

THE HIGH COURT

[RECORD NO. 2014/1583S]

BETWEEN

FIDELMA KERRIGAN

PLAINTIFF

AND

JOHN KEENAGHAN AND JACQUELINE KEENAGHAN

DEFENDANTS

JUDGMENT of Ms. Justice Murphy delivered on the 15th day of January, 2019

1. The plaintiff's claim is for repayment of the sum of €280,000 given by her to the defendants on the weekend of 27th August, 2010. There is no dispute that the said sum was paid by the plaintiff to the second defendant in the form of two bank drafts, one for €200,000 and one for €80,000. The plaintiff claims that the sum was given as a loan which had been requested of her by the second named defendant. The defendants deny that the said sum was given as a loan and contend that it was an unsolicited gift which the plaintiff insisted on giving them.

Background facts

2. The plaintiff Fidelma "Della" Kerrigan is a 59-year-old single woman, who lives with her sister in their family home at 56, St. Benildus Avenue, Ballyshannon in Co. Donegal. Both she and her sister have had limited formal education. The plaintiff's talents lay in the creative and artistic sphere. She is a highly accomplished knitter. Prior to 2002, singing and dancing played a major part in her social life. She participated in musicals and sang with a folk group. She had a green belt in karate and had a passion for long walks which she indulged with her sister Celine.

3. Up to the late 1990s, she worked in the Celtic Weave Pottery factory where she worked as a finisher, working on lamps. She loved working with her hands. In or about the late 1990s, she left work to become a fulltime carer for her father who had begun to have health problems. She and her sister, Celine, and their father, lived together in the family home, a council house in Ballyshannon. Celine had acquired a job as a catering assistant with the HSE. There was a happy unit which allowed the plaintiff to indulge her interests in singing and dancing, doing karate, and indulging the sisters' mutual passion for long walks.

4. Unfortunately for the plaintiff all of this ended on 13th November, 2002, when she was involved in an horrific car accident. The plaintiff was taking her father for a drive, as she did most days, when a van crashed headlong into their vehicle. The plaintiff's father sustained fatal injuries and the plaintiff sustained multiple serious life-threatening injuries, including head and facial injuries. She was taken unconscious, to Sligo General Hospital and was thereafter transferred to Altnagelvin Area Hospital in Derry, for treatment of her facial injuries. Her last memory before the collision was of laughing with her father and her first memory post collision is of waking up in Altnagelvin Area Hospital. By reason of the severity of her injuries she was unable to attend her father's funeral and to participate in the normal grieving process.

5. The plaintiff spent two months in hospital and was bed bound for a further two years. Thereafter she spent three years in a wheelchair. In the years following the accident, the plaintiff underwent twenty-four different surgical procedures. Her needs were such that her sister Celine took five years unpaid leave from her job with the HSE, to care for the plaintiff. The effects of the accident have been devastating for the plaintiff's life. Apart from the horrific physical injuries which she suffered, the plaintiff has never recovered from the traumatic loss of her father, who she perceives, died while in her care.

6. In the period following the accident, many members of the community rallied round the sisters. Jacqueline Keenaghan, the second defendant was one of those who began to call on them. Jacqueline Keenaghan is the wife of the first named defendant, John Keenaghan. They live outside Ballyshannon, in a house they had built in the 1980s on a two and a half acre plot of ground in Rathmore. They have three grown up children, two sons and a daughter. From 1982 until in or about 2008/2009 the first defendant ran an architectural services business conducting *inter alia* evaluations, inspections, mapping and surveying.

7. Jacqueline Keenaghan had been particularly friendly with Celine Kerrigan when they were both in national school in Ballyshannon. Their paths had diverged after national school but they reconnected, initially at a surprise 40th birthday party for Jacqueline Keenaghan in 2001, and again in the aftermath of the tragedy that had befallen the Kerrigan family. After secondary school, Jacqueline Keenaghan had worked as a legal secretary for either six or eight years until the birth of her first child in 1987. The three women got on well and Jacqueline Keenaghan was a source of comfort and support to the Kerrigan women in the immediate aftermath of the plaintiff's dreadful accident.

8. When the plaintiff became mobile in or around 2007, the plaintiff and her sister, Celine, were regular visitors to the Keenaghan household. Jacqueline Keenaghan was aware of the plaintiff's ongoing claim and the various surgical interventions which occurred in the years following the collision. She advised them in a general way on their dealings with their solicitor and of the need to keep pressure on her by requesting updates on the progress of the plaintiff's claim.

9. Following the financial crash in 2007, the first defendant's architectural practice came under increasing pressure. At the time of the crash he had three employees, all of whom he eventually had to let go. Those who owed him money could not pay and some of his primary debtors went bankrupt. In June, 2008 he secured a loan from Allied Irish Bank in Bundoran, Co. Donegal in the sum of €80,000. The loan was specified to be a short-term loan to be repaid by eight monthly repayments of €558.72 commencing on 14th July, 2008, with a final repayment on 14th February, 2009, of €80,558.72. The security for the loan was expressed to be an all sums mortgage from Mr. John Keenaghan over Rathmore, Ballyshannon, Co. Donegal. This is the land on which the defendants' home is built. The bank also required as a security for the loan, a letter of guarantee for €90,000 from the second-named defendant, Jacqueline Keenaghan.

10. During the course of 2008, matters did not improve and the loan taken out in June, 2008 was not repaid by February, 2009. In 2008 or early 2009, the defendants borrowed €5,000 from the first defendant's brother and over that period borrowed a further €1,500 from the first defendant's mother. It appears that sometime in 2009 the first defendant's architectural practice closed and the defendants approached MABS for advice about their growing indebtedness. Sometime after June, 2009 the defendants' solicitors prepared a "TO WHOM IT MAY CONCERN" letter setting out the parlous state of the first defendant's finances. Attached to the letter is a list of twelve debtors of the first defendant's architectural business and the various sums owed by those debtors to the business. The debts accrued between October, 2006 and June, 2009. The total sum alleged to be due was €153,692 exclusive of VAT. The solicitor's letter points out "the realistic prospect of obtaining satisfaction from any of these debtors in the immediate future is negligible." The letter sets out the efforts made to obtain payment by the defendants' solicitors and goes on to state:-

"We would also point out that our clients owe considerable sum(sic) of money to the Revenue Commissioners for Vat and Income Tax and any monies obtained in settlement of any of the debts accrued as set out in the list of debtors will have to be forwarded to the Revenue Commissioners for payment of a substantial sum of money due and owing by our clients to them."

The letter continues:-

"As you will appreciate the Revenue Commissioners rank as a priority debtor in all situations. We trust that this clarifies the situation with regard to our clients' position and as you will note there is little or no prospect of recovering any monies personally for their own benefit in the near future arising out of the debts which we are pursuing on their behalf. Even if we are successful in obtaining monies after a long and arduous process of debt recovery there is a considerable sum of money due and owing to the Revenue Commissioners which has to be deducted from any monies recovered by our clients therefore if they are successful in recovering all of the debts then it will be some considerable time before they would ever have any of these funds for their disposal. We trust this clarifies the position and should you have any further queries please don't hesitate to contact us."

11. The first defendant's architectural business closed in 2008/2009 and thereafter the only income available to the defendants' household was Jobseeker's Allowance which the second-named defendant applied for some time in 2009. While the defendants were facing financial ruin and bankruptcy, a fate suffered by a number of their debtors, the plaintiff was continuing to experience her own difficulties in coming to terms with the tragic death of her father. In December, 2008, she was referred for counselling for the psychological trauma resulting from the circumstances of the tragic death of her father. It was noted at the time, that she was being treated by her GP for depression since the accident. She attended psychotherapy from January, 2009 until the end of March, 2009. The depth of her trauma can be gauged from the fact that even seven years after the event, she expressed the view that she would rather have died along with her father.

12. In April, 2010 the defendants were coming under further pressure from the bank because of their failure to discharge the short term loan of €80,000 repayable in February, 2009. While the original loan offer required security over the whole of John Keenaghan's property at Rathmore, Ballyshannon, Co. Donegal an arrangement appears to have been put in place in April, 2010 whereby part of the defendant's original folio, upon which there was planning permission for two houses, was hived off from the main folio and a new folio 66493F was created for that portion of the lands upon which the two sites existed. A charge in favour of AIB mortgage and Allied Irish Banks PLC for present and future advances was registered against the new folio. The date of registration of the charges is 23rd April, 2010. The financial pressure continued and the court notes that in July/August, 2010 three interest payments on the bank loan went unpaid.

