

THE HIGH COURT

[2009 No. 4845S]

BETWEEN/

PASCHAL BERGIN

PLAINTIFF

AND

GEORGE WALSH, SAMUEL WALSH AND MERVYN WALSH

DEFENDANTS

JUDGMENT of Mr. Justice Gerard Hogan delivered on 19th day of June 2015

Index to the Judgment

[Part I: Introduction - para.1-3](#)

[Part II: The parties and the witnesses - para.4-45](#)

[Part III: The conduct of the litigation - para.46-55](#)

[Part IV: The evidence of the witnesses - para.56](#)

[Paschal Bergin - para.57-92](#)

[The November 2006 settlement - para.93-96](#)

[The proposed acquisition of the French properties - para.97-116](#)

[The Wells property, Co. Wexford - para.117-119](#)

[The Vee Contract - para.120](#)

[The fees claimed by Mr. Bergin - para.121-123](#)

[2009 and the sundering of the friendship - para.124-134](#)

[Myles Garland - para.135-136](#)

[Timothy Mceniry - para.137-138](#)

[Ian Skeffington - para.139-140](#)

[William Brennan - para.141](#)

[Paul Kelly - para.142-145](#)

[Mervyn Walsh - para.146-165](#)

[The November 2006 agreement - para.166](#)

[The purchase of the French properties - para.167-169](#)

[The contract for the Vee - para.170](#)

[The attempts to raise finance in 2007 - para.171-172](#)

[The events of 2009 - para.173-178](#)

[Paraic Muldowney - para.179-184](#)

[Maurice Mason - para.185-186](#)

[Dr. David Marrani - para.187-204](#)

[Mary McCarthy - para.205-208](#)

[Liam Grainger - para.209-211](#)

[Anthony O'Gorman - para.212-215](#)

[Francis Crossan - para.216-218](#)

[Michael Walsh - para.219-223](#)

[Jacob Muccheke - para.224](#)

[Violet Walsh - para.225-232](#)

[Samuel Walsh - para.233-237](#)

[The gold transaction - para.238-248](#)

[The proposed purchase of the Wells Estate - para.249-250](#)

[George Walsh - para.251-265](#)

[The proposed development at Saint-Fargeau - para.266-267](#)

[The proposed development at Angers - para.268-270](#)

[The November 2006 settlement agreement - para.271](#)

[The December 2009 email - para.272-276](#)

[Part V: The method of service of the defendants - para.277](#)

[The manner in which the defendants were served - para.278-285](#)

[Part VI: The allegations of fraud - para.286](#)

[Allegations of fraud: general principles - para.287-292](#)

[The December 2009 email - para.293-310](#)

[Whether the November 2006 settlement agreement was authentic? - para.311-333](#)

[What conclusions should flow from these findings? - para.334-341](#)

[Part VII: Other Irish issues to be determined The approach of the courts to the evidential difficulties and principles of quantum meruit - para.342-348](#)

[The payment of the deposit of €46,000 to the auctioneering firm Norths - para.349-356](#)

[The Ballyhoque site - para.357-364](#)

[The Tramore Credit Union payment - para.365-368](#)

[The Moyne site - para.369-370](#)

[The purchase of the motor car - para.371-373](#)

[The purchase of No. 9 Westbury Woods - para.374-379](#)

[The Rinuccini site at Kilminchy - para.380-382](#)

[Was the plaintiff a de facto partner with Mervyn Walsh? - para.383-390](#)

[The proposed acquisition of the Wells Estate - para.391-395](#)

[Part VIII: Two specific defences raised by Mr. Mervyn Walsh - para.396-400](#)

[Whether the building contract for the house at the Vee, Co. Waterford is authentic? - para.401-412](#)

[The cheque payments made by Event Horizon to Mr. Bergin - para.413-414](#)

[Cheque payments between 2005 and 2006 - para.415](#)

[The payment of 13th February 2005 to Wexford County Council - para.416](#)

[Loan to Paschal Bergin on 7th March 2005 and 28th April 2005 - para.417-419](#)

[Payment to Christy O'Malley dated 28th February 2005 - para.420-421](#)

[Payment of €100,000 of 20th March 2007 \(sale of motor vehicle\) - para.422-423](#)

[Payment of 26th February 2006 \(Noel O'Sullivan\) - para.424-425](#)

[Payment of 3rd August 2006 \(Advance to Paschal Bergin\) - para.426-427](#)

[Other payments from 2005 - para.428](#)

[The cheques for under €10,000 - para.429-430](#)
[The cheques for over €10,000 - para.431-432](#)
[The O'Hare, O'Connor, Walshe cheque - para.433-436](#)
[Payment of €100,000 on 10 May 2007 \(Cork property\) - para.437-440](#)
[Three payments of €100,000 on 18th October 2007, 27th October 2007 and 15th November 2007\(Vince Bergin and Glenn Dawson\) - para.441-447](#)
[Payments to Laois County Council - para.448-450](#)
[Three payments of €100,000 on 6th July 2007, 5th March 2008 and 28th October 2008 \(share buy back\) - para.451-453](#)
[The payment of €150,000 by Sherside in September 2007 - para.454-455](#)
[Part IX: Acquisition of French properties and residency in Monaco - para.456](#)
[Whether the Walshs had tax liabilities which needed to be resolved prior to the acquisition of any French properties - para.457-467](#)
[Chateau Meillard - para.468-471](#)
[Saint-Fargeau - para.472-474](#)
[The development at 21 Boulevard Foch, Angers - para.475-482](#)
[The trips to Luxembourg - para.483-484](#)
[The communications between Mr. Shevet and Mr. Bergin - para.485-496](#)
[The Monaco residency - para.497-507](#)
[Conclusions regarding the acquisition of the French properties and the Monaco residency - para.508-513](#)
[Part X: Overall Conclusions - para.514-535](#)

Part I – Introduction

1. This is an action to recover monies which the plaintiff claims are due to him from the defendants in respect of a variety of services which he rendered to them between 2003 and 2009. The plaintiff is an accountant and a financial adviser and the three defendants are brothers who originally hail from Wexford. The first two defendants, George Walsh and Samuel Walsh, now own and reside at a very substantial farm and chateau in Meillard in the centre of France. The third defendant, Mervyn Walsh, now resides and works in Kenya.

