Neutral Citation Number: [2011] IEHC 356

THE HIGH COURT

2011 5843 P

BETWEEN

ANGLO IRISH BANK CORPORATION LIMITED

PLAINTIFF

AND

QUINN INVESTMENTS SWEDEN AB, SEAN QUINN, CIARA QUINN, COLLETTE QUINN, SEAN QUINN JNR, BRENDA QUINN, AOIFE QUINN, STEPHEN KELLY, PETER DARAGH QUINN, NIALL MCPARTLAND AND INDIAN TRUST AB

DEFENDANTS

JUDGMENT of Mr. Justice Clarke delivered the 13th September, 2011

1. Introduction

1.1 Both the plaintiff ("Anglo") and the group of companies (the "Quinn Group") associated with many of the defendants were apparent stars of the Celtic Tiger years. However, the situation facing both has dramatically altered. As is widely known Anglo is now in state ownership, would be hopelessly insolvent but for state assistance, is no longer involved in ordinary banking but is seeking to recover such loans as it can so as to minimise the ultimate exposure of the taxpayer. Likewise, the Quinn Group in its various component parts has been the subject of significant financial difficulty with the appointment of administrators and receivers to many companies within the Group.

1.2 There is at least a partial connection between the problems which beset both Anglo and the Quinn Group. At certain times the Quinn Group made significant (and ultimately disastrous) investments in Anglo. In that context it is, perhaps, not surprising that litigation between Anglo and members of the Quinn family and companies associated with them has ensued. These proceedings form part of that litigation.

1.3 The specific backdrop to these proceedings concerns a part of the Quinn family empire which derived from the acquisition of a significant property portfolio largely based outside Ireland. It is unnecessary for the purposes of the issue with which I am now concerned to set out in any detail the precise and complex ownership structure through which the beneficial interest of members of the Quinn family in that property portfolio was held. Suffice it to say that the first named defendant ("QIS"), which is a Swedish company, was the vehicle through which that property portfolio was owned. QIS in turn had many ultimate subsidiaries including a number of Cypriot companies, which in turn held the shareholding in companies in countries such as Russia, Ukraine and India which latter companies directly owned the properties which formed part of the portfolio.

1.4 Anglo alleges that various members of the Quinn family have been involved in what it says is a conspiracy to alter the way in which the property portfolio concerned is held. Anglo has *prima facie* security over the property portfolio and the companies which hold that property. It is said by Anglo that the intention of the defendants is to remove the value of that portfolio away from the existing structure (which has QIS at its head) and into a separate structure whose ultimate beneficial owner would again be members of the Quinn family (although not necessarily in exactly the same way as presently constituted) but where, crucially, security in favour of Anglo would not be in place.

1.5 In substance, the allegation is that the intention is to deprive Anglo of the value of its security over the property portfolio.

1.6 At this stage I am only concerned with questions of jurisdiction. The defendants (save where the context otherwise requires "the Quinns") suggest that this Court does not have jurisdiction (or may not have jurisdiction depending on certain other events to which it will be necessary to refer in due course) to determine these proceedings. The Quinns have brought this application seeking to persuade the Court that it does not have jurisdiction or alternatively that the proceedings should be stayed. In order to fully understand the issues which arise, it is necessary to start by setting out a brief overview of the jurisdictional issues which confront the court.

2. Questions of Jurisdiction

2.1 One obvious consequence of increased globalisation of trade and commerce is an internationalisation of litigation connected with global commercial arrangements. Historically each country had its own private international law which specified the various bases on which the courts of that country would accept jurisdiction over all types of disputes (including commercial disputes) and the factors that might properly be taken into account in deciding whether to exercise that jurisdiction. Likewise, the private international law of each country specified the circumstances in which the courts of that country would recognise judgments, decisions and orders of the courts of other countries which might also be said to have a jurisdiction in relation to relevant matters.

2.2 In the context of the building of the single market within the European Union, it is hardly surprising that measures have been adopted which are designed to specify with some precision the particular jurisdiction or jurisdictions which are appropriate to decide particular disputes. The Brussels Convention (later the Brussels Regulation) was the means adopted.

2.3 However, in addition to setting out the rules that determine which jurisdiction or jurisdictions is or are appropriate to decide on a particular dispute, the Brussels Regulation also, importantly, seeks to specify which countries' courts are actually to make the decision as to where a particular set of proceedings are to be tried. While the Brussels Regulation sets out detailed rules concerning jurisdiction, the interpretation of those rules can, in some cases, be difficult and, moreover, the application of the rules to the facts of individual cases can, in itself, lead to controversy. There will, therefore, necessarily, be some cases where it will not be free from doubt as to the proper jurisdiction to try a particular set of proceedings. In those circumstances it is important that there be clear rules as to which countries' courts are to make the decision as to where the trial is to be, for in the absence of such rules there would be the obvious risk of differing views being taken by the courts of different countries leading to obvious confusion.