13. On or about 30th July, 2010, the plaintiff and her sister and her nephew attended at the Four Courts to discuss settlement of her claim. Liability was not in issue. On advice the plaintiff accepted a sum of €750,000 together with costs in full settlement of all her claims. On the way home from the Four Courts, the plaintiff telephoned the second-named defendant and notified her of the fact and of the amount of her settlement. There was a lot of contact between the plaintiff, her sister Celine and the second-named defendant in the days immediately following the settlement. There was a meeting between those three people at the second-named defendant's house on 7th August, at a time when the first-named defendant was in Galway with his mother and son. There appears to have been a second meeting that weekend or perhaps on Monday 9th August between the Kerrigans and the two defendants. There was a third meeting on or about 16th August at which the Kerrigans and the Keenaghans were in attendance. The contents of those encounters are disputed. At the end of that process it was agreed that the defendants would accept €280,000 from the plaintiff.

14. It took some weeks for the settlement cheque to arrive. It appears to have been lodged by the plaintiff in AIB in the Diamond in Donegal town, which bank on 27th August, 2010, issued two demand drafts payable to the second-named defendant, Jacqueline Keenaghan, in the sum of €200,000 and €80,000 respectively. These demand drafts were handed over to the second-named defendant on the weekend of 27th August, 2010. The draft for €200,000 was presented for payment on Monday 30th August, 2010. The second draft for €80,000 was presented for payment on 14th January, 2011, at AIB in Ballyshannon, Co. Donegal.

15. Out of the draft for €200,000 presented on Monday 30th August, 2010, the defendant's discharged their bank debts of €83,282.05. They repaid the family loans of €5,000 and €1,500 received in 2008/2009 from the first defendant's brother and mother respectively. They paid €10,000 into the account of their eldest son, Edward, who lives in the U.S. €20,000 was put into an account to finance the return to college of the defendant's daughter, Danielle, to train as a speech therapist. Money was also put aside to finance the college expenses of the defendants' younger son, Sean. The balance was in effect used to allow the defendants train as counsellors and psychotherapists. The second defendant had started such a course in 2009 and qualified in 2012, thereafter setting up a business as Ark Counselling in Ballyshannon. Using the money given by the plaintiff, the first defendant also returned to college and trained as a counsellor and psychotherapist, and together with his wife practises as such in Ballyshannon.

16. In the months following the giving of the money, it appears that the first defendant entered negotiations with the Revenue Commissioners in respect of the VAT and Income Tax owed by his business. On 14th January, 2011 the second bank draft for €80,000 was presented for payment. Three days later a letter issued from the Donegal District of Revenue acknowledging payment of €88,119.58 in respect of the VAT and Income Tax liability of John Keenaghan. The letter confirmed that his tax liability had been paid in full. Two days later the second defendant received a letter from the Department of Enterprise, Trade and Innovation acknowledging receipt of €2,445.40 in respect of redundancy payments and advising that a further payment of €1,264.20 was due to the Social Insurance Fund.

17. The good relations between the parties continued for the next few years. Contact was somewhat less frequent because of the defendants' college commitments, however the weekly trips by Della Kerrigan and Jacqueline Keenaghan to knitting/crocheting classes continued. By the end of 2013, the Keenaghans were back on their feet and their counselling business was up and running. They were in a position to plan a lengthy trip to the U.S. to visit their son in June, 2014. On two or three occasions in late 2013 and early 2014 the subject of the €280,000 was broached by Della Kerrigan with Jacqueline Keenaghan on the way home from knitting/crocheting classes. The content as opposed to the fact of these conversations is disputed. This culminated in a meeting at the defendant's home in April, 2014 where the first defendant unequivocally asserted that the €280,000 given by Della Kerrigan to the second defendant was a gift.

18. Following this meeting a letter of demand seeking repayment of €280,000 was sent on the 6th May, 2014. On the 18th June, 2014 a summary summons was issued seeking repayment of the loan of €280,000 together with interest pursuant to the Courts Act 1981. On the 6th October, 2014 the second defendant filed an affidavit seeking to have the matter remitted to plenary hearing, in the course of which she averred that the monies given to the defendants was either a gift or an unconditional act of charity, or an open ended loan without a repayment date. The matter was remitted to plenary hearing. A statement of claim was delivered on 18th

November, 2014 in which the plaintiff claimed the return of the monies on the basis that it was a loan and on the alternative basis that it was money had and received by the defendants to the use of the plaintiff, and on the further alternative basis that if the money was found to have been given as a gift that same had been procured by undue influence. A defence was delivered on the 2nd April, 2015 in which the defendants, while admitting receipt of the money, denied that it given as a short term loan. At para. 6 they plead that the sum of €280,000 was given *"on a charitable basis or as a gift with no repayment date discussed."* They deny the exercise of undue influence over the plaintiff. They deny certain factual matters including a specific denial *"that the defendants made any approach before or after the plaintiff's personal injury settlement asking for money."*

19. The foregoing are the objective facts against which the court must measure the testimony of the parties as to the nature and circumstances of the transaction in which the plaintiff gave the second named defendant the sum of €280,000.

Evidence of the plaintiff

20. The plaintiff finally regained mobility following the accident, some five years after the event in 2007. While she was unable to get back to her pre-accident life she was able to socialise to some degree. A large part of that socialising was in the company of her sister, Celine, and the second defendant, Jacqueline Keenaghan. Each Thursday evening, Jacqueline Keenaghan collected her in her car and brought her to a knitting/crochet class where it appears Jacqueline Keenaghan worked as a crochet teacher. As 2007 moved into 2008 and onto 2009, she was aware that there were financial problems in the Keenaghan household. John Keenaghan's business closed in or about 2009 and the plaintiff and her sister recall that the second-named defendant was frequently stressed and upset. She cried at the prospect of losing her home and expressed concern about putting food on the table. Around this time, she was urging the plaintiff to keep pressure on her solicitor to keep the case moving and to seek regular updates about the progress of her claim. Before the settlement in 2010, she broached the subject of the plaintiff assisting her out of the proceeds of her settlement. She promised the plaintiff that if she was willing to help her in her hour of need that she would pay back every penny. She explained that her husband, the first-named defendant, was owed money by a lot of people and that they needed help until that money came through. She also spoke of her hopes of retraining as counsellor (which she had commenced in 2009) and setting up a business with her husband John, as counsellors and psychotherapists.

21. According to the evidence of the plaintiff the issue of her willingness to loan money to the defendants was first broached in or about 2009. At that stage, according to the plaintiff, Jacqueline Keenaghan did not mention a particular sum but assured the plaintiff that if she helped her, she would pay back every penny. The plaintiff agreed in principle to help the second-named defendant. Every time the question of assistance was raised the second defendant said she would pay back every penny. It was only after the case was settled on or about 30th July, 2010 that the second defendant first mentioned the sum of money which she was requesting. It appears that a figure of €240,000 was initially mentioned, but the ultimate figure sought was €280,000. The plaintiff gave evidence that she was shocked by the size of the amount and that she had expected the sum to be in the region of €50,000. Though shocked by the size of the sum, she gave evidence that she felt that having given her word that she would help, she felt bound to do so. She also felt comforted by the second named defendant's repeated assurances that the monies would be repaid when the monies due to the first-named defendant by his creditors was paid, and/or when they got set up in their new counselling business. She trusted Jacqueline Keenaghan to keep her word.

22. All of the initial discussions about the loan took place between the plaintiff and Jacqueline Keenaghan and sometimes with her sister, Celine. John Keenaghan was initially reluctant to accept money from the plaintiff. Jacqueline Keenaghan asked for the money to be paid in two separate bank drafts; one for €200,000 and one for €80,000. According to the evidence of the plaintiff, the second defendant wanted it in this form so that the money could not be traced. After the payment of the monies the friendship between the plaintiff and her sister and Jacqueline Keenaghan carried on much as before, though the second defendant was less available because of the college commitments, which she and her husband were pursuing, funded by the monies given to them by the plaintiff.

23. In 2012, the second defendant, Jacqueline Keenaghan, qualified as a psychotherapist and set up a counselling practice called Ark Counselling in Ballyshannon. By the end of 2013 the counselling practice had been up and running for more than a year. The defendants seemed to be back on their feet and were in a position to take holidays in the U.S. where their eldest son was living. In the car on the way back from knitting on a Thursday evening, the plaintiff broached the subject of the repayment of her loan. According to the plaintiff the second-named defendant responded that she would need more time. The plaintiff brought it up again sometime later, on one of the knitting nights, and the plaintiff's evidence is that the complainant again stated that she needed more time and that she would have to talk it out with her husband.

24. Finally in April, 2014 there was a meeting in the defendants' house at which the plaintiff, her sister Celine and the two defendants were in attendance. On this occasion according to the plaintiff, John Keenaghan,, on being asked about repayment of the money, replied that the money was a gift. The plaintiff states that that was the first time a gift was mentioned and that she was shocked because, throughout her dealings with the second defendant Jacqueline Keenaghan, she had asked for a loan and assured the plaintiff that she would pay back every penny. The plaintiff had trusted her to do that. At this meeting the second-named defendant suggested that they should not fall out about money and further stated that they could not pay the money back. The plaintiff and her sister left and shortly thereafter sought legal advice.