2. The plaintiff was first introduced to the Walsh family when a farm belonging to Samuel Walsh was about to be sold by way of auction in September 2003. There is no doubt but that Mr. Bergin had significant contact and engagement with the three defendants over the six years, although this was especially marked in the case of the third defendant, Mervyn Walsh. Beyond that there is precious little agreement between the parties. With the exception of a document from November 2006 and an email from December 2009 (the authenticity of which are both fiercely in dispute), it is agreed that there is no written record of any arrangement between the parties regarding payment for services, fees and commission.

3. It is accordingly necessary for the Court to resolve multiple disputes between the parties in respect of what happened at discreet stages of eventful and hectic lives between 2003 and 2009. Before considering these questions, it is necessary first to introduce and to describe the witnesses and others who played an important role in these events. I then propose to give an outline summary of the critical events.

Part II – The parties and the witnesses

4. The following is a summary by way of introduction of the background of the major witnesses, entities and the other participants in these events. All of these participants gave evidence, save where this is expressly indicated.

5. **Arrowdell Ltd. (Sheehy Motors):** Sheehy Motors are a garage based in Carlow which was involved in the sale and purchase of a Mercedes motor vehicle involving Mr. Pascal Bergin and Mr. Mervyn Walsh in March 2006.

6. **Pascal Bergin:** An accountant and “company doctor”. He is the plaintiff in these proceedings. His chance introduction to the Walsh family (or, at least, members of the Walsh family) in September 2003 at a time when they were in financial difficulties set in train a long chain of events, culminating in this litigation.

7. **Vincent Bergin:** A brother of Pascal Bergin who lived in Canada. Mr. Vincent Bergin was an investor in Event Horizon Ltd. He did not give evidence.

8. **Bich family:** The vendors of the estate at Chateau Meillard. They did not give evidence.

9. **Pierre Bihan:** A notaire based in Beaufort en Vallee, about 30kms east of Angers, who acted for Mr. George Walsh and Mr. Samuel Walsh in the acquisition of Chateau Meillard. Me. Bihan did not give evidence.

10. **Francis Crossan:** The computer expert who gave evidence on behalf of George Walsh and Samuel Walsh.

11. **Aleksander Cvoric:** Mr. Cvoric was the architect retained by George Walsh and Samuel Walsh to prepare the designs and lodge the planning application in respect of the St. Fargeau site and Blvd. Foch at Angers. Mr. Cvoric did not give evidence.

12. **Glenn Dawson:** A Canadian friend of Mr. Bergin’s brother, Vince Bergin. Like Mr. Vince Bergin, Mr. Dawson provided mezzanine finance to Event Horizon Ltd. Mr. Dawson did not give evidence.

13. **Marie France:** According to Mr. Bergin Mme. France works in credit finance with the finance company, CAPFI, based in Nice. Mr. George Walsh maintained that his contact at CAPFI was a Mme. Béatrice Ruoizzi-Charroud and that Mme. France worked instead for another company, Credit Immobilier de France. Neither Mme. France or Mme. Béatrice Ruoizzi-Charroud gave evidence.

14. **Myles Garland:** A computer expert who gave evidence on behalf of Mr. Bergin.

15. **Liam Grainger:** Mr. Grainger is a company formation agent and is a director of Com-Net Corporate Consultants. Mr. Grainger was involved in the most of the company filings with regard to the principal Walsh companies, Event Horizon, Harside, Hillcrest and Largreen.

16. **Dominique Gourant:** M. Gourant operated an estate agency along with his son Virgil in Saint-Fargeau, a rural town some 200km south of Paris. Mr. Samuel Walsh gave evidence that the Gourants located a site at Saint-Fargeau which might be suitable for housing development, but this purchase ultimately did not go ahead. Neither Dominique Gourant or Virgil Gourant were called to give evidence.

17. **Event Horizon Ltd.:** This was the principal company used by Mervyn Walsh for his business ventures. It was principally a

construction company which built houses under licence from the other property holding companies (such as Sherside and Largreen) owned and controlled by Mr. Mervyn Walsh.

18. **Harside Ltd.:** This was another property holding company owned and controlled by Mr. Mervyn Walsh. It was used to acquire the lands at Ballyhogue which were in the effective ownership of Mr. Denis Kinsella.

19. **Hillcrest Ltd.:** This was a company of which Mervyn Walsh and Dorcas Walsh were the directors. It obtained outline planning permission for the development of 40 residential units at Kilmuckridge, Gorey, Co. Wexford in 2004, but full permission was never obtained and these units were never built.

20. **Michel Jonchere:** A French accountant who acted on behalf of George Walsh in the acquisition of Chateau Meillard. His firm is called Audit Pays de Loire. M. Jonchere was not called as a witness.

21. **Paul Kelly:** One of five investors in Event Horizon who claim to have lost considerable sums of money on their investment. They had put up mezzanine finance for the Kilminchy development.

22. **Denis Kinsella:** Mr. Kinsella was the original purchaser of the site at Ballyhogue, Co. Wexford on which he intended to complete the development of 12 houses. The site was later sold to Harside Ltd. in 2004. Mr. Kinsella was not called as a witness.

23. **Largreen Ltd.:** Largreen was a company controlled by Mervyn Walsh which owned the Kilminchy site and which licensed Event Horizon to construct houses on that site.

24. **O'Hare, O'Connor, Walshe:** O'Hare, O'Connor, Walshe are an eminent firm of solicitors based in Foley St., Dublin 1. They were retained by Mr. Bergin in October/November 2006 to prepare documents designed to regularise the relationship between him and the Walsh family and members thereof.

25. **Anthony O'Gorman:** Mr. O'Gorman is the Wexford-based solicitor who acts for George and Samuel Walsh in these proceedings. Mr. O'Gorman gave evidence in relation to the €46,000 bank draft used as a deposit to acquire certain lands from Norths, auctioneers.

26. **Conor O'Sullivan:** Mr. Conor O'Sullivan was an architect who was friendly with Mr. Bergin. Mr. Bergin arranged for Mr. O'Sullivan to do work on several projects associated with members of the Walsh family, including Kilminchy and the Wells estate. Mr. O'Sullivan did not give evidence.

27. **Leonard O'Sullivan:** Mr. Leonard O'Sullivan was a friend of Mr. Bergin who specialised in gold and other rare metals. He was introduced to Mr. Mervyn Walsh by Mr. Bergin and he travelled to Kenya and Tanzania in late 2003 in connection with the prospective sale of gold bullion, but the sale ultimately fell through. Mr. O'Sullivan did not give evidence.

