest in the partnership from Dr. Cullen, he went to the Ulster Bank branch in Mullingar, County Westmeath, where he met with Mr. Alan Leech. The meeting took place on 1st August, 2007. At that time, Mr. Leech was a business centre manager with a title of 'Relationship Manager'. He was an assistant to a manager. The plaintiff claims that he arrived at the bank with his mother and that they were taken to an office upstairs by Mr. Leech. He told Mr. Leech that the deal had been done in relation to the Coole partnership and Mr. Leech told the plaintiff that he was surprised although he knew the closing of the deal was imminent. After some preliminary conversation, the plaintiff discussed what interest rates he could secure on the monies he was about to deposit. The plaintiff informed Mr. Leech he had spent some considerable time discussing interest rates, terms and conditions that he might be able to obtain from other banks. Mr. Leech told the plaintiff that he was reasonably confident he could not only match any other offers, but could make him a better offer. The plaintiff recalled that Mr. Leech then left the room and came back later on, indicating that he would be able to do so. Then the plaintiff discussed with Mr. Leech his liabilities to the bank and informed Mr. Leech that he had been talking to his solicitor, Mr. Patrick Groarke, the day before, and that he had informed the plaintiff that it was safe for him to go into Ulster Bank with his funds and that he had no liability. The plaintiff claims that Mr. Leech concurred and said, "*That is my understanding*". The plaintiff claims that he said to Mr. Leech, "*Alan, am I square with Ulster Bank and can you give me your assurances that I have no liability in relation to the project at Coole with Ulster Bank*?" He said that Mr. Leech replied, "*Neil, you have my assurances*". He then added, "*Alan, if I lodge this cheque with you, is it safe from you and is it safe in Ulster Bank*?" He gave evidence that Mr. Leech said, "*Neil, you are in the clear*", and added, "*You let me do the worrying for Ulster Bank*". He then stated, in evidence, that he told Mr. Leech, "*Alan, on the basis of those assurances, I am going to continue to do business with Ulster Bank, I am going to continue to have my practice account with you and I am going to deposit these funds with you*".

10. The plaintiff claims that he relied on these assurances and that he did so to his detriment because, having lodged the funds, some time later the bank set off those funds, or a portion of them, against his liabilities arising out of the former partnership.

The defendant's case

11. The defendant denies that it made the representations contended for by the plaintiff. While Mr. Alan Leech candidly admitted that he had no precise recollection of his conversation with the plaintiff, he does remember the meeting of 1st August, 2007, at the bank. He stated that he was quite sure that he did not give the representations contended for by the plaintiff and that he would have had no authority to do so or to release the plaintiff from his security without obtaining sanction from the Credit Control section of the bank. This was confirmed by another witness from the bank, Ms. Breda Finnegan, who is employed by the defendant as Senior Manager in the North Midlands Business Centre in Mullingar.

Evidence

12. A number of witnesses gave evidence on behalf of the plaintiff and the defendant. In the course of that evidence, significant conflicts of fact arose which I have to resolve in reaching my decision. There was also evidence given in the course of the hearing from which it is possible to draw certain inferences.

13. The guarantee executed by the plaintiff and dated 9th August, 2006, was a formal written document executed by the plaintiff under seal and duly witnessed. It was a normal document of its type. The plaintiff was aware that there would have to be a formal release from that guarantee if he was to be absolved of liability under it. In the course of his evidence-in-chief, he stated that it took approximately six to eight weeks to fine-tune the details of the agreement dissolving the partnership. He said, " . . . *the nub of the agreement was that I would leave my assets, the new practice, the partnership and my medical practice for a consideration in financial terms, that Dr. Cullen would assume the liabilities of the previous business, and that there would be a letter of release from Ulster Bank* . . ." (transcript 12th May, 2009, pages 59-60). In the course of his evidence on the same date, he informed the court that when Mr. Leech told him that he was surprised that the deal dissolving the partnership had closed, it " . . . *planted a seed of doubt in my mind because I was surprised in that because I had anticipated that either the (sic) Mr. Leech or Ms. Finnegan would have sent a letter of release to Patrick Groarke and that they would then be fully familiar that all of the closing*

documents were, in fact, completed . . .” What emerges from this evidence is that that the plaintiff himself appears to have understood that a letter of release would be required to free him of his liability under the guarantee.