The evidence of Celine Kerrigan

25. Celine Kerrigan left school at thirteen to mind her mother who was ailing. After her mother died she worked in a hosiery factory for four years, after which she was in and out of work, until she eventually got a job as a catering assistant with the Health Board. When the plaintiff came out of hospital following her accident, Celine took a leave of absence from her work and for the next five years she cared for her sister; first when she was confined to bed, and thereafter when she mobilised using a wheelchair. She eventually went back to work part-time in 2007 and is now back working full-time. As a child she was very friendly with the second-named defendant, Jacqueline Keenaghan. As Celine Kerrigan left school at thirteen and Jacqueline Keenaghan went on to secondary school, they lost touch with each other but would see each other occasionally in various locations in Ballyshannon. In 2001, Jacqueline Keenaghan's sister organised a surprise 40th birthday for her and both Celine Kerrigan and the plaintiff, her sister, were invited. A year later, after the tragic accident in which the plaintiff's father was killed, Jacqueline Keenaghan was one of the people in Ballyshannon who rallied round the sisters and visited them regularly during the period when the plaintiff was housebound. Once the plaintiff was able to leave the house in 2007/2008, she and her sister were regular visitors to Jacqueline Keenaghan's house. As the plaintiff's personal injury claim was trundling on the second defendant, who had been a legal secretary, advised both sisters to keep the pressure on the solicitor and to keep ringing her office for updates. Before they travelled to Dublin for the settlement meeting on or about 30th July, 2010 they told the second-named defendant of the impending meeting. The witness was aware of the financial difficulties besetting the Keenaghan household for a significant period prior to the settlement of her sister's claim. She stated that the second defendant was terrified that her house was going to be taken from her and that she cried when expressing that concern. The witness gave evidence that Jacqueline Keenaghan told her that she had sought a loan from her sister's husband, who had been made redundant, but that he had declined her request for a loan. Celine Kerrigan confirmed her sister's evidence that Jacqueline Keenaghan had requested help prior to the settlement and had promised to pay back every penny.

26. Jacqueline Keenaghan discussed with the witness and the plaintiff the financial difficulty that she and her husband were experiencing. She told them that her husband was owed money by many people and she asked if Della, the plaintiff, would lend her money. Della indicated a willingness to help her out. There was talk of getting money from the people who owed the first defendant fees. The first that Della heard of the sum being sought was after the settlement when €280,000 was requested. She has no recollection of the initial request for a sum of €240,000. Though shocked as her sister was that the defendants could be in so much debt, she was happy that her sister was willing to help the defendants. The plaintiff offered to give the second defendant a cheque once her settlement funds came through, but according to Celine Kerrigan, the second named defendant asked for two bank drafts so that the money could not be traced. She asked that the drafts be made out in her name.

27. According to the witness, there was a discussion about telling the second-named defendant's mother about the fact of the loan. The second defendant suggested that she would tell her mother that her husband's brother, Daniel, had given them the money to clear off their debts. The witness confirmed that initially John Keenaghan was reluctant to take money from the plaintiff but the second defendant Jacqueline Keenaghan suggested that they leave John to her, that she would get him around to her way of thinking.

28. At the meeting that everyone agrees occurred on 7th August, 2010, only the plaintiff Della Kerrigan her sister Celine Kerrigan and the second defendant Jacqueline Keenaghan were present. Della Kerrigan confirmed that she was willing to lend money to Jacqueline Keenaghan. Jacqueline Keenaghan said that it was wonderful news and that the plaintiff and her sister were two guardian angels and that she would repay the money. At a later meeting the first defendant, John Keenaghan, was still expressing reluctance and concern about their ability to pay the money back and the witness accepted that she urged him to take the money, notwithstanding his express concern that they could not repay it.

29. The witness gave evidence that after a couple of years Della had remarked to her that there was no sign of the money being repaid. Della relayed to the witness the contents of her conversations in the car with Jacqueline Keenaghan about the repayment of the loan. The witness urged Della to give them time because she felt sure that when the defendants established their business Jacqueline Keenaghan would come back and start paying off the loan.

30. The plaintiff and her sister went out to the defendants' house and the plaintiff asked when they would start paying the money back, and that she wanted her money back. It was at that point that the first defendant turned around and said it was a gift. The plaintiff was shocked because Jacqueline Keenaghan had consistently, when asking for help, promised to repay every penny. There was an awkwardness and, having exchanged the usual hugs, the plaintiff and her sister left. In the car on the way home, the witness suggested that they needed legal advice. After that meeting the parties never met again.

31. After the initiating letter seeking the return of the money was sent, Jacqueline Keenaghan texted both the plaintiff and her sister, Celine, inviting them out to the house but they declined. This was particularly difficult for Celine Kerrigan because she considered that she had had a very close relationship with Jacqueline Keenaghan between 2002 and 2014. It was put to her in cross-examination that when John Keenaghan expressed his reluctance to take the money because of their inability to repay the sum, that she had said emphatically, *"who said anything about this being a loan? This is a gift."* She denied that those words were spoken but accepted that she was enthusiastic about helping out her friend with the loan that her sister Della had offered. It was suggested to her that there was a witness from Ballyshannon who would give evidence that Celine Kerrigan had told her it was a gift. When pressed by the court to identify the person and the circumstances of that conversation, a woman from Ballyshannon was named. However, the defendants subsequently resiled from that position and no such witness was called. It was suggested to her that she was jealous of the defendants' new found prosperity and that she had concocted the story of a loan to which she replied:-

"You are so wrong. We were letting her get established with her business thinking that she'd have the decency to come back and say 'Della there is some money after you lending me the money', but she didn't...Della lent her the money and waited on repayment, and never got it.."

The defendants' case

32. Jacqueline Keenaghan, the second named defendant, gave evidence that she is married to John Keenaghan, the first named defendant, and has three adult children. She worked as a legal secretary until 1986 in a solicitors' office in Bundoran. She was in the same class as Celine Kerrigan in national school and they were great friends. Celine left school at thirteen and Jacqueline Keenaghan went on to secondary school in the Mercy Convent. They encountered each other from time to time, but were not close friends. She gave evidence that her husband started his own business in architectural services in 1982/83. Both the plaintiff and Celine Kerrigan were invited to her 40th birthday party in July, 2001. She recalled how the town was shocked at the time of the accident which claimed the plaintiff's father's life and led to years of pain and suffering for the plaintiff. She took to visiting the sisters, who were in effect housebound by Della's injuries. She remarked that since everyone in town called to visit them, they had all of the current gossip which she, living two miles outside the town, might not otherwise hear. They became very close friends over the period and supported each other through various medical procedures that one or other of them had had to undergo.

33. She gave evidence about the economic situation in Ballyshannon in 2008 and 2009. In or about 2009 her husband had to start letting people go. A firm of plumbers in the town went into liquidation. A major bakery closed. In 2008 and 2009 a number of people who her husband did an awful lot of work for were in financial difficulty and some ended up bankrupt.

34. Her husband's office was in a building beside the family home and it would have been noticeable that there were less cars outside the big building. She suggested that Celine was the one who calls the shots in the Kerrigan household and that on an occasion when it was obvious that the employees of her husband's business were not at work, Celine demanded to know what was going on. She says this took place in 2009 and 2010. She gave evidence that she told Celine about the level of their debts and that her husband was trying to work with Revenue. She stated that she never expressed concern about losing her house because as of July, 2010, there was no mortgage on her house. The bank charges were on land adjacent to the house which lands had planning permission. She gave evidence that she told both the plaintiff and her sister Celine that her husband owed over €200,000 but that he was working with the bank and Revenue authorities. She stated that she did not feel under any pressure at the time because her husband was working with his solicitor trying to obtain fees, and that he was meeting the bank and Revenue. She denies that she ever mentioned money to either the plaintiff or her sister. She stated that she and her husband were in the process of working out their debts with the bank and Revenue. She gave evidence that the allegation that she had complained that she was finding it difficult to put food on the table *"cut [her] to the bone."* She stated she was on Jobseeker's Allowance and that that was sufficient to pay the bills and food, and that they were in the process of working out their debts with the bank and Revenue.