28. **Dr. David Marrani:** Dr. Marrani has degrees in both French and English law. He was formerly a lecturer in law at both UCD and the University of Essex. He is now a consultant in French law and business and was retained by Mr. Bergin to assist the Walshs in their French business dealings. He was also retained by George Walsh to assist in the financing of 21 Blvd. Foch in Angers.

29. **Mary McCarthy:** Ms. McCarthy was the business manager attached to the Bank of Ireland in Waterford.

30. **Mr. McEniry:** Mr. McEniry was a practising solicitor up to April 2010. He was a mutual friend of both Mr. Bergin and Mr. Walsh. Mr. Bergin maintains that Mr. McEniry had organised a conference call/settlement meeting in December 2009 involving some or all of the three Walsh defendants. This is denied by all of the defendants.

31. **Andrew McLoughlin:** Mr. McLoughlin worked as a book keeper who originally worked as an associate in Mr. Bergin's firm in Stillorgan. He gradually began to perform bookkeeping and other ancillary functions for Event Horizon. Mr. McLoughlin was not called to give evidence.

32. **Maurice Mason:** Mr. Mason is a mortgage broker who met Samuel Walsh and Cecil Walsh in early 2003 in a bid to raise finance for the property at Ballynahoun. He was later involved in efforts to raise monies for other projects such as Clonhassen and the Moyne site in Enniscorthy.

33. **Donna Moore:** Ms. Moore was a secretary and personal assistant to Mr. Bergin at his offices in the Village Craft Centre, Cornelscourt, Dublin 18. Ms. Moore was not called as a witness.

34. **Jacob Mucheke:** Mr. Mucheke was a security guard who worked for Event Horizon Ltd. in 2007. He was assigned by Mervyn Walsh to guard Mr. Bergin's house in November for a two week period after a major break-in.

35. **Paraic Muldowney:** Mr. Muldowney is a mortgage broker and principal in Muldowney Financial Services Ltd. who was involved in the raising of finance in respect of both the Moyne and Kilminchy sites.

36. **Dr. Sam Naser:** Dr. Naser is a general practitioner based in Dublin. He is also an investor who bought a house in the Westbury Woods development at Enniscorthy. Co. Wexford. He also introduced both Mr. Bergin and Mr. Mervyn Walsh to a number of Jordanian business contacts. Mr. Bergin and Mr. Mervyn Walsh both travelled to Jordan for this purpose in June 2009, but nothing came of it. Dr. Naser was not called as a witness.

37. **Sandra Savona:** Mme. Savona was a banker attached to the Swiss private bank, BSI, which was based in Monaco. Mme. Savona was the contact point for Mr. Bergin in relation to his endeavours to secure residency status in Monaco for Mervyn Walsh and (perhaps) George Walsh and Samuel Walsh. Mme. Savona was not called as a witness.

38. **Dan Shevet:** Mr. Shevet was a Danish lawyer based in Paris who advised George and Samuel Walsh regarding aspects of tax structure and the financing of the French property acquisitions. Mr. Shevet was not called as a witness.

39. **Sherside Ltd.:** Sherside was a construction company owned by Mr. Mervyn Walsh. It acquired lands at Clonhasson, Enniscorthy and Westbury Woods, Greenville Lane, Moyne, Enniscorthy for the purposes of housing development.

40. **Jean-Michel Urbani:** Me. Urbani is a tax lawyer based in Nice who, according to the evidence led by Mr. Bergin, arrived at a settlement with the French Revenue Authorities of the Walshs' outstanding tax liabilities in that country. Me. Urbani did not give

evidence.

41. **George Walsh:** Mr. George Walsh is the first defendant in these proceedings. He graduated with a postgraduate degree in exploration geography and worked for many years in the oil exploration business. He and his brother Samuel were jointly represented by the same solicitor and counsel. His principal involvement in the case relates to his purchase of three major properties in France in 2006/2007 at St. Fargeau, Angers and Chateau Meillard. The projected sale of St. Fargeau did not close and the deposit was ultimately returned in 2010. He is the current owner along with his brother Samuel of the Chateau Meillard estate.

42. **Mervyn Walsh:** Mr. Walsh is the third defendant and he represented himself at all stages during the hearing. He was a close friend of Mr. Bergin for the period from about 2003-2009. Mr. Walsh claimed that Mr. Bergin was not simply his financial adviser but that he was also a 50/50 partner in Mr. Walsh's business activities.

43. **Michael Walshe:** Mr. Walshe is a principal attached to O'Hare, O'Connor, Walshe. He was the solicitor who liaised with Mr. Bergin regarding the drafting of the November 2006 agreement.

44. **Samuel Walsh:** Mr. Walsh is the second defendant in these proceedings. It was the proposed sale of his lands at auction in September 2003 which led Mr. Bergin to his business ventures with members of the Walsh family. Mr. Walsh spent much of the period between 2004 and 2006 in Kenya. He currently lives in France and in Ireland where he is the joint-owner with his brother George of a major estate, Chateau Meillard.

45. **Violet Walsh:** Ms. Walsh is a sister of the three defendants who gave evidence in relation to the service of the proceedings on the defendants at a Ballsbridge address.

Part III: The conduct of the litigation

46. The present proceedings commenced by way of summary summons dated 10th November 2009 by which the plaintiff claimed sums in the order of €3.65m. from the three defendants. The plaintiff originally obtained a default judgment for this amount on the 15th February 2010. The defendants then moved by notice of motion dated 23rd March 2010 to have the judgment set aside. I will return presently to the circumstances in which that judgment was obtained, but it suffices to say that on 17th February 2011 this Court (Hedigan J.) set aside that order and directed that the matter stand adjourned to plenary hearing.

47. The matter ultimately came on for hearing before this Court in May 2013. It should be noted that the proceedings were first assigned to me for hearing by the President of the Court as a routine matter on Wednesday 29th May 2013 after another case had been resolved in the course of that morning. I was informed at the outset that the estimated time for hearing was between five to eight days. This estimate turned out to be woefully inadequate, as the case ultimately occupied some 64 hearing days and concluded in June 2014.