2.4 The freedom to do business across the single market within the European Union necessarily carries with it the requirement that there be a single and, insofar as it may be possible, relatively straightforward, set of rules designed to ensure that there is clarity as to where court cases involving disputes arising out of the trans-national nature of that single market are to be tried. It is the application of those rules to the somewhat complex situation which underlies the dispute between Anglo and the Quinns that gives rise to the difficult questions with which I am now faced. However, before setting out the precise issues of jurisdiction which arise, it is appropriate to briefly set out the background to the various cases and to the general issues which arise between Anglo and the Quinns for it is against that background that the jurisdictional issues which now arise need to be seen.

3. Background

3.1 There are a number of cases currently extant between the parties across a number of jurisdictions. While this decision merely goes to determine the jurisdictional questions which arise in one of those sets of proceedings, the existence of the other cases forms part of the picture against which that jurisdictional issue needs to be considered. For this reason it is necessary to refer to the other proceedings and to provide a brief overview of same.

3.2 In the present case, the third to seventh defendants ("the Quinn Children") are the beneficial owners of the Quinn Group which comprises approximately 95 companies and which was, as far as these proceedings are concerned, at all material times under the stewardship of the second defendant, Mr. Sean Quinn. The Quinn Children are beneficially entitled, either directly or indirectly, to the issued share capital in these companies. The Quinn Group carried on a variety of businesses including the manufacture of cement and plastics, the provision of general insurance, hospitality, real estate and financial services. The companies which comprise the Quinn Group are not contained within a single holding group structure nor are they strictly speaking "related companies", as that term is defined under the Companies Acts.

3.3 QIS is the top holding company in the International Property Group ("the IPG"), a group of companies established by Mr. Sean Quinn for the purposes of developing a large international property portfolio for the benefit of the Quinn Children. The eighth defendant, Mr. Stephen Kelly, is the husband of Ms. Aoife Quinn, the seventh defendant. The ninth defendant, Mr. Peter Daragh Quinn is the nephew of Mr. Quinn and is the first cousin of the Quinn Children. The tenth defendant, Mr. Niall McPartland, is the spouse of the third defendant, Ms. Ciara Quinn. The eleventh defendant, Indian Trust AB, is a Swedish company whose purpose is a matter of some controversy. On Anglo's case it is to be the apex of a parallel structure into which the properties currently held by the IPG are to move. All of the natural defendants, bar the ninth defendant who resides in Northern Ireland, are Irish based residents with assets inside this State and abroad.

3.4 The origin of the wider dispute between the parties has its roots in the provision by Anglo of approximately €2.8 billion to Quinn Finance, a private unlimited Irish registered company within the Quinn Group. It is said that the purpose of this facility was to allow Quinn Finance, or related companies within the Quinn Group, to meet certain obligations under various contracts for difference ("CFDs") margin calls which had been entered into relating to shares in Anglo.

3.5 A contract for difference is essentially a surrogate share deal of sorts, in which a person agrees that that person will effectively either get or give depending on the relevant nominated share price increasing or decreasing. If the share price goes up, the relevant person gets whatever amount is referable to the volume of the investment. However, if the share price goes down, that person loses and must pay the corresponding amount. Furthermore, if the share price has moved down then there is also a call on the person to pay the amount of monies represented by the loss.

3.6 As security for the relevant advances, share pledges and guarantee agreements ("Share Pledges") were executed by the Quinn Children and a number of companies within the Quinn Group in favour of Anglo. These included companies in Ireland, Northern Ireland, Sweden, Cyprus and Russia.

3.7 On the 14th April, 2011, Anglo issued a demand for payment and, when that demand was not met, proceeded, on the same day, to appoint a share receiver, Mr. Kieran Wallace, over the Quinn Children's shares and the shares of the various companies. The validity of this action is disputed and proceedings were issued in this Court on the 16th May, 2011. These proceedings ("the Quinn Irish proceedings") were taken by the Quinn Children and their mother, Ms. Patricia Quinn, against Mr. Wallace as share receiver and Anglo. The proceedings were admitted to the commercial list on the 30th May, 2011. In the Quinn Irish Proceedings the plaintiffs seek declarations that various guarantees and share charges are invalid, unenforceable and of no legal effect and that consequently appointments made by Mr. Wallace in his capacity as receiver (e.g. to the boards of companies in the Group) pursuant to those charges, were unlawful and invalid. The basis of the claim is that it is said that Anglo engaged in lending which was tainted by illegality and/or was for an illegal purpose, namely that it was contrary to the terms of the Market Abuse (Directive 2003/6/EC) Regulations (S.I. No. 342/2005) and/or s. 60 of the Companies Act 1963 (as amended). It is further claimed that Anglo breached its fiduciary duty and duty of care to ensure that members of the Quinn family received independent legal advice in relation to the transactions. In addition, damages are sought. The matter has been listed provisionally for hearing in January, 2012 or soon thereafter.

3.8 On the 29th June, 2011, the Quinn Children and Mrs. Quinn together with Quinn Way Sweden AB, Quinn Building Sweden AB and Quinn Services Sweden AB issued proceedings against Anglo and three Cypriot companies, namely Krostein Investments Limited ("Krostein"), Carcer Management Limited ("Carcer") and Samonaca Holdings Limited ("Samonaca"), in the District Court of Nicosia (the "Quinn Cypriot Proceedings"). These latter three companies are part of the Quinn Group. The plaintiffs in those proceedings seek declarations as to the ownership of the shares in Krostein, Carcer and Samonaca, declarations as to the validity and enforceability of Share Pledges in respect of shares in those companies, declarations as to the validity and enforceability of Share Pledges of shares owned by those companies in several Russian companies and declarations concerning the validity of the purported appointment of directors of the those companies by Anglo, its share receiver or their representatives together with damages.