35. She confirmed that every Thursday night she collected Della for crochet class. She would often go into the house to visit Celine and there were lots of hugs. She was aware of the ongoing case because the Kerrigan women would tell her that they had been to

Dublin to see this doctor or that doctor. She painted a picture of an extremely close friendship, particularly with Celine Kerrigan, which was of mutual benefit to all parties. She confirmed that on the evening of the settlement on or about 30th July, 2010 she received a phone call from the Kerrigans telling her the amount that the plaintiff's case had been settled for. According to the witness, the plaintiff and her sister were out a number of times that week and said nothing about the settlement. On 7th August, 2010 when the first named defendant and his son and his mother were in Galway for an anniversary mass, the witness and her daughter Danielle remained at home. She was at home when, as she calls them, "the girls" arrived. According to the witness Celine Kerrigan turned around and said "Della and I have been talking and we've decided we wanted to give you a gift of €240,000." This she claims was entirely unsolicited. She said Celine asked where the first defendant was and she explained that he would be back on Sunday. According to her evidence, Celine told her that they had jokingly planned a holiday to Hawaii out of the proceeds of the settlement which was now not going to happen, stating "no, we are not doing that now, we have decided that we are doing this instead...we want to give you this gift, and that's it." The witness said that she refused the gift and told the Kerrigan sisters that her husband John would refuse it as well. She gave evidence that she had no idea where this offer came out of. She picked up her daughter Danielle from her work at Waterworld and told her about the offer and spoke to her about her husband's probable reaction. She states that she rang her husband that night and that he refused to take the money. When she communicated that refusal to Celine Kerrigan, her reply by text was "what the f... is wrong with yis? This is what we want to do."

36. Jacqueline Keenaghan gave evidence that there was a meeting on Monday 9th August when her husband again refused the offer of €240,000 and Celine Kerrigan pushed him to take it. The evidence of Jacqueline Keenaghan was that between 9th and 16th August the plaintiff and her sister were texting them, trying to force them to take the money. According to the witness, she and her husband resisted all attempts by the Kerrigans to force a gift of €240,000 on them. On the 16th August there was a meeting in the Keenaghan house during which Celine Kerrigan was pressing them, using colourful language, to take the money. At some point during the meeting when John Keenaghan said he was not accepting it as he could not pay it back, Celine Kerrigan got up and said "what the f... are you talking about? Who said anything about this being a loan? This is a gift and this is what Della and I have decided, isn't that right Della?" According to Jacqueline Keenaghan, Della Kerrigan then said "yes, John, this is what we have decided, and we want to give you this." John Keenaghan then apparently turned around and said "okay". There was then cheering and roaring and Seán and Danielle, the son and daughter of the defendants, who were in the other room, joined in on the hugging and celebration and according to Jacqueline Keenaghan, Celine Kerrigan then said "it took yous f...ing long enough to accept this gift."

37. According to Jacqueline Keenaghan, having persuaded the defendants to take this gift, Celine Kerrigan then imposed a condition that they were not permitted to tell their family about the gift because she was not telling her own family, "because they are nothing but money grabbers." This suggestion was not put to Celine Kerrigan. According to Jacqueline Keenaghan a few days after they had apparently accepted the gift of €240,000, Celine Kerrigan came out to the house, walked across to Jacqueline Keenaghan and said that she and Della were talking and that they were now going to give €280,000. When Jacqueline Keenaghan said that she did not even want to take the €240,000 she was told to "shut your f...ing mouth. This is what we have decided. This is what you're doing and you have no say in the matter." The witness gave evidence that they attempted to refuse this gift many times but that "the girls" said that as they had been friends that this would make them feel better, that they were doing something good with their money; "they had weight off their shoulders, it felt that some good was coming out of this money."

38. When asked about the bank drafts, Jacqueline Keenaghan said she was never asked about a cheque. Had she been asked she avers that she would have taken a cheque. Her evidence was that Celine asked "what way do you want this?" and she thought to herself, that €200,000 and a separate €80,000 would clear the bank. A bank draft was mentioned. She denied saying that a bank draft was preferable because it would not be traceable. This suggestion was also not put to the plaintiff or her sister. The second defendant acknowledged that she lodged the draft for €200,000 on Monday the 30th August, 2010.

39. She gave evidence that the friendship continued on as before and that there were a number of outings to places like Ballymena. They continued to exchange birthday and Christmas cards and gifts. She produced an album of cards and photographs documenting the ongoing friendship, including photos of the surprise 50th birthday party which the plaintiff and her sister Celine assisted in organising for her in 2011.

40. Jacqueline Keenaghan gave evidence that between 2010, when she received €280,000 from Della Kerrigan, to 2013 she never thought about the money that she had received from her. Asked about the conversation in which the plaintiff asked for the money back, the second defendant gave evidence that she said to Della Kerrigan, "do you not remember all of that...about you giving it as a gift?" She says that Della Kerrigan replied, "That's right. But our circumstances have changed. We want it back." Jacqueline Keenaghan told her "that money is long gone since 2012." The witness gave evidence that the plaintiff brought the matter up again and said they, meaning she and Celine, would do what they had to do, to get it back. She recounted details of an encounter with Celine Kerrigan in her house. That event was never put to Celine Kerrigan.

41. Jacqueline Keenaghan's evidence about the meeting in April, 2014 when the plaintiff and her sister were looking for the money back, was that Celine Kerrigan accepted that the money was a gift but that now they wanted it back. Explaining the "gift", Jacqueline Keenaghan said:-

"The girls had said that they loved me that much and that this is what they wanted to do and that this would make them feel better...it was them who came up with 'this is a gift', this is what they wanted to do... then John accepted it and the whole thing about it is the girls had said to me our friendship meant so much and that because of the accident and the whole lot that this would actually make them feel better that at least the money was going to two good causes, ourselves and their nephew, and that this is what they wanted to do. And in my heart and soul, hand on heart, this is what I felt they wanted to do. And they were so insistent and persistent that 'this is what we want to do' and that is why we accepted it then. You could see it seriously in the girls this is something they wanted to do."

The witness said she took the money because "the girls" were insisting they would feel better and because "we were such good friends it would make them feel better." The witness stated that she never ever asked them for money. According to her, where the sum of €240,000/280,000 came out of, she will never know.

42. In cross-examination it was put to the witness that in resisting an application for summary judgment she had sworn an affidavit describing the monies given to them as, "either a gift or an unconditional act of charity or an open ended loan without a repayment date." The second-named defendant's explanation for that description, was that the affidavit had been typed by her legal team and that she had read it and signed it. Notwithstanding that her description in 2014 encompassed the possibility that the money was given as a loan without a repayment date, the second defendant refused to accept responsibility for that description and held fast to her current evidence that it was given as a gift.

43. The differences in educational attainment between the witness and Della Kerrigan were explored. The witness obtained a B.A. in

counselling and psychotherapy in 2012 and an M.A in the same discipline in 2015. The witness did not accept that this gave her any superior intellectual advantage over Della Kerrigan, despite the latter's debilitating injuries.

44. The witness denied that she had ever cried in front of the plaintiff and her sister, when speaking of her family's financial predicament. She maintained that in the absence of Della Kerrigan's money she and her husband would have worked their way out of their financial difficulties. When asked about how much they had recouped from their list of debtors she replied "*nothing...they all went bankrupt.*" Despite this the witness insisted that she and her husband did not need either a loan or a gift of money in 2010. Her explanation for taking the money was that the girls insisted that they take it. When pressed on the point, the witness agreed that she and her husband took the money out of kindness to the plaintiff and her sister, because it was what they wanted to do. The witness denied ever telling the plaintiff or her sister that she would pay back every penny of the amount being lent to her. She also denied telling them that she would beg, borrow or steal to pay the money back. On the issue of the bank drafts she agreed that it was she who suggested two drafts, one for €200,000 and one for €80,000. In her head she said she was thinking of €80,000 for the bank to get that sorted. She stated that she would have taken a cheque but that Della Kerrigan had gone to the bank and that the bank had told her that it would take some time for a cheque book to issue.

45. There was a lengthy exchange about what John Keenaghan meant when he refused the money, on the basis that they could not pay it back. It was put to the witness that that indicated that John Keenaghan knew that what was on offer was a loan. The witness maintained that he was just clarifying things. Counsel was unable to establish what the witness thought that John needed clarity on. When asked specifically whether he needed clarity as to whether it was a gift or a loan, the witness replied "*no it was always a gift.*" In the course of the exchanges on this issue the witness pointed out that 90% of the interactions and conversations took place between herself and "*the girls*" and that her husband John was only intermittently present throughout their friendship and throughout the events leading up to the payment of the money.

46. In the course of cross-examination the witness insisted that she was 110% sure that she had never told "*the girls*" that her husband owed €240,000, that the most she had ever said was that he owed over €200,000. When confronted with an earlier contradictory averment in her affidavit of 6th October 2014, in which she swore that "*I had told them the sum was in the region of €200-240,000 but left it at that*", she had no coherent explanation for the contradiction and again sought shelter behind her legal team. During the course of the cross-examination it emerged that the defendants' debts as of 2010 were in the order of €190,000, the bulk of which was owed to the bank and Revenue. The balance of the money received from Della Kerrigan of €90,000 was spent by the Keenaghans on college education for themselves and two of their children, apart from a sum of €10,000 which was given to their eldest son who resides in the U.S.