48. It was disappointing that modern case management methods were not availed of in advance of the hearing of this hugely complex action. No witness statements had been prepared in advance and nor was any agreed statement of facts. The very fact that the case was assigned mid-week out of the non-jury list (with the result that the assigned judge had no opportunity at all to pre-read the extensive discovery and other voluminous documentation) suggested that the case was a routine one. The case was very far from that. As I have just indicated, it was an enormously complex action which required and demanded extensive case management from a specially assigned judge who had no other immediate responsibilities and who was in a position – as due to prior scheduling commitments, I was not – to give exclusive attention to this case. Any judge assigned to hear the case would have benefited from the opportunity of advance reading of the extensive documentation associated with this litigation.

49. All of these difficulties were compounded by the difficulties involved in the scheduling of the parties and their respective witnesses. It proved impossible at times for the action to run in a smooth and flowing fashion. While the legal teams did their very best, the hearing was interrupted by vacations, other professional commitments, illness and the unavailability of witnesses. Several offers which were made by the court to arrange for the continuation of the hearing during vacation were not taken up: there was always one excuse or another. At one point the court was obliged to vacate several hearing dates in September, October, November 2013 and January 2014 in order to accommodate the parties and their witnesses.

50. It should also be noted that, presumably for reasons of costs, no transcript of this colossally complex hearing is available to the court and the third defendant was not professionally represented. This meant that I was first obliged to recreate from my own notes a summary of this hugely intricate evidence. I then circulated a summary of that evidence for the parties and invited their comments. This was done in early December 2014 and there was a subsequent short hearing where the parties addressed me on this summary of the facts.

51. While none of this assisted the smooth functioning of the administration of justice, it is nonetheless only fair to record, however, that all of the parties made excellent closing submissions in writing. Specifically, a time line and summary of the discovery documentation prepared by the plaintiff's solicitors proved to be enormously helpful and valuable.

52. Two further matters call for comment at this juncture. First, while the trial was a lengthy one, there were, in fact, several potential witnesses who did not give evidence and whose testimony, one imagines, would have been of considerable assistance to this court. These include Mme. Sandra Savona, Mr. Dan Shevet, M. Aleksander Cvoric, Dr. Sam Naser, Mr. Andrew McLoughlin, Ms. Donna Moore, Me. Jean-Michel Urbani, Mme Marie France and Me. Pierre Bihan. The only fair assumption which I can make is that in some cases these witnesses were either unwilling to travel to Ireland or the parties were dissuaded from calling them for reasons of cost. In at least one case, however - namely, Ms. Donna Moore - an adverse inference can be drawn against the plaintiff by reason of the failure to call this witness.

53. Second, as if these difficulties were not enough, Mr. Mervyn Walsh produced evidence of very significant payments made by cheques (or, in a few instances, bank drafts) drawn on the accounts of companies controlled by him (Event Horizon, Largreen and Sherside) in the period between 2005 and 2008. The total sum came to over €1.4m.

54. These payments were the subject of acute controversy during the course of the hearing. Broadly speaking, Mr. Bergin contended that the sums were made by way of either repayment of legitimate expenses and outlay, the repayment of sums paid to third parties and the repayment of investments and loans made to these companies. For his part, Mr. Mervyn Walsh stated that a significant element of these payments – admittedly not all – was for the purposes of remuneration. A significant difficulty for the Court, however, is that there was almost no documentary invoice to explain the nature of the payments. Nor was there any specialist forensic accountancy evidence which could assist in the tracing and the accounting for this evidence.

55. It is against this background that we can proceed to examine the evidence.

Part IV: The evidence of the witnesses

56. I will now endeavour to summarise the evidence given by the 18 witnesses in the course of the hearing.

Pascal Bergin

57. Mr. Pascal Bergin gave evidence for 18 days and it is obviously not possible to compress the entirety of that evidence into this judgment. The following, however, may be provided as a summary of what he had to say.

58. Mr. Bergin said that he was a qualified accountant and had spent the last 25 years specialising in what he described as a form of "company doctor". In other words, he specialised in turnaround strategies for distressed companies and thereby restoring them to sound financial health. At the time he first encountered the Walshs he had a considerable reputation in that regard.

59. He first met the Walshs at some stage towards the end of August, 2003. To this end he had been approached by a friend to see whether or not he could assist a family that was in financial difficulty. The Bank of Scotland (Ireland) were about to take steps to sell some 55 acres of land (and a derelict cottage) which was in the possession of the Walsh family at Ballynahown, Kilmuckridge, Co. Wexford. Mr. Bergin knew the Chief Executive Officer of Bank of Scotland (Ireland) and he felt that he might be able to intervene to negotiate a deal with the Bank. He first met the third defendant, Mervyn Walsh, on the day of the auction, Tuesday 23rd September 2003. Mr. Mervyn Walsh was just back from Africa and they met outside the Radisson Hotel in Dublin and then drove down to the auction that afternoon in Gorey, Co. Wexford.

60. At Mr. Bergin's suggestion, Mr. Mervyn Walsh put in a bid of €1m., but since this could not be honoured, the auction was cancelled. Mr. Bergin then set to work with the Bank and he arranged that the Bank effectively sold the debt for the sum of €450,000. The total debt was in the order of €700,000, although this figure was disputed by Samuel Walsh. To this end he put in a bid on the 25th September 2003 through Norths Auctioneers and he bought the land on behalf of the Walshs.

61. Mr. Bergin said that he had put up the deposit of €46,000 himself and he produced a receipt for this sum from Norths which was dated 2nd October 2003. The receipt stated that the sum had been received from Pascal Bergin.

62. This was disputed in evidence by Samuel Walsh and the Walsh's family solicitor, Anthony O'Gorman. They maintained that Mr. Samuel Walsh had put up the money for what was his farm (and not the family farm) and that a cheque for this sum issued from Mr. O'Gorman's office. So far as these witnesses were concerned, Mr. Bergin was purchasing the property in trust using money which had been advanced by Mr. Samuel Walsh.

63. Once one of the family farms had been saved, it was necessary to consider how a cash flow could be created for the family. This involved sorting out the tax affairs of the Walshs and arranging for planning permission in respect of certain lands at Ballyhogue. In essence, the plan was to get planning permission on Walsh family lands in order to generate income. Critically, Mr. Bergin said that Mervyn was effectively the spokesman for all the Walsh family and at all material times represented their interests.

64. In addition to Ballyhogue, a number of other projects were being considered. One of these plans involved the transfer of gold bullion which was held in a bonded warehouse in Nairobi in Kenya. Both Mervyn and George Walsh had extensive business interests in Kenya and they were convinced that significant sums could be realised if this bullion could be transferred from Kenya to Switzerland. Mr. Bergin was aware that a friend of his, Leonard O'Sullivan, had considerable expertise in these matters. Mr. Bergin drove to Kerry to meet Mr. O'Sullivan and he introduced him to other members of the Walsh family.