14. I accept on the evidence that the normal bank practice is that a guarantor would only be released from a guarantee after the matter was referred to the Credit Department of the bank to consider. A person in the position of Mr. Leech would not have the authority to release the plaintiff or any guarantor from a guarantee without receiving the approval of the Credit Committee. Therefore, if the plaintiff is correct in his assertion that Mr. Leech gave him the undertaking contended for, and a release from his obligations under the guarantee, without reference to the Credit Committee, this was contrary to normal bank practice. It would also have amounted to a breach of well-established procedures in circumstances where the plaintiff had very substantial liabilities to the bank on foot of the guarantee. It is against that background that I must consider the evidence. I have to consider whether those assurances were given by Mr. Leech and, if they were, whether they amounted to “. . . *a clear and unambiguous promise or assurance* . . .” as required in view of the Supreme Court decision in *Ryan v. Connolly* [2001] 1 I.R. 627.

15. I have already referred to the fact that the plaintiff expected that he would need a letter of release from his guarantee when he completed the dissolution of the partnership. The plaintiff accepted, in his evidence, that he did not obtain a letter of release. Instead, he relies on what he says were verbal assurances given by Mr. Leech.

16. Mr. Leech was quite clear in his evidence to the court that he would not have given a release to the plaintiff and that he had no authority to do so. He continued to assert this, although he accepted he could not remember precisely what he said. Counsel for the plaintiff laid significant emphasis on the fact that the plaintiff, for his part, was quite clear as to the assurances which were given on 1st August, 2007, whereas Mr. Leech had no recollection of what was said. If the plaintiff’s evidence is reliable on this detail, then, clearly, he is in a strong position, because while Mr. Leech may not have had actual authority to give him a release, he may have had ostensible authority to do so. The credibility of the plaintiff is obviously crucial to the determination of the issue of fact as to whether or not the words contended for by the plaintiff were said by Mr. Leech. As such an undertaking would be contrary to bank practice and most unusual, it requires the plaintiff’s account of the meeting of 1st August, 2007, to be scrutinised.

17. The plaintiff informed the court that when he went to collect the cheque from his solicitor, Mr. Groarke, on 31st July, 2007, he asked him whether it would be safe for him to go back into Ulster Bank with his funds and deposit them. Mr. Groarke told him that he would be safe and that he had no liability. He also says that prior to the closing of the deal he had a checklist which he sent to Mr. Groarke. The defendant called Mr. Groarke as a witness on foot of a *subpoena.* Mr. Groarke denied that any checklist had been produced to him and quite trenchantly denied that there was any discussion between him and the plaintiff about the plaintiff’s liability to Ulster Bank in respect of loans or guarantees or that the plaintiff sought his advice as to what he should do with the proceeds of sale (transcript 15th May, 2009, pages 20-23). Furthermore, on 1st August, 2007, the plaintiff sent an email to Mr. Groarke after his meeting with Mr. Leech in which he stated:

> *“I met with Alan Leech, one of the managers with Ulster Bank in Mullingar. I lodged the cheque to a deposit account with them for the moment. He was not aware that our deal had concluded and I am keen to ensure that I am protected from Ulster Bank and, indeed, that my name is removed from any shared accounts concerning the Coole project. I might ask you to contact him to ensure that this is in order . . .”*

Mr. Groarke responded on the following day, informing the plaintiff that he had written to the bank seeking confirmation that the plaintiff’s name had been removed from all partnership accounts. Mr. Groarke confirmed that neither on 1st nor 2nd August, 2007, was he informed by the plaintiff that he had received an assurance from the bank that he had been released from his liabilities under the guarantee.

18. When Mr. Groarke was cross-examined by the plaintiff’s counsel about a discussion in which he allegedly told the plaintiff that he had no liability, Mr. Groarke replied,;

> *“I couldn’t have said that because, not only would it not have been right, but it was clear, (and I have no doubt that Dr. Healy was aware) as transpired on 1st August, that he was not released from the guarantee. I couldn’t release him from the guarantees and I couldn’t tell him he was*.” (Transcript 15th May, 2007 p. 37).