3.9 Separately, on the 28th April, 2011, Anglo applied to the Stockholm District Court to place QIS into bankruptcy ("the Swedish Bankruptcy Proceedings"). The application was granted on the 5th July and a bankruptcy receiver appointed. An appeal against this decision failed and the bankruptcy receiver stands appointed.

3.10 It would appear that the legal and factual basis which underlies the claims made by the Quinn Children and Mrs. Quinn in the Quinn Cypriot Proceedings are the same as those which form the basis of the Quinn Irish Proceedings. The basic allegations are that the provision of monies by Anglo to Quinn Finance amounted either to impermissible market manipulation or assistance in the purchase of Anglo's own shares, both of which activities being, at the level of principle, unlawful. In addition, similar alleged breaches of fiduciary duty are relied on in both the Quinn Cypriot Proceedings and the Quinn Irish Proceedings. However, it does need to be noted that the Quinn Irish Proceedings are directed towards seeking to establish the invalidity of what one might call the Irish part of the

composite set of securities put in place in favour of Anglo, while the Quinn Cypriot Proceedings are directed towards the Cypriot element of that security.

3.11 In other words the security at which respectively the Quinn Irish Proceedings and the Quinn Cypriot Proceedings are directed is different. However, the grounds, both as to the facts and as to the law, which are relied on for suggesting that the security in both cases is invalid are substantially the same. It might, in that context, be reasonable to describe them as parallel proceedings where the same facts and law are relied on but where the consequence of those facts and law are said to relate similarly but separately to two different sets of security.

3.12 In the present proceedings, Anglo seeks to prevent the Quinns, acting individually or in a conspiracy or in concert with one another, from inducing breaches of contract and intentionally causing loss to Anglo by unlawful means, including taking actions which, it is alleged, will result in transferring assets of companies within the IPG to companies in another corporate structure for the purposes of denuding the IPG of its assets. The reliefs sought by Anglo include orders restraining the Quinns from inducing, procuring or facilitating breaches of Share Pledges or from taking steps to transfer assets or purporting to exercise rights attaching to pledged shares or to establish an alternative corporate structure. Orders are also sought declaring that the Quinns hold certain assets as constructive trustees for Anglo and directing an accounting to Anglo of any such property or assets transferred.

3.13 On the 27th June, 2011, Anglo applied on an *ex parte* basis for an interim injunction against the Quinns seeking to restrain further steps in that alleged plan. The matter was then made returnable for an interlocutory hearing before me. At that hearing on the 20th July, 2011, counsel for the Quinns agreed to give a number of undertakings which were in identical terms to the interim relief which had been granted. This was without prejudice to the Quinns' contention that Anglo was and is not entitled to the reliefs sought and that Anglo's concerns are unwarranted.

3.14 While it was not, therefore, necessary to consider, at that stage, in any detail the issues which arise in these proceedings (given that undertakings were given) it is, nonetheless, possible from the replying affidavits filed on behalf of the Quinns to at least obtain a general indication of the defences which it is sought to raise in response to Anglo's claim.

3.15 First, reliance is placed on the allegation that the security held by Anglo is invalid for the reasons put forward in both the Quinn Irish Proceeding and the Quinn Cypriot Proceedings. Second, while not disputing, to a very large extent, the underlying factual account given by those witnesses who swore affidavits on behalf of Anglo for the purposes of the interim and interlocutory applications, it appears to be the position of the Quinns that those facts do not bear the inference of the conspiracy alleged by Anglo. Certain explanations for those facts are put forward. Clearly the question of whether there is or is not such a conspiracy is a matter which will require a full trial to determine. In addition, and even in the absence of such a conspiracy, Anglo also argues that many of the steps taken are in specific breach of provisions of the security documentation relied on by Anglo. Clearly, therefore, the validity of that security is a central issue in these proceedings as well as in the Quinn Irish Proceedings and the Quinn Cypriot Proceedings.

3.16 There is, therefore, at least a significant overlap between, on the one hand, the Quinn Irish Proceedings and the Quinn Cypriot Proceedings and, on the other hand, these proceedings. The overlap stems from the fact that a principal basis of the defence to these proceedings seems to be a reliance by the Quinns, for their contention that they are not in breach of the relevant security arrangements, on the invalidity of that security on precisely the same grounds as underlie the claims in both the Quinn Irish Proceedings and the Quinn Cypriot Proceedings. It is against the background both of those general facts and of the connection which I have noted between the various proceedings, that the issues of jurisdiction need to be addressed.