65. Mr. Bergin and Mr. O'Sullivan subsequently travelled to Switzerland with a view to having the gold assayed. The project ultimately did not proceed further, principally because it seems that a satisfactory certificate of origin was not forthcoming.

66. By this stage Mr. Bergin had formed a friendship with the members of the Walsh family. Mr. Bergin said he sometimes visited in the family home at Ballyvadden. Two sisters of the defendants, Ms. Violet Walsh and Ms. Dorcas Walsh had a house in Lansdowne Village in Ballsbridge, Dublin 4 and Mr. Bergin said that he and other members of the Walsh family often met there.

67. Mr. Bergin said that he had visited Ballyvadden House on perhaps 3 to 5 occasions and thereafter he met the Walshs in hotels and other public places. He rejected a suggestion made by Mervyn Walsh in cross-examination to the effect that they had always met thereafter in hotels. Mr. Bergin stated that there had been some business meeting held in Ballyvadden, something which all three defendants later denied.

68. A frequent theme which emerged from Mr. Bergin's evidence was that he had become, in effect, a family confidant and that Mr. Mervyn Walsh had been nominated by the wider Walsh family to represent their interests. Mr. Bergin stated that the wider Walsh family were all fully aware of the various business interests and the difficulties which they encountered. This, it must be stated, was emphatically denied by all three defendants, both in cross-examination of Mr. Bergin and in their own evidence.

69. By November, 2003 Mr. Bergin said that he had raised the money to buy the lands back and to discharge the debts to Bank of Scotland (Ireland), the money in question being raised by ACC Bank.

70. Having done this, the next step was to formulate a business plan and use the family assets with a view towards raising money for cash flow purposes. For this purpose he spoke to various bankers in Carlow and Kilkenny. He discussed the costings with various architects and other professionals. The Walsh family were still in difficult financial circumstances in December, 2003 and at the request of George Walsh and Mervyn Walsh, Mr. Bergin advanced them €3,000 by means of two cheques for that Christmas 2003. Samuel and George Walsh denied that they had received such monies or that they were the beneficiaries of this largesse. Mr. Mervyn Walsh admitted receiving a smaller sum of €750 which he said he had later repaid to Mr. Bergin.

71. In January, 2004 Mr. Bergin introduced the Walshs to a client of his, Mr. Denis Kinsella. Mr. Kinsella had certain property nearby at Ballyhogue, Co. Wexford, but he did not have the wherewithal to complete a housing development for which he had obtained planning permission. Mr. Bergin arranged for a joint venture which involved the completion of the houses with five members of the Walsh family coming on site. Ms. Violet Walsh and Ms. Dorcas Walsh did the interior designing. Mr. Bergin said he had arranged finance for the site from the Tramore Credit Union in the sum of €120,000 and that sum was given to Mr. Kinsella in order to pay for the site. Mr. Bergin said that he had borrowed the money in his own name and he denied a suggestion put in cross-examination by Mr. Mervyn Walsh to the effect that Mr. Kinsella had borrowed the money and that he (Mr. Bergin) had guaranteed it.

72. Mr. Bergin stated instead that he had used his own credibility and standing to obtain the €120,000 loan from Tramore Credit

Union. These monies were used to pay off a Mr. Rossiter who owned the original site. Mr. Bergin stated that only €20,000 of this mortgage had been repaid by the Walshs and that he had been left to service the balance. Another €20,000 had been repaid by Mr. Kinsella in September 2007 when the Credit Union were putting him under pressure. Mr. Bergin said that an arrangement to this effect had been reached at a public house known as Black Toms, Tinahely, Co. Wicklow which was owned by Mr. Kinsella.

73. After that, the Walshs got involved in the development of twelve further houses and it was agreed that Mr. Bergin would receive a fee of €500,000 for this work. Critically, however, Mr. Bergin said that the Walshs later came back to them to say that they had other accrued debts from the earlier foot and mouth crisis and, on the strength of that, it was agreed – or so Mr. Bergin contended – that he would not insist on the €500,000 payment. He insisted that there had been a new agreement that he would receive a sum of €1m. out of the next deal. Between March 2004 to late 2005 twelve dormer bungalows were sold at the Ballyhogue site.

74. The next site was at Grenville in Enniscorthy, Co. Wexford, which was known as the Moyne. That site came on the market in September 2004 and following negotiations with the vendor Mr. Bergin said that he had negotiated the price down to €3m. This was a big site with full planning permission for 90 units. The Walshs arranged for a corporate vehicle, Sherside Ltd., to acquire the site. The development itself was known as Westbury Woods.

75. Mr. Bergin stated that he had acquired No. 9 Westbury Woods as an investor which had been selected for him. When he inspected it, he saw that it needed a conservatory which was then installed. The property is presently being rented. All three defendants rejected the suggestion that either they or one of their companies had agreed to take over the mortgage in respect of the property.

76. While Mr. Bergin readily acknowledged that he had had nothing to do with the construction work which later took place on the site, he nonetheless organised the finance and approved of the appropriate tax structure. He saw it to that the conveyances were handled by Kieran O'Connor. He made applications for finance to the major financial institutions and ultimately secured funding through Bank of Ireland. This finance arrangement was on more favourable terms than that which had been originally negotiated with Anglo Irish Bank.

77. A standing order of some €2,000 in favour of Bergin & Co. (Mr. Bergin's accountancy firm) was put in place from 28th March 2004. This, however, was to reflect tax and audit work and did not encompass Mr. Bergin's management consultancy work which was entirely different. This arrangement continued until November 2006 when this monthly payment was intended to represent the rental of premises by Event Horizon at Mr. Bergin's suite of offices in Stillorgan, Dublin 4.

78. A further site at Clonhassen outside of Enniscorthy was also acquired at this time. On this occasion the Walshs did not wish to deal with the vendor directly, so Mr. Bergin purchased it himself in trust for €1.05m. following a family discussion at Ballyvadden House. This site was also financed by Bank of Ireland. Mr. Bergin contended that he had agreed a fee of 3% of total site value in respect of the Moyne and Clonhassen sites.