19. I accept the evidence of Mr. Groarke.

20. The plaintiff’s mother accompanied the plaintiff to the bank for the meeting with Mr. Leech on 1st August, 2007. Although Mr. Leech did not recall her being present in the room when he was receiving the cheque from the plaintiff, I accept her evidence that she was there at the time. She said she heard Mr. Leech telling the plaintiff that he was, “. . . *in the clear with the Ulster Bank*”. But when she was asked whether there was any detailed discussion on the issue as to whether her son had a liability under a guarantee, she could not remember any such discussion.

21. The plaintiff’s accountant and financial adviser, Mr. Malachy Stephens, said that around the time the deal to terminate the partnership was being concluded, he had a conversation with Mr. Alan Leech and informed him that the deal had been struck and that in closing the deal, the plaintiff would require €2.25 million and would need a letter of release from his liabilities to the bank. He told Mr. Leech to expect such an application to be made by Dr. Cullen’s advisors to the bank. When the dissolution of the partnership was imminent, he received a letter from the bank on 11th July, 2007, setting out the current liabilities of the partners under each of the accounts and stating “*Neil Healy continues to be liable for all facilities in the name of Coole Properties Ltd*.”. At that time, he accepted that the plaintiff remained liable under these arrangements and while the plaintiff should have been released from his liabilities to the bank on the closing of the deal, that this did not happen.

22. Mr. Leech informed the court that he could not specifically remember what he said at the meeting of 1st August, 2007. He said that he had absolutely no discretion to restructure existing facilities or release existing security in relation to customers. All such matters would have to be approved by the Credit Department after a report was submitted to the Credit Risk Department. I accept that evidence. He did not recall the plaintiff informing him that he had asked his solicitor, Mr. Groarke, whether it was safe for him to go to Ulster Bank with his funds and that Mr. Groarke told him he had no

liability to the bank. Neither did he recall informing the plaintiff that he had no liability in relation to the project at Coole. The plaintiff said, in evidence, that he told Mr. Leech that he had met with his solicitor, Mr. Groarke, the evening before the meeting, and that Mr. Groarke had told him that it was safe for him to lodge his funds in Ulster Bank and that he had no liability. Since I accept Mr. Groarke's evidence that he never said this to the plaintiff, it seems, as a matter of probability, that the matter was not raised at the meeting between Mr. Leech and the plaintiff which supports the evidence of Mr. Leech insofar as he says he has no recollection of the matter being raised. If it was said by the plaintiff to Mr. Leech, then it was misleading. It is perhaps worth noting that the plaintiff, under cross-examination, conceded that he did not ask Mr. Groarke on 31st July, 2007, what the position was in relation to the guarantee.

23. In August 2008, the plaintiff was informed by the defendant that he had liabilities to the defendant in excess of €2.2million and the repayment was sought about the outstanding sum. On 14th August, 2008, the defendant exercised a set off against the debit balance outstanding in respect of the Coole Property Holdings Limited account in the sum of US$993,983.03. Shortly afterwards, two meetings involving the plaintiff took place which are of significance. On 1st September, 2008, Mr. Peter Lynch of Ulster Bank Ireland Limited brought his son to the plaintiff's surgery as a patient. It was Monday morning. Over the weekend, Mr. Lynch had contacted him to ascertain if he could see his son on the Monday morning. The plaintiff said that he could. It is clear, therefore, that the plaintiff knew that Mr. Lynch would be coming to his surgery with his son. After the medical consultation, the plaintiff asked Mr. Lynch's son to call his father in from the car park and Mr. Peter Lynch went into the surgery and had a discussion with the plaintiff. Unknown to Mr. Lynch, the plaintiff secretly recorded the discussion. To do so in circumstances where Mr. Lynch was at the surgery because his son was attending as a patient was, in my view, quite improper. In the course of the discussions, Mr. Lynch twice insisted that their conversation was "*off the record*" and the plaintiff agreed. Notwithstanding that, he sought to use the recording to bolster his case that the Bank had relieved him of his obligations under the guarantee.