4. Reliefs Sought

4.1 The Quinns seek orders staying, or in the alternative, dismissing these proceedings on the grounds that the court does not have jurisdiction to hear and determine them and, in particular:-

> 1. An order declining jurisdiction and dismissing these proceedings by virtue of Article 28.2 of the Brussels Regulation on the grounds that there is a related action (no. 4324/2011) pending before the courts of Cyprus;
>
> 2. In the alternative, an order under Article 28.1 of the Brussels Regulation staying these proceedings pending the determination of the Cypriot proceedings; and/or
>
> 3. A declaration that the Courts of Sweden and Cyprus respectively have jurisdiction to settle any disputes which have arisen or which may arise in connection with the Share Pledges the subject of these proceedings under Article 23 of the Brussels Regulation.

4.2 A fourth estoppel argument, although initially made, is not now being pursued by the defendants. By their very nature, the orders sought concern the so-called "Brussels Regulation" to which it is now appropriate to turn.

4.3 However, it should be noted that, as a fall-back position, in the event that the Quinns succeed, Anglo seeks orders under Article 31 of the Brussels Regulation. I will deal with that application later in this judgment. As all of the applications before me are brought under the Brussels Regulation I turn first to a consideration of its relevant terms.

5. The Brussels Regulation

5.1 Council Regulation (EC) No. 44/2001 of 22nd December, 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, P.1) (the "Brussels Regulation") is a direct descendant of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended (see OJ C 27, 26.1.1998, p.1 for the consolidated version) and the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

5.2 In *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v. Minister for Transport* [1994] 2 ILRM 551, Murphy J. noted that the teleological or schematic approach was a fundamental principle of interpretation to be applied to EC regulations and directives. This approach was later accepted by the Supreme Court in *Radio Limerick One Ltd v. Independent Radio and Television Commission* [1997] 2 ILRM 1. Accordingly, the starting point for any consideration of the Brussels Regulation is its recitals. They are, in relevant part, as follows:-

> "(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provision to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States

bound by this Regulation are essential.

[…]

(11) The rules of jurisdiction must be highly predicable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

[…]

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.

(16) Mutual trust in the administration of justice in the Community justifies judgment given in Member States being recognised automatically without the need for any procedure except in cases of dispute."

5.3 Turning now to the substantive provisions under which relief is sought. Articles 23 and 28 of the Brussels Regulation are in the following terms:-

Article 23

1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:-

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".

3. Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

4. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settler, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

[…]

Article 28

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

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

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

5.4 As noted earlier the application brought by the Quinns with which I am concerned is one which seeks to invoke both Article 23 and Article 28. However, some mention of Article 27 is also, in my view, appropriate. Both Articles 27 and 28 form part of section 9 which operates under the heading "*Lis Pendens* – Related Actions". Article 27 requires the court of a member state other than the court first seised to stay its proceedings "where proceedings involving the same cause of action and between the same parties" are brought in the courts of different member states. As can be seen from the terms of Article 28 as cited earlier, the difference between Article 27 and Article 28 is that Article 27 is concerned with proceedings involving the same cause of action and the same parties, whereas Article 28 is concerned with what are described as related actions in the sense in which that term is used, most particularly in Article 28.3. In addition, Article 29 provides that any court other than the court first seised is required to decline jurisdiction in

favour of that court where actions come within the exclusive jurisdiction of several courts.

5.5 Thus, at least in general terms, the overall architecture of the relevant Articles is clear. Where the same case is brought in more than one jurisdiction, then the court first seised is to have jurisdiction to hear it and any other courts are required to decline jurisdiction. If there is any doubt about the issue (*i.e.* if there is any doubt about whether the court first seised actually has jurisdiction) then it is clear from the relevant jurisprudence that all other courts are to stay their proceedings until such time as the court first seised can determine whether it has jurisdiction.

5.6 However, the position under Article 28 is different. Article 28 is concerned with related actions and permits a court other than the court first seised to stay its proceedings. It seems clear that the overall purpose of section 9 is, as was pointed out by Finlay Geoghegan J. in *Popely v. Popely* [2006] 4 I.R. 356, to prevent "parallel proceedings in two Member States with jurisdiction with potentially irreconcilable judgments". *Popely* was, it is true, mainly concerned with Article 27 although a fall-back argument under Article 28 was also made. The application to decline jurisdiction under Article 27 in *Popely* failed because the cause of action or "objects" of both proceedings in question were not considered to be the same. However, *Popely* (and its analysis of the relevant ECJ jurisprudence) seems to me to be of general guidance as to the overall objectives of section 9 of the Brussels Regulation.

5.7 Insofar as the application with which I am concerned is, therefore, specifically brought under Article 28, it is clear that one of the questions which necessarily arises is as to whether the actions can be said to be related actions for the purposes of that Article. In *The Tatry* [1999] 1 Q.B. 515 (Case C-406/92), the ECJ held that an independent interpretation should be given to the concept of "related actions" and found that in "order to achieve proper administration of justice, that interpretation must be broad and cover all cases where there is a risk of conflicting decisions, even if the judgments can be separately enforced and their legal consequences are not mutually exclusive". That approach was followed by Kelly J. in *Gonzalez v. Mayer* [2004] 3 I.R. 326, in the course of which approval was given to the decision of the House of Lords in *Sario SA v. Kuwait Investment Authority* [1999] 1 A.C. 32, where Lord Saville determined that there should be:-

> "A broad commonsense approach to the question of whether the actions in question are related, bearing in mind the objective of the Article, applying the simple wide test set out in Article 22 and refraining from an over-sophisticated analysis of the matter."