Evidence of John Keenaghan

47. The first defendant set out the history of his business providing architectural services, which he commenced on leaving college at the age of 22. The 1980s were tough but business began to improve in the 1990s. He built a house on a two and a half acre plot given to him and his wife by his father. Eventually he moved his offices to outbuildings beside his family home. In the early 2000s business was good and he had three people employed. Like all self-employed people he relied on clients paying their bills. The business had an overdraft to cover the periods between work being done and payments received. At the end of 2007 he had no significant debt problems.

48. In 2008, he noticed a change. There was less work coming in and it became increasingly difficult to get paid for work on hand and work completed. As he put it, "*as a result of that, the overdraft took off*". As mentioned earlier in this judgment his business loan was restructured in June, 2008 with short term loan facilities of €80,000 being advanced, with interest only payments for a period of eight months, and the full sum to be repaid by mid-February, 2009. The security for this loan was an all sums mortgage over the defendants' lands at Rathmore. In addition the second defendant had to sign a letter of guarantee in the sum of €90,000. Things did not improve. The loan remained unpaid in February, 2009. He had to let his employees go which was a difficult decision in a small community, where employees tend to be friends as well as employees. By 2009 both work and money had dried up. The first and second defendant attended MABS, the money advice and budgeting service, for advice on how to deal with their growing liabilities. They were clearly advised to engage with their creditors and the court infers that the undated letter titled "*TO WHOM IT MAY CONCERN*", drafted by their solicitor sometime after June, 2009 was part of that process. Unfortunately, two of their biggest debtors who accounted for the bulk of the approximately €153,000 owed to the business, went bankrupt. The second defendant applied for and received Jobseeker's Allowance around this time. As advised by MABS the first defendant engaged with his major creditors, being the bank and Revenue. He answered every inquiry and engaged whenever requested to do so. The witness accepted that as 2009 turned into 2010, he was in severe financial difficulties. When asked as to whether he felt that he could overcome these difficulties, he answered, "*I tried what I could do with the bank...talked to the Revenue, was going to MABS...I was doing everything I could do...trying my best.*" When asked as to whether he felt that he was getting anywhere, he replied "*I was hoping, but I wasn't really.*"

Relationship with the plaintiff and her sister

49. The witness stated that he knew that his wife had been friends with them and had met them the odd time over the years. Knowing that, he invited them to the surprise party that he had organised for his wife's 40th birthday. He knew that after the accident in 2002, his wife went to visit them regularly at their home. When Della became mobile the sisters began to visit them at their house, first intermittently but this gradually developed into visits, to his recollection, a few times per week. In the witnesses' view the relationship was developing and ongoing. It was a very close and happy relationship. He personally did not have a lot of contact but any that he did have was great. In his view they were "*great fun...they were just jolly and happy go easy people.*" Generally speaking he would be in the room next door when they visited. He was rarely in the room with them. They had great fun with "*loads of chat and gossip*". He was the "*tea maker*" and would "*get a shout from the room every now and again*" to bring in tea, and would then maybe have a quick chat.

The money

50. The witness stated that he was unaware of the terms of the settlement of Della Kerrigan's personal injury claim before 7th August, 2010. He stated that he had nothing to do with that. On that day he was in Galway with his mother and younger son attending a family anniversary mass. He states that he got a call from his wife who told him that "*the two girls had said to her that they were offering €240,000 to help us and that they wanted to give us this money.*" His initial reaction was that it was a very generous offer, but that they could not accept it, and his impression was that his wife agreed with him. He got back home on Sunday and he states that his wife showed him texts from "*the girls*" inquiring as to whether John was home and whether he had agreed to take the money.

51. There was a meeting on Monday 9th August at the Keenaghan home when the witness states that he was repeatedly urged, particularly by Celine Kerrigan, to accept the money. He states that having refused to take it umpteen times, he left the room. He states that he was uncomfortable. He states that as she was leaving, Celine Kerrigan approached him and said words to the effect that "*this is what we are doing, this is what we want to do.*"

52. Over the next week there were further texts and calls, according to the witness and there was another meeting at the house. Again Celine Kerrigan was urging him to accept the money, assuring him that it was what she and Della wanted to do. He says that he resisted. When asked why by Celine, he says that he responded that they could never pay it back. It was at this point he states that Celine Kerrigan said *"what the f... are you talking about? It's not a loan, it's a gift. We have given it to you, that's what we want to do. Isn't that right, Della?"* He says that he looked at Della Kerrigan and she said words to the effect that *"this is what we really want to do."* He then agreed to accept the money, which at that stage was €240,000. This was followed by celebrations and hugs with the Keenaghan's and their two children who were in the adjoining room. The witness gave evidence that he had no idea how the original sum of €240,000 increased over the following days to the sum of €280,000, which they eventually received.

53. The witness confirmed that following the giving of the monies, the relationship between his family and the Kerrigans continued in a happy vein. The Kerrigans still visited two to three times per week and were involved in all major Keenaghan family events. He was aware from his wife that Della Kerrigan had asked for repayment of the monies a few times in late 2013 and early 2014. He was present at a meeting in their home in April, 2014 when the issue of repayment was discussed. He became emotional and cried, and asserted that the money was a gift which the Kerrigans had pressed them to take and that it had all long since been spent.

Cross-examination

54. In cross-examination, the witness was asked about his and his wife's landholding of approximately two and a half acres, which had been given to them by his father and on which their family home was built. It was established that prior to 2008 there was no mortgage or charge against any of the land. He was taken through the loan document from AIB of the 5th June, 2008, signed on behalf of the bank by a named official. The witness professed not to know who he had dealt with in relation to the restructuring of his loan, but assumed it must have been the named official. He accepted that the restructured loan was for €80,000, to be repaid in full in eight months. He acknowledged that the interest rate on his overdraft of €10,000 was increased as part of the arrangement.

55. He accepted that a term of the restructured loan was that the he would grant the bank an all sums mortgage over his entire folio of two and a half acres. In addition, his wife had to sign a personal letter of guarantee in the sum of €90,000. It appears that at that time, 2008, the witness had secured planning permission for four houses on his lands. He professed not to know what the current value of four houses built in accordance with the original planning would be, despite the fact that one of the services offered by his previous business, was property valuation. He suggested that he lost interest in following up house values when he closed his architectural services business in 2009. He acknowledged that two of the sites were hived off into a separate folio in or about April, 2010 and that the bank registered a charge against the new folio.

56. The current position appears to be that there is subsisting planning permission on the lands for one house, which expires in 2020. There is other land available for potential development, which enjoys road frontage. The site with planning permission, is according to the witness, intended for his daughter Danielle.

57. He stated that the first he knew of bank drafts was when they arrived at his house. He stated that he wasn't surprised that they were made payable solely to his wife. He was asked about the loans received from his brother (€5,000) and his mother (€1,500) and confirmed that there was no documentation relating to those loans and no interest charged on them. He commented to the effect that they were private loans and that it was ridiculous to talk about interest in such circumstances.

58. He was asked about the issue of the secrecy of the transaction. It was put to him that secrecy was in his interest, because if word were to get out in Ballyshannon that he had access to funds, other creditors might emerge for payment or alternatively, someone like Florence Hutchinson, Della's solicitor in her personal injury claim, might have intervened to protect Della's interests. The witness rejected that suggestion and said that that *"is not the type of people we are."* Later in his cross-examination he claimed that it was *"the girls"* who asked them not to tell anyone.

59. He was asked about the letter of claim of the 6th May, 2014 seeking repayment of the loan, and in particular, why his solicitor did not immediately respond to the plaintiff's solicitor, saying you have got this all wrong, you *"are barking up the wrong tree"* because the money was given as a gift. He was asked why the first mention of a gift came five months later in an affidavit sworn by his wife in October, 2014 to fend off summary judgment. He had no real answer to the question other than repeating words to the effect that *"we always said it was a gift."*

60. The witness was questioned as to whether he told his accountant, the bank or the revenue of the source of his new found wealth. He stated that he did not tell them, nor did any of them ask him about the provenance of the money.

Other Evidence

61. Two of the defendant's three children were called to give evidence, their daughter Danielle, and their younger son Sean. Neither of them had much direct evidence to offer. Neither had been directly involved in discussions about money.