79. Mr. Bergin next turned to the situation in France. He said that the Walshs had previously leased a farm in France for the purposes of the export of animals from Wexford, but that the entire business model was devastated by the outbreak of the foot and mouth crisis in 2001. This posed a long term problem for the Walshs, because he said that they owed taxes to the French tax authorities which, it seems, rendered them liable to arrest and detention in France. (This was later emphatically denied by all three defendants.)

80. In an effort to solve that problem, Mr. Bergin arranged for a French tax consultant, Me. Jean-Michel Urbani, to deal with this. Dr. Marrani had put him in touch with Me. Urbani. Me. Urbani discovered that while there was, in fact, a form of warrant for the arrest of the Walshs outstanding, many of the French taxes were now statute-barred. This meant that, following some discreet approaches, Me. Urbani in any event, did a deal with the French tax authorities which meant that George, Samuel and Mervyn Walsh were now free to return to France. Mr. Bergin contended that he had spent between three to four days dealing with the problem, claiming payment for some 67 billable hours.

81. Mr. Bergin further stated that Me. Urbani had met with Mervyn Walsh (and, possibly, George and Samuel Walsh, as well) in Nice to assure them that the matter was under control. Me. Urbani sorted the matter out in a matter of weeks. Mervyn Walsh was later to deny that he ever met Me. Urbani. He did acknowledge, however, that he had met Dr. Marrani in Nice, but that this was simply in the context of the possible acquisition of a property in the south of France.

82. George and Samuel Walsh also denied that they had any tax issues in France

83. The Walshs were, in any event, anxious to acquire a new property in France and they were also keen to acquire tax residency status in Monaco. Mr. Bergin had contacts in the Principality and over the years he had assisted a limited number of wealthy Irish nationals to acquire such tax residency status. To this end he travelled with Mervyn to Milan in August 2006. They then made the journey overland to Monaco and later to Nice. In Monaco they met with representatives of BSI SAM, a Swiss bank based in the Principality, with a view to laying the ground work for such residency status. The BSI representative with which they had the most dealings was Mme. Sandra Savona.

84. BSI was well connected within the Principality, so that a recommendation from that Bank counted for a good deal so far as tax residency was required. While they were present, Mme. Savona advised that Samuel Walsh would have to travel personally to Monaco before she could open an account. Mme. Savona inquired of Mr. Bergin regarding the accreditation and she advised that Mervyn Walsh could only open an account if a sum of €1m. was deposited. According to Mr. Bergin (but denied by Mr. Mervyn Walsh) that Mr. Bergin would be entitled to charge a residency fee of €250,000.

85. According to Mr. Bergin the reason they travelled to Milan was because the Walshs did not dare enter France through conventional routes due to the French tax issues which were still besetting the Walshs. Mr. Mervyn Walsh (and, indeed, the other defendants) was later to deny this and say that the reason they travelled to Milan was because they could not get a flight directly to Nice.

86. While they were in Monaco Mr. Bergin received a telephone call from a Mr. Andrew Healy, an estate agent based in Lucan. He indicated that a major site, Kilminchy, in Portlaoise was now available. They then travelled quickly back to Ireland. Mr. Bergin met with Mr. Healy and Mr. Bernard McNamara, the well known developer, the latter being the effective vendor of the site.

87. Mr. Bergin then met with the Walshs in Portlaoise where they walked the site. It was situated close to a well known hotel, the Killeslin Hotel. It was in many ways a perfect site which was close to the main road and which had easy access to the motorway. It was agreed that the Walshs should purchase this site through a separate corporate vehicle, Largreen Ltd., which would then grant a

builder's licence to Event Horizon to construct the houses. The sale was finally closed in early 2007 as Mr. Bergin had encountered difficulties in securing funding for the site. Mervyn Walsh and Dorcas Walsh executed the deeds of conveyance qua directors of Largreen and the purchase price was some €9.75m with monies borrowed for this purpose from Bank of Ireland.

88. The closing of the purchase was not without its difficulties. There were delays in closing which resulted in Largreen being sued by the vendors. But even when these difficulties were surmounted, issues arose in relation to finance. Mr. Bergin maintained that the letter of offer from Anglo Irish Bank Corporation was very expensive. He knew the head of business lending at Bank of Ireland Waterford Branch, Ms. Mary McCarthy. He was also aware that Bank of Ireland were anxious to increase its share of property lending and, using these contacts, Mr. Bergin stated that he had obtained a better offer from Bank of Ireland in respect of all the Walsh sites: Portlaoise, Moyne and Clonhassen. He rejected the contention advanced by Mervyn Walsh that a mortgage broker retained by them, Paraic Muldowney, had negotiated this finance package.

89. Mr. Bergin said that he negotiated the arrangements for social housing under Part V of the Planning and Development Act 2000 with Laois County Council in respect of the Kilminchy site. He arranged for the architect, Conor O'Sullivan, to submit plans to the Council with a view to securing planning permission. He further arranged for Liam Grainger of Com.Net to set up an accounting system.

90. Mr. Bergin said that another employee in his office, Andrew McLoughlin, supervised the making of events by Event Horizon in respect of the Kilminchy site. These payments were reconciled every month for management and revenue purposes and Mr. Bergin said that he personally supervised such payments on a monthly basis.

91. Mr. Bergin acknowledged that he was in receipt of a weekly income from Event Horizon Ltd. by reason of his capacity as a consultant. He stressed that he was not employed by Event Horizon, but he requested nonetheless that PAYE be paid on this income. It was perfectly possible that self employed income could be made subject to PAYE in this fashion and he insisted that Mr. Mervyn Walsh was fully aware of this.

92. Mr. Bergin stated that he had previously obtained a judgment in the sum of €1.3m against Event Horizon Ltd. in respect of working capital which he had previously advanced to that company.

The November 2006 settlement

93. Mr. Bergin claimed that after constant pressure on his part he ultimately reached an agreement with the Walshs to effect payment. To that end, he arranged with Mr. Michael Walsh of the solicitors O'Hare, O'Connor, Walshe for a draft agreement which might serve as a template. Mr. Bergin said that he ultimately reached an agreement with Mervyn Walsh on behalf of the entire Walsh family at a meeting at a hotel in Stillorgan on 10th November 2006. He acknowledged that the draft served as a template and, having discussed it with Mervyn Walsh, the final version of the agreement was typed up in his office. It was Mervyn and himself who in effect put the document together.