5.8 The overall approach in determining whether actions are, therefore, related is as to whether there is a sufficient connection between the relative proceedings such as would create the risk of irreconcilable judgments were both proceedings to be separately determined by the courts of differing jurisdictions.

5.9 Having outlined the relevant provisions of the Brussels Regulation, I turn first to the argument under Article 23.

6. Discussion on Article 23 Application

6.1 Under this heading the Quinns place reliance on clauses to be found in many, if not all, of the pledge agreements which form the basis of the security provided by the Quinns and various other companies within the Quinn Group in favour of Anglo, which lie at the heart of these proceedings.

6.2 It is unnecessary to go into detail in respect of each and every relevant clause for they can usefully be grouped into two sets of pledge agreements which I will call respectively the "Swedish Pledge Agreements" and the "Cypriot Pledge Agreements".

6.3 In the Swedish Pledge Agreements each such agreement contains, at clauses 20.2 and 20.3 the following:-

> "20.2 Subject to clause 20.3 below, the Courts of Sweden shall have exclusive jurisdiction over matters arising out of or in connection with this agreement. The District Court of Stockholm should be the court of first instance.
>
> 20.3 The submission to the jurisdiction of the Swedish Courts shall not limit the right of the bank to take proceedings against the pledgor in any court, which may otherwise exercise jurisdiction over the pledgor or any of its assets."

6.4 In relation to the Cypriot Pledge Agreements, clause 23.2 of same is in the following terms:-

> "23.2 For the purposes of any proceedings which the pledgee may take in or before the Courts of Cyprus the pledgors hereby submit to the non-exclusive jurisdiction of such courts (PROVIDED ALWAYS) that the pledgee may at its option sue the pledgors in any other court having jurisdiction in the premises."

6.5 It is important to recall the terms of Article 23 of the Brussels Regulation. Article 23.1 provides that an agreement as to jurisdiction confers jurisdiction on the courts of the member state specified. The Article goes on to state that such jurisdiction "shall be exclusive unless the parties have agreed otherwise".

6.6 So far as the Cypriot Pledge Agreements are concerned, the agreement contained in clause 23.2 expressly states that the jurisdiction is to be "non-exclusive". It is clear, therefore, that there is an agreement between the parties (at least so far as the Cypriot Share Pledges are concerned) that the jurisdiction of the Courts of Cyprus is non-exclusive.

6.7 Likewise, clause 20.3 of the Swedish Share Pledge Agreement makes clear that the parties have agreed that the "bank" (*i.e.* Anglo) may take proceedings "in any court which may otherwise exercise jurisdiction over the pledgor or any of its assets". It is again clear that, so far as the Swedish Pledge Agreements are concerned, and insofar as Anglo is concerned, the jurisdiction clause is non-exclusive.

6.8 There is nothing, therefore, in either the Swedish Pledge Agreement jurisdiction clauses or the Cypriot Pledge Agreement jurisdiction clause which, at least so far as Anglo is concerned, purports to confer exclusive jurisdiction on respectively the Swedish or Cypriot Courts. It is true that those courts have jurisdiction by virtue of the respective clauses. It is equally clear that those courts do not, so far as Anglo is concerned, have exclusive jurisdiction. The only way in which Article 23 could amount to a barrier to the Irish Courts having jurisdiction is if there were relevant and applicable jurisdiction clauses which conferred an exclusive jurisdiction on the courts of a jurisdiction other than Ireland. For the reasons already analysed, the clauses do not do that. I am not, therefore, satisfied that Article 23 has any application to these proceedings.

6.9 It is, of course, true to say that the fact that the respective jurisdiction clauses do not refer to Ireland or the Irish Courts means that those clauses cannot, of themselves, be relied on to give Ireland a jurisdiction over any proceedings. But, as I understand it, Anglo does not place any reliance on any jurisdiction clauses for the purposes of its contention that the Irish Courts have jurisdiction

over these proceedings. Anglo does not need to rely on Article 23 to confer jurisdiction on the Irish Courts. Rather, it is the Quinns who seek to rely on Article 23 for the purposes of suggesting that the Irish Courts do not have jurisdiction. In any event it is important to emphasise that the nature of these proceedings involves personal orders against parties who, for the main part, are individuals resident in Ireland. The proceedings do not seek to restrain Swedish or Cypriot companies (or, indeed, companies in any other jurisdictions) from doing anything (with the exception of QIS and Indian Trust AB). Rather the orders sought ("the objects" of the proceedings) are designed to obtain personal (*in personam*) orders against individuals to prevent them from acting in a way which is said to be unlawful. Those individuals are, for the main part, resident in the jurisdiction and insofar as one defendant is not resident it would certainly seem, on the evidence currently available, that that person has carried out actions relevant to these proceedings by attending meetings within the jurisdiction. In those circumstances it is difficult to see how the Courts of Ireland would not have jurisdiction to entertain these proceedings in the ordinary way under the provisions of the Brussels Regulation.