Evidence of Danielle Keenaghan

62. Danielle Keenaghan is, courtesy of the funding provided by Della Kerrigan, a speech and language therapist working in the U.K. The Kerrigan sisters have been part of her life virtually since childhood. She was told by her mother of events which had occurred when the three women met at the Keenaghan house on the 7th August, 2010. She gave evidence that her mother showed her the texts that she had received from the Kerrigan sisters after that meeting, asking whether John was home and insisting that they wanted to give them the money. She was at home for the meeting on 16th/17th August. She was in the room next door. She gave evidence that she heard both Celine and Della, particularly Celine, say *"You're taking the money. We're offering you this money. This is what we want to do... You're our friends."* Danielle gave evidence that it was a lengthy conversation. She did not hear her father refer to any difficulty in relation to repayment of the money. At the end of the conversation there was cheering and hugging, and Celine is to have said words to the effect *"it took us long enough to persuade your parents to take the money."*

63. She also gave evidence that she was in attendance at a later meeting between Della and Celine when the money increased to €280,000. Danielle stated that on that occasion she answered the door to the Kerrigan sisters and brought them into the room where her mother was sitting. Danielle said that she witnessed Celine standing over mother wagging her finger when she said *"Della and I have decided that we are giving you €280,000... This is what we want to do."* Celine allegedly told Jacqueline Keenaghan that they were now giving her €280,000 as they wanted to be of more help. According to Danielle, Celine kept insisting that the Jacqueline take the money *"no questions asked."*

Evidence of Sean Keenaghan

64. Like his sister, Sean Keenaghan has little by way of direct evidence to offer the court. The only direct evidence he could provide to the court was that he was present at the family home on the occasion of the meeting between his parents and the Kerrigan sisters on 16th /17th August, 2010. He was with his sister in the adjoining room and heard his parents chatting with Della and Celine when

the conversation of the money came up. He gave evidence that he heard "the girls" saying that they wanted his to take the money but that they had refused on the basis that the offer was too generous.

65. Sean gave evidence that after the conversation took place he heard a commotion, and that Celine came out of the room to Sean and Danielle saying that they were celebrating their parents' acceptance of the money. He avers that following the parents' agreement to accept the money, he was present at a conversation where Celine stated that the one condition that was attached to the gift was that they did not want anyone to know about it.

Evidence of Dr. McGuire

66. Dr. Mary McGuire is a consultant psychiatrist and former clinical director of Roscommon Mental Health Services. She assessed the plaintiff on 7th November, 2018, immediately prior to the hearing of this case. Her assessment was based on an interview of the plaintiff and on an affidavit prepared by the plaintiff dated 16th September, 2014 and a psychotherapy report prepared by Ross Scully, dated 9th June, 2009. The psychiatrist noted that in the collision on 13th November, 2002 in which the plaintiff's father was fatally injured the plaintiff sustained multiple injuries including facial injuries, bilateral fractured humeri, bilateral fractured knees, a fractured right leg and a punctured lung. She also sustained a closed brain injury and experienced loss of consciousness for an unknown duration. The psychiatrist noted that the plaintiff's history was that her last memory was of laughing with her father and her next memory was waking up in Altnagelvin Area Hospital in Derry. The plaintiff reported that her memory was patchy for some time afterwards and is patchy, "even yet". As part of her history, Dr. McGuire outlined the memory problems the plaintiff experienced after her accident, which continue to this day. Dr. McGuire noted that the plaintiff had developed a major depressive disorder in the aftermath of the accident and this, in conjunction with her natural grief reaction for her father, has resulted in her being treated with significant levels of antidepressant medication since that time. In the course of her assessment by Dr. McGuire the plaintiff stated, "I will never be right, daddy is dead." This very much echoes the thought process which she revealed during her psychotherapy sessions in early 2009. Dr. McGuire conducted a mini mental state examination and the plaintiff scored 29 out of 30; the point she lost was in the subsection dealing with recall. In Dr. McGuire's opinion she states:-

"Ms. Kerrigan sustained life threatening injuries in a road traffic accident on 13.11.2002 and her father was fatally injured in the same accident. Significantly, she sustained a closed brain injury which caused post traumatic amnesia of unknown duration. She continues to experience difficulties with recent memory. It appears that she developed a Major Depressive Disorder in conjunction with her natural grief reaction for her father and has been treated with anti-depressant medication ever since. Her previously normal mental [health] has never recovered. While it is difficult to diagnose in retrospect the objective evidence supports Ms. Kerrigan's contention that 'I was not right' when she handed over €280,000 to her neighbour, Ms. Keenaghan.

(1) She had suffered a closed brain injury with loss of consciousness and post-traumatic amnesia of unknown duration.

(2) She developed a Major Depressive Disorder and was being treated with antidepressant medication.

(3) She was frail mentally and physically.

(4) When asked why she did not get a solicitor to draw up a contract she stated that it never entered her head. Ms. Kerrigan appears to have been very vulnerable, gullible and naive at that time in her life. She was evidently not looking to her own future needs."

67. Dr. McGuire was challenged in cross-examination that there was no independent evidence upon which to base her evaluation as to Ms. Kerrigan's state of mind at the time she handed over €280,000 to her friend Jacqueline Keenaghan. Dr. McGuire instanced the independent evidence of the injuries sustained in the accident; the high dosage of antidepressant medication which she has been on since the time of the accident and the content of the psychotherapy notes which dated from early 2009, all of which supported her opinion of Della Kerrigan's mental state at that time.

Evidence of Kevin Devlin

68. Kevin Devlin is a Revenue official summoned to prove the fact that neither of the defendants had filed an income tax return in respect of a gift of €280,000. The defendants had been served with a notice to admit facts in respect of this matter but had declined to do so. Mr. Devlin gave evidence as to the Gift Tax payable on a gift of €280,000. The amount payable would depend on whether it was paid as €140,000 to each of the defendants or as €280,000 to the second-named defendant. Mr. Devlin confirmed that having checked the records from 2010 to 2018, neither of the defendants had filed an appropriate Income Tax form in respect of a gift of €280,000. The current liability in the event of a gift of €280,000 being paid in August in 2010, is in excess of €100,000. Later Mr. Devlin returned and gave evidence that there are also Income Tax implications arising from the receipt of an interest free loan. Such a loan is it appears, treated as a benefit in kind and is taxed as such. This too would give rise to a significant tax liability.

Assessment of the Court

69. The most significant testimony in this case is the testimony of the three women, Della Kerrigan, Celine Kerrigan, and Jacqueline Keenaghan. All of the material conversations took place between two or more of them. All of the other witnesses as to fact, including John Keenaghan, are bit players in these events. John Keenaghan's evidence is in many respects dependent on his acceptance of the truth of what his wife has told him about events leading up to the giving of the money. Similarly, the evidence of her children is largely dependent on what she told them about her interactions with "the girls".

The friendship

70. There is no doubt that following Della Kerrigan's terrible accident, a strong friendship developed between these women. Immediately post-accident, Della was entirely dependent on her younger sister, who took five years' leave of absence to care for her. For a number of those years they were effectively housebound and neighbours and friends rallied round to keep them company. One of those was Jacqueline Keenaghan, who had been particularly friendly with Celine Kerrigan when they were in national school. The rekindled friendship deepened and the three women spent significant time in each other's company, first in Celine and Della's house and after 2007, when Della after many surgical procedures, regained mobility, in Jacqueline Keenaghan's house. As John Keenaghan put it, the three women would be in one room chatting and gossiping while he would be in another, emerging occasionally to make tea. Celine was a larger than life figure who appears to have had hugs for everyone. The court has the impression that Della was more diffident, perhaps as a consequence of her horrendous injuries and her persistent depression and survivor guilt arising from the death of her father. The court has the impression that prior to these events, Jacqueline Keenaghan was an ebullient type of personality.

71. The court has no doubt that the progress of Della's claim was discussed between the women. It would be surprising if it were not.

Della underwent numerous procedures and had to attend various doctors for the preparation of medical reports. Jacqueline Keenaghan had a general knowledge about the operation of legal practices, having worked for a number of years as a legal secretary, and the advice she is said to have given about seeking regular updates on the progress of the case seems to be the kind of sensible advice that a former legal secretary would give, to ensure that appropriate attention was being given to progressing the claim. As a former legal secretary, it is also reasonable to infer that Jacqueline Keenaghan would have been aware that Della Kerrigan's case was a substantial one which was likely to attract significant compensation. It seems to be accepted that there was chat, jocular or otherwise, about a possible trip to Hawaii when the claim came through.

72. The court has the impression that these three women discussed everything and supported each other in everything. Apart from the multiple medical procedures necessitated by Della Kerrigan's injuries, there were a number of medical issues that Jacqueline Keenaghan experienced over the years which required medical operations. They were all the subject of supportive banter between the three women.

73. Just as Della Kerrigan's claim was likely to have been a subject of conversation between the women, so too was the fact of the rapidly deteriorating finances of the Keenaghan family, particularly in 2009 and 2010. These are issues that one discusses with one's best friends.

The crisis

74. The court accepts the evidence of the Kerrigan sisters, that in 2009/2010 Jacqueline Keenaghan was frequently tearful and upset at the prospect of losing her home. Looking at the objective facts, the loss of her home was a real possibility. Financial pressure had certainly begun to build in 2008. In June of that year her husband had agreed an all sums mortgage on their two and a half acre holding in Rathmore in return for a restructuring of his business's loan. On the same occasion she had had to sign a letter of guarantee for €90,000. That has to have been a significant worry for someone who had never had a debt on her property.