94. Some amendments to the draft agreement were made in pen at the actual lunchtime meeting with Mervyn Walsh in the Montrose Hotel. Mr. Bergin said that the signature of Mervyn Walsh was witnessed by his secretary, Donna Moore, who he asked to come down from the nearby offices to the Montrose Hotel in Stillorgan for this purpose. Mr. Bergin acknowledged that he does not have the original of that document. Mr. Bergin said that in his view there was no need to contact either George Walsh or Samuel Walsh as he understood that Mervyn Walsh had authority to bind them. Nor were any of his sisters or his mother party to this discussion because, as Mr. Bergin put it, Mr. Mervyn Walsh had said that he did not want "any of the women involved."

95. Mr. Bergin acknowledged that Mervyn Walsh had signed a cheque on 7th November 2006 in favour of O'Hare O'Connor Walshe in the sum of €34,388. But this sum had nothing to do with work on the draft agreement. This was rather a sum which Mr. Bergin owed to O'Hare, O'Connor, Walshe in respect of the potential acquisition of a site in Mitchelstown owned by a company known as Dornway Ltd., on which development never went ahead.

96. Mr. Mervyn Walsh maintained that he had never executed a document of this nature and that it was procured by fraud on the part of Mr. Bergin. Both George Walsh and Samuel Walsh stated that they never saw the agreement and that Mervyn had never been given authority to bind them. They also maintained that the document was fraudulent.

The proposed acquisition of French properties

97. Following the acquisition of the Kilminchy site, attention turned again to the acquisition of properties in France. Three sites were under consideration during this period:

Avenue Foch, Angers: This was a property in the centre of Angers which George Walsh intended to re-develop as a hotel, as there was a shortage of hotel accommodation in the town.

Saint-Fargeau: George Walsh and Samuel Walsh paid a deposit on a green field site subject to obtaining planning permission for about 100 dormer-style houses. Angers is a small town in the Burgundy region south of Paris. It was intended that these houses might prove attractive as second homes for Parisians. Without these houses, the scheme would not be profitable.

Chateau Meillard: This was a very substantial property based near Meillard which is located in the Auvergne in central France. The property itself was situate on about 1,000 acres and was the largest Charolais farm in France. It had about 600 cattle, along with a swimming pool, croquet lawns, a model farm and a house for the farm manager.

98. Mr. Bergin stated that he had been actively involved in the acquisition of these properties from February 2007 onwards, having contacted several estate agents for this purpose. Mr. Bergin acknowledged that he had never sourced these properties, the property at Angers excepted. He had instead looked at all title issues and the valuations. He also advised on the major farming and agricultural issues arising from the Chateau Meillard acquisition.

99. He said that during this period he had inspected these premises on a number of occasions and had walked the Chateau Meillard lands in the company of the Walshs. This, he said, happened on one Thursday or Friday afternoon when the party arrived by car to inspect the property and George Walsh had done most of the driving.

100. This was denied by the Walshs, who said that he had merely shown him the property briefly one Sunday morning as they drove through it during a drive from Nice to Paris, with an overnight stopover at Vichy. All three defendants maintained that Mr. Bergin had been recovering from an overnight drinking session with Mervyn and that, as a result, he declined the offer to inspect the property. Mr. Bergin stoutly denied this suggestion, saying that he had been a *de facto* teetotaler virtually all his adult life.

101. Mr. Bergin said that he had also walked the site at Saint Fargeau and met the owner. He said that he was deeply involved in the structuring of the deal. Mr. Bergin acknowledged that the Walshs had themselves found this property and Mr. Samuel Walsh later said that he had personally seen an advertisement for the property in the *Farmer's Weekly*, a UK trade journal.

102. Mr. Bergin said that nothing of any substance happened at St. Fargeau without reference to him. He advised on the establishment of a special purpose vehicle and gave general taxation advice. He contended that he was present at all the meetings involving the architect, Mr. Aleksander Cvoric, and that he had had long discussions with Mr. Cvoric regarding the design and the plans. He contended that he had copies in colour of the various plans.

103. While Mr. Bergin acknowledged that the property had been actually found by the Walshs, he still claimed an entitlement to 3% based on the work he put in and the general advices which he tendered to the Walsh family. He had been advised by Dan Shevet that outline planning permission had been obtained. Mr. Bergin seemed unaware, however, that the St. Fargeau development had not gone ahead by reason of the difficulties with planning permission or that the deposit had been returned in August 2009. Mr. Bergin explained that this development had post-dated his break with the Walshs, so that he was no longer aware of these developments.

104. Mr. Bergin also said that he had personally sourced the property at Angers. He had also engaged the requisite French professionals in areas such as finance, planning, acquisition etc. Mr. Bergin claimed that by virtue of the 2006 agreement he was entitled to a 3% commission payment in respect of the value of the three French properties. He placed a value of €10m. for Chateau Meillard and €4m. for Angers.

105. In conjunction with all of this Mr. Bergin sought to raise finance for these ventures. In this regard Mr. Bergin had many contacts with Mme. Sandra Savona of BSI with a view to raising finance for these projects. Mr. Bergin rejected the argument advanced by Mr. Mervyn Walsh to the effect that the pair intended to establish an Irish property company which would purchase en bloc the houses and apartments which were constructed by Event Horizon or that it was envisaged that the surplus profits would be transferred to Monaco where both would reside.

106. Mr. Bergin said that a mortgage for Blvd. Foch in Angers was ultimately sourced through Mme. Marie France of CAPFI based in Nice with assistance from himself and Dr. Maranni. He accepted that Dr. Maranni had been paid fees in respect of the sourcing of the mortgage, but he said that the payment to Dr. Maranni did not include fees payable to him.

107. The Walshs were undoubtedly anxious to become resident in Monaco. For this purpose it was necessary for them to become accredited by a person of good standing for the purposes of both the Bank and the Principality. The fee for this introduction is a sum in the order of €250,000, a figure which Mr. Bergin described as "petty cash" for anyone who was seriously contemplating residency in Monaco. Mr. Bergin said that he had previously obtained residency for three Irish citizens. The fee was not specified anywhere, but was rather in the nature of a rule of practice and this figure represented the sum which he was expected to charge. Mr. Bergin said that he had organised an interview for the Walshs with the Monegasque police and this entire procedure involved a lot of background checks and documentation.