6.10 However, the truth is that no contrary case was, in fact, made by the Quinns. The only case made was that Article 23 precluded the Irish Courts, in the light of the relevant jurisdiction clauses, from having jurisdiction. However, for the reasons already analysed, that does not seem to me to be the case. I, therefore, reject the case made by the Quinns to the effect that Article 23 has any bearing on the jurisdiction of this Court. In those circumstances it is necessary to turn to the Quinns' application under Article 28.

7. Discussion on Article 28 Application

7.1 The question as to the proper approach which a court of a member state should take in the event that there are potentially three separate courts seised of the same or similar issues has only, so far as I am aware, been the subject of consideration in one albeit quite unusual case being *Masri v. Consolidated Contractors International Company SAL & Ors* [2011] EWHC 1780 (Comm). I will refer briefly to that case in due course.

7.2 Where related proceedings are brought sequentially in three different jurisdictions, it is hard to see how any additional complication arises by virtue of the existence of the third set of proceedings. Articles 28.1 and 28.2 provide that any court other than that first seised may consider whether it should stay or decline jurisdiction. These provisions would apply equally to a court third seised. If the third proceedings are related to those commenced in either the court first seised or the court second seised then the court third seised should ordinarily decline jurisdiction or stay if there is a real risk of inconsistent judgments.

7.3 However, the complication potentially arises where the court third seised is the same as the court first seised. In other words, a difficulty potentially arises where proceedings are brought in country A followed by a second set of (potentially related) proceedings in country B and followed in turn by a third set of (potentially related) proceedings back in country A. The question which arises is as to whether the prior existence of the proceedings first seised in country A can confer on that jurisdiction any additional entitlement to deal with the third case.

7.4 Of course if all three proceedings were about exactly the same subject matter, then it is hard to see how such a situation could arise for there would be little point in either side commencing a new set of proceedings in the country first seised (the third proceedings), which was about exactly the same thing as the proceedings which were already in being in that jurisdiction. The problem arises where the proceedings may not be the same but may be related. The truth is that that there is little or no guidance as to the precise course of action which a court should adopt when faced with the situation currently before me where it is suggested by Anglo that the existence of the (first in time) Quinn Irish Proceedings effectively confers a jurisdiction on the Irish Courts to entertain these proceedings.

7.5 It seems to me that a number of observations are appropriate at this stage. First, it does not seem to me that it is the function of the Courts of Ireland to interfere with the proper consideration by the Cypriot Courts as to whether those courts have jurisdiction over the Quinn Cypriot Proceedings. It is my understanding that an application has been brought by Anglo before the court in Nicosia in which it will be sought to argue that the Cypriot Courts should decline jurisdiction in relation to the Quinn Cypriot Proceedings by virtue of the contention that they are related to the (first in time) Quinn Irish Proceedings. On a like basis the court in Nicosia will be asked to stay those proceedings. It is clearly a matter for the Cypriot Courts to decide that question. It would be wholly inappropriate for me to offer any view on what the Cypriot Courts should conclude. It would be equally wrong for me to base my judgment on the issues which fall for me to decide on any view as to what the Cypriot Courts should do.

7.6 However, the decision of the Cypriot Court is obviously of some significance. First, it needs to be noted that, if the Cypriot Court decides that it does not have jurisdiction or should decline jurisdiction by virtue of the Brussels Regulation, then it follows that there would be no Cypriot proceedings in being which would act as a barrier to this Court continuing to deal with these proceedings in the ordinary way. For that reason alone it seems to me that it would be inappropriate for me to decline jurisdiction (by dismissing these proceedings under Article 28) at this stage. I am, in substance, being asked by the Quinns to decline jurisdiction on the basis of pre-existing Cypriot proceedings in circumstances where those Cypriot proceedings themselves may or may not continue depending on the outcome of an application to the Cypriot Court as to its jurisdiction. I cannot presume the answer that the Cypriot Court will give to that question. It must be possible that the Cypriot Court will find that the proceedings before it should either be dismissed or stayed on jurisdictional grounds. There are, therefore, possible results of the application which Anglo is shortly to move before the Cypriot Courts, which would have the effect of removing the Quinns' basis for suggesting that the Courts of Ireland should decline jurisdiction to entertain these proceedings. In those circumstances it seems to me that the most that the Quinns could hope to achieve on this application is a staying of these proceedings until such time as the Cypriot Court had considered its jurisdictional position, with the matter to be re-entered thereafter for further consideration in the light of the Cypriot Court's determination.

7.7 However, it is also necessary, in my view, to analyse the situation (or more accurately the range of situations) with which I might be faced when the result of the Cypriot Court's deliberations on its own jurisdiction have become known. That is not, in any way, to attempt to pre-judge the view that the Cypriot Court will take, but rather to analyse the range of possible situations with which I might be faced for the purposes of seeing whether any action by me can or should be taken now rather than awaiting the decision of the Cypriot Court.