24. The other meeting to which I have referred took place on 4th September, 2008, also at the plaintiff's clinic. On that occasion, the plaintiff was due to meet Mr. Leech and Mr. Roche who would be taking over from Mr. Leech. Mr. Roche could not attend, but the meeting went ahead in any event. That meeting was also secretly recorded by the plaintiff and again he sought to use that recording to bolster his position.

25. In each of these meetings, the plaintiff sought to elicit from the bank personnel an admission that Mr. Leech had agreed, on behalf of the bank, that he was relieved from his liability under the guarantee. He sought to manipulate the discussion and gain such admissions by presenting a scenario which was, at times, inaccurate and misleading. For example, he referred to the assurances which he had received from Mr. Patrick Groarke. Mr. Groarke has emphatically denied that he gave such assurances. In his meeting with Mr. Leech, he gave the impression that he had documented every conversation that he had with him and with his solicitor Mr. Groarke and he informed Mr. Leech that he had written an email to Mr. Groarke to say that he had attended at the bank where Mr. Leech had given assurances that his money was safe. Under cross-examination, he conceded that in his email to Mr. Groarke on 2nd August, 2007, there was no statement by him to Mr. Groarke that he had received such assurances. At each of these meetings, he conveyed the impression that he had suffered a substantial loss in relation to the purchase of a property in Florida when he knew that to be untrue. I will deal with this later in the judgment. The plaintiff was, of course, aware that at the time he recorded his conversation with Mr. Leech, that Mr. Leech had no clear recollection at what transpired at the meeting in the bank on 1st August, 2007, and it was clear from the transcript that the plaintiff had the intention of exploiting this uncertainty on the part of Mr. Leech by suggesting matters to him (some of which were untrue) and inviting him to agree that he had given the assurances for which the plaintiff contends. Having regard to the circumstances in which those recordings were procured, I do not believe the plaintiff should be permitted to rely on them. In any event, I might add that there is nothing contained in those recordings which would assist the plaintiff's case. All they show is that the plaintiff was prepared to act improperly and go to almost any lengths to bolster his case.

26. I now turn to the Florida property mentioned above. The plaintiff gave evidence that he intended to purchase a Wachovia Bank property at Riverside Financial Centre, 219, Indian River Avenue, Florida, 32796, USA, (The "Wachovia property") for the sum of US$900,000. He claimed to have suffered significant loss as a result of being unable to proceed with this purchase. He blames this on the fact that the defendant exercised a set-off in respect of funds standing to his account in Mullingar. Mr. Ralph Perrone, a licensed Real Estate Broker in the State of Florida, gave evidence that if the plaintiff purchased the property, it could have been put back on the market at a price of between US$3.7million to US$3.9million. Under cross-examination, he accepted that the purchase of the building would be a very speculative venture unless they intended to wait for a return in many years time.

27. Mr. Geoff Carson, a Certified General Appraiser for the State of Florida and licensed Real Estate Broker, gave evidence on behalf of the defendant. Having set out the many drawbacks in relation to the building, he concluded that it would be very difficult to sell, and stated that the property has a negative cash flow. He added that the plaintiff would not have been able to develop the site unless the Wachovia Bank decided to leave and that this was very unlikely having regard to the terms of the lease. He gave evidence that the property was sold ultimately in 2008, for a sum of US$750,000 and that, in the circumstances, the plaintiff suffered no loss by not proceeding with the deal. I prefer the evidence of Mr. Carson to that of Mr. Perrone for two reasons. In the first place, I hold that he was better qualified to give the evidence, and secondly, his evidence as to the value of the premises was borne out by the actual sale price.

28. The plaintiff was cross-examined on this issue and he conceded that he never paid US$90,000 by way of a deposit. He admitted that he lied to Mr. Leech in the secretly recorded meeting when he told him that he had paid a US$90,000 deposit and lost that deposit. (See transcript of 13th May, 2009, page 71). He conceded that he knew the property was sold in December 2008, for around US$750,000 and that if he had bought it for US$900,000 he would have suffered a loss. Yet, during the hearing, he persisted in maintaining a claim for loss on the Florida property deal. (Transcript 13th May, 2009, page 73).