75. Thereafter, things continued to go downhill. The couple were unable to repay the restructured loan on its due date in February, 2009. The business closed and its employees were laid off. In that year they approached MABS for advice on managing their debt and John Keenaghan certainly heeded the advice given to him, to engage with his creditors, the primary ones being the bank and Revenue, to whom collectively a sum in the order of €170,000 to €180,000 was owed. They approached their solicitor to try to recoup money from their debtors but were unsuccessful, because their debtors were themselves in trouble. Their two primary debtors, who between them apparently owed the business in excess of €120,000 net of VAT, went bankrupt. Bankruptcy was also a realistic fate facing the Keenaghans at that time.

76. In 2009, Jacqueline Keenaghan applied for and received Jobseeker's Allowance, which is a means tested benefit. She also began a college course to qualify as a counsellor and psychotherapist. By the end of 2009, the only income the couple had to live on, and to service their growing debts, was Jobseeker's Allowance. This income was supplemented by family loans totalling €6,500 provided by John Keenaghan's brother and mother.

77. Having regard to the closeness of their friendship, it is in the court's view highly probable that Jacqueline Keenaghan regularly discussed her worries and anxieties about her family's precarious and worsening financial circumstances with one or both of the Kerrigan sisters. The court notes that it appears to be common case that she was particularly close to Celine. The court accepts the Kerrigan sisters' evidence that at some point in those conversations Jacqueline Keenaghan expressed concern that she might not be able to put food on the table. Given their dire financial circumstances for which there was no prospect of relief, that was not an unreal concern. The court also accepts Celine Kerrigan's uncontested evidence that around this time, Jacqueline Keenaghan told her that she had sought a loan of money from her brother-in-law who had received a redundancy payment, but that he had declined to advance them a loan.

The transaction

78. As the Keenaghan family were sinking ever deeper into debt, Della Kerrigan was approaching a point where she was going to receive substantial compensation for the horrendous accident which had occurred in November, 2002. The court accepts the Kerrigan sisters' evidence that in the months leading up to the settlement Jacqueline Keenaghan broached the possibility of Della helping her, out of the proceeds of her settlement. The court accepts that she assured Della that if she could help them out of their difficulties that she would pay back every penny. The court is not certain whether the means of paying back the money were discussed before or after the settlement, but is satisfied that Jacqueline Keenaghan talked about the money John was owed and of her plans to set up a counselling business, and that she would be in a position to repay Della Kerrigan out of those resources. The court is satisfied that Della Kerrigan agreed in principle to help her dear friend from the proceeds of her settlement by loaning her money. The court is also satisfied that Celine was an enthusiastic supporter of her sister's decision. She loved Jacqueline Keenaghan and her family and very much wanted to help her.

79. The court also accepts Della Kerrigan's evidence that no specific sum was mentioned by Jacqueline Keenaghan prior to the settlement of her case on or about 30th July, 2010. This makes perfect sense, because Jacqueline Keenaghan did not know what sum to pitch for until she knew the amount of the settlement. The fact that almost the first thing the Kerrigan's did following the settlement, was to phone Jacqueline Keenaghan to tell her of the fact and the amount of the settlement, is also consistent with the Kerrigan's evidence that in the months leading up to the settlement Jacqueline Keenaghan had been asking them for help from the proceeds of the settlement.

80. On or about 30th July, 2010, Della Kerrigan went from having no money to being wealthy. Neither she nor her sister had any previous experience of handling a large amount of money. Apart from very general advice that they should be careful with their money, and according to Celine, advice not to rush out and buy a Mercedes, there appears to have been no guidance given to them about accessing advice on investing the money with a view to providing an income for Della into the future.

81. There is truth in Jacqueline Keenaghan's suggestion that Della Kerrigan viewed the money as "*blood money*" stemming as it did from the accident which killed her father. This of course, together with her general vulnerability as found by Dr. Maguire, made her more susceptible to making unwise decisions in relation to the money. The court notes that in giving her evidence, Della Kerrigan became most animated when it was suggested to her that she had obtained a good settlement. She was offended by the notion that any level of damages could compensate for the loss of her father and the manner of his loss. The court is satisfied that she would willingly have handed back every penny to have her pre-accident life restored to her.

82. There is no doubt in the court's mind that the sisters, particularly Celine, derived significant pleasure and satisfaction from the fact that the settlement of €750,000 put them in a position to give their friend Jacqueline, the help which she had been requesting over the previous months. Knowing the settlement figure, Jacqueline was now in a position to formulate her request for a loan. The court considers it likely that there may have been some preliminary chats in the week following the settlement. It is agreed that there

was a meeting between the three women in Jacqueline Keenaghan's house on Saturday 7th August, 2010, when her husband John was away at a family event in Galway. Jacqueline Keenaghan's initial request appears to have been for €240,000. The court accepts the evidence of the sisters that they were shocked at the size of the sum. Della Kerrigan had anticipated that the sum would be in the region of €50,000. However, she felt honour bound by her earlier agreement to help Jacqueline, and trusted her word that she would repay every penny. The Kerrigan's didn't even ask for a breakdown of the Keenaghan's liabilities. Had they done so and had the query been answered, they would have learned that their debts were in the region of €180,000 to €190,000. The sum actually owed was €50,000 to €60,000 less than the sum of €240,000 initially sought by Jacqueline Keenaghan. Della Kerrigan agreed to advance her the money. There were kisses and hugs and the court accepts the Kerrigan sisters' evidence that in her gratitude and euphoria, Jacqueline Keenaghan once again promised to her "*guardian angels*" that she would "*pay back every penny.*" There was a conversation between Celine and Jacqueline about John's likely reaction.

83. That evening she phoned John in Galway. According to his evidence she told him that the girls were offering €240,000 to help them out. This of course was true. What Jacqueline Keenaghan failed to tell her husband, at least on that occasion, was that she had asked for the money and had promised to pay it back. To the court's mind there is a real possibility that Jacqueline Keenaghan never told her husband the full details of what had transpired between her and the Kerrigan sisters.

84. The court accepts that John Keenaghan's initial reaction was that it was a most generous offer, but one which they could not accept. His wife professed agreement with his view. In the circumstances of this case, the court considers that that agreement was feigned. Jacqueline Keenaghan was desperate to get access to money to discharge their liabilities. The court accepts that over that weekend there were texts from Celine asking what the situation was with John and whether they were going to accept the money.

85. There was a meeting in the Keenaghan house on Monday 9th August, 2010, at which John was in attendance. The purpose of the meeting was to persuade John to take the money. Celine Kerrigan was trying to reassure him in the forthright language that she is prone to using, that she and Della had discussed the matter and that they really wanted to help them. The court accepts his evidence that the situation made him uncomfortable. To his credit he had qualms about accepting their money notwithstanding the dreadful financial circumstances in which his family found itself. He must of course, have known that the sum on the table grossly exceeded the family's liabilities, yet he said nothing. The court accepts Celine Kerrigan's account that following this inconclusive meeting Jacqueline Keenaghan said to her words to the effect "*leave John to me.*"

86. A week passed during which the court has no doubt, that there were lots of conversations, particularly between Celine and Jacqueline. A further meeting took place on Monday 16th August when John was again being urged to accept the money, primarily by Celine Kerrigan. The court accepts that at one point during that meeting he expressed the view that they would not be able to repay the money. The court does not accept however that this prompted Celine to respond "*what the f... are you talking about? Who said anything about this being a loan? This is a gift.*" Celine Kerrigan was fully aware of the arrangement that had been made between Jacqueline and Della and was unlikely to describe as a gift that which she knew to be a loan. Her concern at that meeting was to get John Keenaghan to accept the money which her friend Jacqueline had been requesting for months. The court does not consider that reference was made to either the term "*loan*" or "*gift*" during the course of that meeting. The entire focus of the meeting was on getting John to accept "*the money*". Wiser heads might have paused when one of the beneficiaries of a loan expressed concern about repayment, but the entire focus of that encounter was as already stated to persuade John Keenaghan to accept the money. Della Kerrigan confirmed that she wanted to give them the money and John Keenaghan relented, and that is to his discredit. Also to his discredit is the fact that he agreed to accept from these women, who he knew had no expertise in business or finance, a huge sum of money which was grossly in excess of the family's liabilities. In seeking to persuade the court that the sum was a gift rather than a loan, John Keenaghan testified that he would not have accepted a loan as he already had two significant loans and he would not take on a third. The court is not persuaded by this testimony. The fact is that by accepting this money, he was able to get two powerful well-resourced creditors, the bank and Revenue, off his back and replace them with a creditor who was benign, generous, empathetic and unfortunately for her in the circumstances of this case, naïve and gullible.