7.8 As pointed out, a decision by the Cypriot Court to the effect that it does not have jurisdiction (presumably because Anglo persuades the Cypriot Court that the connection between the Quinn Irish Proceedings and the Quinn Cypriot Proceedings is such as to meet the test set out in the jurisprudence of the ECJ) would, it seems to me, leave me in a situation where there was no barrier to the orderly continuance of these proceedings. However, a decision by the Cypriot Court that it did have jurisdiction to entertain the Quinn Cypriot Proceedings would give rise to a significantly different situation.

7.9 On that basis there would be two sets of proceedings continuing in different jurisdictions concerning different parts of the security arrangements between Anglo and the Quinns. The problem with which I am faced stems from the fact that these proceedings involve both sets of security (that is to say the securities which are the subject of the Quinn Irish Proceedings and the securities

which are the subject of the Quinn Cypriot Proceedings). That is so at least because part of the defence of the Quinns to these proceedings relies on the invalidity of the whole security package and thus encompasses both the issues raised in the Irish and Cypriot Proceedings. I would then be faced with a potentially paradoxical situation where these proceedings would undoubtedly be connected with both the Quinn Irish and Quinn Cypriot Proceedings (in the sense that the validity of the security which is the subject of respectively the Quinn Irish and Quinn Cypriot Proceedings would be a significant issue in these proceedings). It seems to me that there is little or no guidance either from the direct wording of the Brussels Regulation or from any of the case law to which I have been referred, as to the proper approach of the court in those circumstances. The decision of Burton J. in *Masri* turned on the very unusual circumstances of that case where what was said to be the first seised (English) proceedings were not originally related to the second seised (Greek) proceedings but had, it was said, become so because of issues arising after the case concluded in the context of enforcement actions. In addition, it was held that the Greek proceedings came within the exclusive jurisdiction of the Greek Courts under Article 22 of the Brussels Regulation. *Masri* seems to me to be so different to the situation with which I am faced as to be of little assistance.

7.10 I am mindful of one issue which was raised briefly in argument. As pointed out earlier, subsequent to the hearing to which this judgment relates, a further application was brought by Anglo seeking protective measures under Article 31 of the Brussels Regulation on largely the same factual grounds as were relied on in moving for an interlocutory injunction in this case. For reasons which I hope will become clear it is now unnecessary to rule on that matter. However, a question was raised as to why these proceedings were not brought as a counterclaim to the Quinn Irish Proceedings. I can well understand that, in the urgent circumstances where Anglo wished to move for an interim injunction, it might have been considered expedient to commence separate proceedings. However, it is not immediately obvious to me as to why the issues which are sought to be raised in these proceedings could not have been ultimately maintained as a counterclaim to the Quinn Irish Proceedings. After all part of the defence to the counterclaim would be the facts and law relied on by the Quinns to suggest that the security (whether Irish, Cypriot or otherwise) which form the basis of the claim in both the Quinn Irish and Quinn Cypriot Proceedings is invalid. There would be more than a sufficient connection between the issues which Anglo seeks to raise in these proceedings with the issues which arise in the Quinn Irish Proceedings to allow the issues raised in these proceedings to be maintained by way of counterclaim in the Quinn Irish Proceedings. However, that has not been done.

8. Conclusions on Article 28 Issues

8.1 It seems to me that this is a case where the longest way round may well be the shortest way home. If the courts begin to embark on the undoubtedly expensive and time consuming exercise of getting significant proceedings ready for hearing in circumstances where there may be a doubt as to jurisdiction, then much time and expense may be lost and wasted. In the absence of clear guidance either from the direct wording of the Brussels Regulation or from the jurisprudence of the ECJ as to what is to happen in the context of a third set of proceedings being brought in a jurisdiction first seised of at least connected proceedings, it seems to me that the best course of action is to obtain definitive guidance in the form of a reference under Article 267 TFEU to the Court of Justice of the European Union ("CJEU") as it is now described in Article 13 TEU.

8.2 Article 28.1 provides that the jurisdiction to stay arises "where related actions are pending in the courts of different member states". That provision clearly has no relevance to a situation where the related proceedings are pending in the courts of a single member state. However, what the position is to be where there are three sets of proceedings pending, two of which (being the first and third in time) are pending in the courts of one member state while the other is pending in the courts of a different member state is not entirely clear. Likewise, Article 28.2 refers to "these actions" and thus refers back to the actions which form the subject of Article 28.1. The same difficulty of application also applies, in my view, therefore, to Article 28.2. While there can be little doubt but that overarching object of the Brussels Regulation is to prevent the risk of conflicting judgments, it is also necessary and important to decide as to which courts should make the jurisdictional decisions which require to be made in the context of this case. Is it to be the Courts of Ireland or the Courts of Cyprus who are to determine which actions are "related" in the sense in which that term is used in the Brussels Regulation? In substance, that is the difference between the position adopted by the Quinns and the position adopted by Anglo. Anglo suggests that I should now decide all jurisdictional questions relevant to these proceedings. The Quinns suggest that I should leave it to the Courts of Cyprus to decide whether those courts have jurisdiction over the Quinn Cypriot Proceedings and that I should, in effect, be bound by that decision so that, in the event that the Quinns persuade the Nicosia Court that it has jurisdiction, I should decline jurisdiction over these proceedings either by dismissing them or staying them. It seems to me that that it is the question which needs to be clarified. Which courts should decide the relevant jurisdictional issues in the unusual context of the three sets of proceedings with which I am faced here?