29. The plaintiff placed considerable reliance on some of the bank documents which he contends support his assertion that he was discharged from any liability to the bank. In September 2007, documents were created under the heading 'Business Centres Customer-Existing Credit Application'. These documents related to the plaintiff and his former partner, Dr. Patrick Cullen. They comprised an exchange of memoranda between various bank personnel concerning the facilities which were in place and the release of any security, having regard to the fact that the plaintiff was bought out by his former partner. It is clear that Mr. Leech was proposing that the plaintiff be cleared of the loan and the facilities which were granted and that these be put in the name of Dr. Cullen. He made this request on 3rd September, 2007. On 10th September, 2007, a memo from Mr. Ian Long, a solicitor with the bank stated, ". . . *the security is still held in joint names and amending same may not be correct*". He added later in the same memo:

"Healy effectively no longer has any liability to us and as I say, he has signed contracts signing over any interest he had in all lands and property at Coole to Cullen. I have amended this on the security screen now. This can be changed back if not correct. On the same date, there is a memo from Mr. Donal Coyle on a document entitled "Sanction Summary Sheet", it is necessary to retain Mr. Healy's name on the loan. Did not approach us to have his name removed before now – this would have given us time to re-evaluate our security requirement. Of perhaps more importance, he did not use any of the funds he received from the sale of his share of the assets of the partnership to reduce any of the debt for which he continues to be jointly and severally liable.

If and when the sale of the site with pp for 22 units goes ahead, the payment is then made and at that stage NH can be formerly released. If the sale falls through for whatever reason, the Bank would require the fallback of reliance on the security – something it would be forsaking if he was released."

30. Taken in its entirety, these memoranda do no more than show that the bank was considering a request by Mr. Leech to have the plaintiff cleared of any liability to the bank, but the bank was not prepared to do so. They do not, in my view, support a "*clear and unambiguous promise or assurance*" made by the bank to the plaintiff. If anything, these documents support Mr. Leech's evidence, where he explained to the court that he would not have had authority to give any assurance to the plaintiff that he was released from his guarantee without referring the matter to the Credit Committee. I think it is of significance that at the meeting on 1st August, 2007, when the plaintiff handed over the cheque to Mr. Leech and enquired about what interest rates he could get, Mr. Leech left the room to see whether he could match rates already offered to the plaintiff. It seems unlikely that he would have taken such a step in relation to interest, but would have released the plaintiff from substantial liabilities to the bank on foot of a guarantee without referring the matter to anyone else in the bank, even when he knew he had no authority to give such a release.

31. I found Mr. Alan Leech to be a credible witness. He candidly admitted that he had no recollection of the words spoken at the meeting of 1st August, 2007, but was well aware of the extent of his authority. He quite freely admitted that he was not happy about the manner in which the bank exercised a set-off of the plaintiff's funds against the indebtness of the partnership.

32. I found the plaintiff to be lacking in candour and credibility. He admitted that he had lied to Mr. Leech and Mr. Lynch in respect of his losses claimed over the failed purchase of the Wachovia Bank site and his evidence on other important details was in direct conflict with that of his former solicitor, Mr. Patrick Groarke, whose evidence I accept. The fact that he secretly recorded conversations with Mr. Leech and Mr. Lynch and invited them to comment on facts which he put before them and knew to be untrue further undermines his credibility.

33. The burden of proof is on the plaintiff and he must satisfy the court that, on the balance of probabilities, he was released from his guarantee and that the bank was not entitled to set off his funds and that he suffered loss and damage as a result. In the circumstances of this case, the credibility of the plaintiff is essential to enable him to establish these facts as they depend on the plaintiff's account of what occurred at the meeting on 1st August, 2007.

34. I reject the plaintiff's account of the meeting and I hold that the plaintiff is not entitled to the relief claimed. I therefore dismiss the claim. I will hear counsel on what form the order should take, having regard to the counterclaim.