87. John Keenaghan had been in business for almost 30 years. He had experience of contracts and business dealings. He had had dealings with banks relating to loans and overdrafts. He had had dealings with solicitors. He knew how these matters should be conducted. He knew or ought to have known, that Della Kerrigan should take advice before handing over a third of her settlement cheque to his wife. He did nothing. Having relented, and having agreed to accept Della Kerrigan's money, he left the finer details to his wife. He professed not to know how the sum of €240,000 originally offered was ultimately increased to €280,000.

88. Sometime between the 16th and the 27th August, 2010, the sum requested by Jacqueline Keenaghan increased from €240,000 to €280,000. The evidence of the Kerrigans is not very clear as to how that came about. Celine's memory only relates to the sum of €280,000, while Della remembers that the initial request was €240,000 but ultimately increased to €280,000. The court notes that the additional €40,000 equates in general terms to the sum set aside by Jacqueline Keenaghan for the Keenaghan children's education. It is in the court's view possible that having encountered little resistance to her original request, she decided to pitch for an additional sum to cover her children's education. One way or another, the court is satisfied that the increase of €40,000 was requested by Jacqueline Keenaghan.

Confidentiality

89. On the evidence, the court is satisfied that the parties agreed that they would keep the fact of the transaction between themselves. Each had different interests in doing so. While the Kerrigans had immediately told Jacqueline Keenaghan of the amount of Della Kerrigan's settlement, that information would not have been common knowledge at that time in Ballyshannon. It is perfectly understandable that people who come into a large sum of money, would not want that fact generally known. The court notes that when Della Kerrigan received her settlement cheque, she did not lodge it in a bank in Ballyshannon but instead travelled approximately 15 miles to Donegal town to open an account with AIB.

90. Jacqueline Keenaghan of course had a far greater imperative for secrecy. First of all, had it become common knowledge that the Keenaghan's had received €280,000 from Della Kerrigan, wiser heads might well have intervened to protect Della from her own naivety and sought as a minimum, to put any such arrangement on a formal and proper legal footing. Secondly, such information would have alerted the Keenaghan's creditors to the availability of funds and would have hampered their capacity to negotiate with those creditors. In his cross-examination, John Keenaghan was coy about the original sum claimed by Revenue and whether or not the ultimate sum paid to Revenue was a compromise figure. The court notes in this regard that Revenue were not paid for more than four months after the Keenaghans received €280,000 in August, 2010. The court also notes that the €280,000, when paid was paid to Jacqueline Keenaghan solely, which meant that it was not directly amenable to John Keenaghan's creditors.

The payment

91. The court accepts Della Kerrigan's evidence that Jacqueline Keenaghan asked for the sum to be paid by way of two bank drafts so that it could not be traced. Jacqueline Keenaghan accepts that she suggested the two drafts and the amount of each, but denies

that she said that it was so that the money could not be traced. She said that she would have been willing to take a cheque. The court does not accept her evidence in that respect. The evidence is that it would have taken some weeks for a cheque book to issue on Della Kerrigan's new account and Jacqueline Keenaghan did not want to wait. Delay of that order might well have frustrated her plan. Furthermore, there was a risk that were she to present a cheque signed by Della Kerrigan, questions might have been asked, or alternatively, the information that Della Kerrigan had given her such a large sum of money might have leaked out in a small community. That too might have frustrated her plan.

Repayment

92. It is agreed that on two or three occasions in late 2013/early 2014, Della Kerrigan asked Jacqueline Keenaghan about the repayment of her money. By that point, more than three years had passed and the Keenaghans were both qualified as counsellors and psychotherapists and were running a business as such, known as Ark Counselling. The conversations took place in Jacqueline Keenaghan's car on the way back from the Thursday crochet/knitting classes. According to Della Kerrigan on each occasion the matter was raised, Jacqueline Keenaghan pleaded that she needed more time. On one such occasion she suggested that she *"would have to talk it out with her husband."* Jacqueline Keenaghan's version is that she responded to Della that the money had been a gift and that Della had agreed, but maintained that circumstances had changed and she wanted the money back. On another occasion she suggested that Della Kerrigan said that she would do whatever was necessary to get the money back. The court prefers the evidence of Della Kerrigan on this issue for two reasons. First there is evidence that when she relayed the contents of her conversations with Jacqueline Keenaghan to Celine, Celine urged her to give Jacqueline the extra time that she had requested. Second, when in the meeting in April, 2014, John Keenaghan had suggested that the money was given as a gift and Jacqueline had agreed with him, that assertion caused an immediate rift between the parties. Had Jacqueline suggested in her earlier conversations with Della that the money was given as a gift, the rift between the parties would have occurred earlier.

Jacqueline Keenaghan's account

93. The court rejects the evidence of Jacqueline Keenaghan because it is implausible and in many respects self-serving. She asks the court to accept that there was no financial crisis in the Keenaghan household in August, 2010; that they neither needed a loan nor a gift; that they were dealing with their creditors and would work matters out. That flies in the face of the facts as set out in this judgment. In July/August, 2010 alone, three bank loan interest repayments went unpaid. Their creditors were circling and they had no means to fend them off. Her husband essentially accepted that that was so.

94. She asks the court to accept that she never became emotional or tearful in front of *"the girls"* about the financial crisis facing her family. In the course of her evidence both in chief and in cross-examination, the court has had the opportunity to observe how readily tears come to her. Her demeanour both in the witness box and in the court room over a number of days, strongly supports the evidence of the plaintiff and her sister on this aspect of the case.

95. She asks the court to accept that Celine Kerrigan *"out of the blue"* and without prompting from her in any way, first offered €240,000 and later €280,000 to her. That is simply not credible.

96. She asks the court to accept that she and her husband accepted the money as a kindness to Della Kerrigan, because she and Celine were so persistent and insistent that they should take it. Suffice it to say that the court finds that assertion to be both arrogant and patronising as well as not credible. Were there an iota of truth in this assertion, one would have expected that the Keenaghans would simply have put Della Kerrigan's money aside, to be returned to her when she needed it. As we know, that did not happen.

97. In her first response to Della Kerrigan's claim which came in her affidavit of 6th October, 2014, resisting summary judgment, she adverted to the possibility, among others, that the money was given as a long term loan without a repayment date. When asked to explain how she came to make that averment, she blamed her lawyers. Thereafter, she opted for and stuck fast to the defence that the money was given as a gift. Her family, who had no material involvement in the transaction, adopted that mantra and repeated it throughout their respective evidence.

Decision

98. For the reasons set out herein, the court is quite satisfied on the balance of probabilities, that Jacqueline Keenaghan, in the face of impending financial disaster for the Keenaghan family, pleaded with Della Kerrigan for help and promised that if she did help that Jacqueline Keenaghan would pay back every penny. The money given to her therefore was a loan which had no specified repayment date.

99. Seeing the enthusiasm that the Kerrigan sisters, particularly Celine, had for helping her, Jacqueline Keenaghan became greedy and sought a sum vastly in excess of her family's liabilities. She allowed Della Kerrigan to give her €90,000 to €100,000 more than the family's debts. This was spent on college fees and expenses for John and Jacqueline Keenaghan and their two children, Danielle and Sean. Though married in the U.S, their eldest son Edward was not excluded from the windfall. €10,000 was lodged to his account in AIB Ballyshannon on the 30th August, 2010, the day the draft for €200,000 was cashed.

100. The real tragedy in this case stems from the reaction of the Keenaghans to Della Kerrigan's request for repayment in 2013 and 2014. The three women were still best friends. Had the Keenaghans made any effort or proposal to begin repayment, it is highly likely in the court's view, that it would have found favour with the Kerrigans. There is no suggestion that Della Kerrigan ever demanded immediate repayment of the full sum. The court is confident that any reasonable proposal would have found favour even if it was spread over many, many years. The Keenaghans were in a position to make payments. Two acres of their two and a half acre holding has road frontage and development potential. At one point it had planning permission for four houses. Had that been sold in 2014 it could have provided for a lump sum payment. In addition, the Keenaghans were both earning and having regard to their absence of debt, were in a position to make some weekly or monthly payments. It would not have been unreasonable for them to have asked their children, whose education had been entirely funded from Della Kerrigan's money, to make some contribution. Had they taken those steps or any of them, the court considers it probable that this case would never have come to court.

101. Rather than acknowledging their debt, the Keenaghans chose to deny it and thereby, at least by implication, cast doubt on the honesty of the Kerrigans. It was Jacqueline Keenaghan's denial of the true circumstances of the loan that ruptured this friendship. The Kerrigans saw that denial for what it was, an enormous breach of trust.

102. For the avoidance of doubt, the court wishes to make it clear that while holding that the sum paid to Jacqueline Keenaghan was a loan requested by her, had the court concluded that in fact this money was given as a gift, it would in the circumstances of this case, have set the gift aside as being an improvident transaction on foot of which John and Jacqueline Keenaghan have been unjustly enriched, and accordingly it would be unconscionable for them to be permitted to retain it.