8.3 In those circumstances I propose to frame appropriate questions for the CJEU and will hear counsel further as to the terms of those questions. However, in general terms it seems to me that the issues on which the guidance of the CJEU should be sought are in the following terms.

8.4 The backdrop to the issue is the existence of three sets of proceedings where both the first and third in time (or first and third seised in the sense in which that term is used in section 9 of the Brussels Regulation) are maintained in one country while the second seised are maintained in a different member state. The issues which arise are first as to whether it is appropriate for the court dealing with the third set of proceedings to await the outcome of an anticipated decision by the court second seised as to whether it should dismiss or stay under the provisions of Article 28 prior to the court third seised embarking on its consideration. Second, and in the event that the court second seised finds that it has jurisdiction, whether the court third seised (being the same court as the court first seised) is entitled to have regard to the existence of the first set of proceedings in deciding whether it should dismiss or decline jurisdiction under Article 28. Finally, whether the fact that the third proceedings could have been (but were not) maintained as a counterclaim in the first proceedings is a material factor and, if so, the proper considerations which the court should give to that factor in its determination as to whether it should decline or stay under Article 28.

9. The Article 31 Application

9.1 As noted earlier there was full argument between the parties as to whether, in the event that I were to dismiss these proceedings on the basis of either or both of the Article 23 or Article 28 claims made by the Quinns, I should, nonetheless, make provisional and protective measures available to Anglo under Article 31, in identical terms to the interlocutory injunction currently in place.

9.2 Quite sensibly, in my view, Anglo made clear that they did not require any such measures in the event that I were to retain jurisdiction over these proceedings for in that eventuality Anglo have the benefit of the interlocutory injunction and the protective measures would be superfluous. On the other hand Anglo's case was that, in the event that I were to dismiss these proceedings (and it would necessarily follow in those circumstances that the interlocutory injunction would fall), it would be appropriate to grant provisional and protective measures under Article 31 so as to protect Anglo's position pending the anticipated trial of the Quinn Cypriot Proceedings. In those circumstances Anglo indicated to the court that, in the event that I were to dismiss these proceedings on the basis of the Quinns' jurisdictional arguments, it was Anglo's intention to bring a counterclaim in the Quinn Cypriot Proceedings seeking exactly the same relief as is claimed in these proceedings. It should be noted that Anglo's primary contention is that the Courts of Ireland are the proper jurisdiction to determine these issues. Anglo's intention to bring proceedings by way of counterclaim

in the Courts of Cyprus is, therefore, a fallback position in the event that I were to rule that these proceedings should be dismissed for jurisdictional reasons.

9.3 However, given that the I have decided that the appropriate course of action is to seek the guidance of the CJEU in relation to the jurisdictional issues which confront me, it seems to me that it is now unnecessary to determine the legal questions which were raised in the application under Article 31. It is not my intention, at this stage, either to dismiss or to stay these proceedings. Rather I have determined that it is appropriate to seek the guidance of the CJEU on the issues of principle which arise before deciding whether to dismiss or stay. The proceedings will, therefore, remain in being. In the event that, in the light of the guidance obtained from the CJEU, I ultimately determine that these proceedings should be dismissed or stayed, then the possibility of Anglo being entitled to preliminary and protective measures under Article 31 may arise again. However, as that is not now an urgent question, it does not seem to me to be necessary to decide it at this stage. I should in passing note that the reason why I asked the parties to argue the Article 31 question at this stage (and not after I had decided the jurisdictional issue to which this judgment is directed) was a concern on my part that either or both of the jurisdictional issues or the Article 31 question might be the subject of an appeal to the Supreme Court. In those circumstances it seemed to me to be preferable that all issues so far as this Court is concerned should be decided so that there would not be a piecemeal approach to any appeals to the Supreme Court on these connected questions. However, given that I have decided to go down the route of a reference, it does not seem to me that that concern is any longer one which weighs heavily in the balance.

10. Summary

10.1 In summary, therefore, I propose to decline the application made by the Quinns under Article 23 on the basis that there is no agreement, on the facts, between the parties such as would confer exclusive jurisdiction on the courts of any other member state. I note in that context that no application was brought before the Court which suggested that the Court should decline jurisdiction on the basis that the Courts of Ireland do not have jurisdiction to entertain these proceedings under any other relevant provision of the Brussels Regulation.

10.2 So far as the question of it being appropriate for this Court to either dismiss or stay these proceedings under Article 28 of the Brussels Regulation is concerned, I propose to refer the matter to the CJEU. As indicated earlier, I propose hearing counsel further on the precise questions to be referred. While the earlier terms of this judgment concerning the issues which might be the subject of such a reference are my current thinking on the matter, I am open to suggestion from counsel as to the precise issues that should be included in the reference.

10.3 Finally, and in the light of the fact that I have decided to make a reference, it seems to me that I should adjourn this application pending the determination of the CJEU. It follows that these proceedings will remain in being and that the interlocutory injunction will, for the time being, remain in force.