108. Mr. Bergin also used his BSI contacts to arrange for an apartment to be found for the Walshs in Monaco. He arranged for furniture to be purchased in nearby Nice and transported down to the Monaco. In the end, only Mervyn Walsh obtained residency in the Principality. Mr. Bergin rejected the suggestion that he wished to become tax resident in Monaco, saying that he had already ample prior opportunity to do so had this been his wish.

109. Mr. Bergin also approached Mme. Savona with regard to raising funds in respect of the Portlaoise project. BSI were not interested because the Walshs were not resident in Monaco. Mr. Bergin acknowledged that he sent an email on 10th September 2007 to Ms. Savona where he put a new proposal which would have involved the incorporation of a company by Mervyn Walsh and himself, albeit, perhaps, not on a 50-50 basis. In that email he envisaged that the company would purchase the houses and apartments at the Kilminchy site, with the proceeds being transferred ultimately to Monaco. In the end that project came to nothing, as BSI was not interested.

110. Mr. Bergin also had extensive dealings with a M. Guillaume Brachet of Branado, a Monegasque firm of accountants and tax advisers specialising in Monegasque and French tax issues. They explored various structures to explore the purchase of these properties. A French lawyer with a Danish background, Dan Shevet, looked after the conveyance of the three properties and Mr. Bergin and the Walshs had frequent dealings with him during the course of 2007/2008.

111. There seems little doubt but that Mr. Shevet and Mr. Bergin got on well. There was undoubtedly a good deal of email traffic and correspondence between these two men from mid-2007. Mr. Bergin pointed to this to illustrate this contention that he was centrally involved in the acquisition of the properties. He rejected the argument which was equally forcefully advanced by the Walshs that he was simply the courier of this email traffic because the Walshs were not accustomed to using email.

112. By this stage there were difficulties in securing finance and these purchases and the Kilminchy acquisition took up a great deal of his time throughout 2007. Mr. Bergin stated that he travelled to Luxembourg on a number of occasions in the summer and autumn of 2007 in an effort to raise finance for the Walshs. On at least one of these occasions he was accompanied by George and Samuel Walsh. One such trip was to meet representatives from Dexia Bank, but this trip ultimately proved fruitless.

113. Mr. Bergin said that in July 2007 the three defendants had travelled to Luxembourg along with Dan Shevet in order to meet the head of Danske Bank with a view to raising funds for the Kilminchy project. He understood that at that meeting Mr. George Walsh sought to raise funds for the St. Fargeau project. All of these efforts were unavailing.

114. Mr. Bergin also stated that he had sought to raise finance with a Dr. Hesse, a German financier based in Hamburg. Mr. Bergin said that he had prepared all the documents necessary with a view to raising this money via this source, but the matter was ultimately unavailing. Dr. Hesse's role was to open doors with various continental banks and finance houses.

115. The acquisition of Chateau Meillard proved to be especially challenging and it proved difficult to keep track of everything. One of the many troubling issues was the actual identity of the purchasers of Meillard was proving to be troublesome. The tax and general accountancy structure could not be put in place until this was clarified. A great deal of time and effort was devoted to exploring whether off-the-shelf Danish companies could be used to take advantage of special feature of a Danish/French tax agreement before that agreement was due to end. In the end the sale closed in April 2008 following the purchase of the property by George Walsh and Samuel Walsh in their own names.

116. Mr. Bergin rejected the suggestion that either Pierre Bihan or APL were deeply involved in the tax structuring of these

arrangements. As with St. Fargeau nothing was done by either George Walsh or Samuel Walsh without reference to him.

The Wells property, Co. Wexford

117. In 2007 the Wells Estate came on the market. This site comprised a fine country house dating from the 17th century and 140 acres, but its main advantage was that it was adjacent to the Walsh family home in Ballyvadden, Co. Wexford. The Walshs had plans to acquire the property and re-develop it as a sports complex, with Mr. Samuel Walsh as the lead investor. Mr. Bergin visited the property and secured the services of the architect, Conor O'Sullivan, who drew up plans. He met the Walshs on the estate and they walked the land. Mr. Bergin also spoke to senior personnel in Ulster Bank regarding the project, but in the end they had no interest in advancing any money to fund it. He also arranged for special purpose companies to be incorporated in contemplation of the project.

118. At one point it was suggested that the property might be used as a complex to accommodate visiting athletes in anticipation of the Olympics which were to be held in London in 2012. Mr. Bergin contacted high level personnel in the Olympic movement who were very doubtful about these prospects. In the end even though a €350,000 deposit was paid, the sale was not completed. Mr. Bergin mentioned a meeting in the summer of 2007 at Powerscourt, Co. Wicklow where he advised the family not to proceed with the purchase.

119. Mr. Bergin rejected the suggestion advanced by Mr. Mervyn Walsh that he had done little work in respect of the project. As he put it, very few accountants had the relevant experience as would facilitate the realisation of the project and he claimed to be entitled to be paid for the work he did put into the project.

The Vee Contract

120. Mr. Bergin said that he planned to build a bungalow on a four acre site in the Vee valley, Co. Waterford and that for this purpose he had agreed an overall figure with Event Horizon Ltd. for some €180,000 in a contract dated April 2007. He maintained that despite this he was nonetheless required to discharge the invoices of various suppliers which Event Horizon ultimately repaid him. He explained that the project remains uncompleted.

The fees claimed by Mr. Bergin

121. Mr. Bergin maintained that while his outlays were generally discharged, he had never been paid for his work since he was first engaged by the Walshs in the autumn of 2003. He had been given to understand by the Walshs following the completion of the Meillard transaction that he would be offered 20 in-calf heifers, along with a property in the exclusive Cap Martin region. In the end, he was bitterly disappointed to see that no such payments were made.

122. Mr. Bergin claims the following amounts based on a hourly charge-out rate.

Kilmuckridge:	Fees for management consultancy: €238,080
Advising on tax matters in France	€15,000
Advising re the acquisition of French farms	€12,000
Tax planning	€56,000
Residency in Monaco	€250,000
Saint Fargeau:	3% of acquisition price
Chateau Meillard:	3% of acquisition price
Angers:	3% of acquisition price
Moyne, Enniscorthy;	3% of acquisition price
Kilminchy:	3% of acquisition price
Tramore credit union	Repayment of €120,000 loan

123. So far as the Monaco residency was concerned, Mr. Bergin admitted that he had no documentary proof as to his fee, although he said that he sought same from the Monegasque authorities.

2009 and the sundering of the friendship

124. The banking and general economic collapse of the second part of 2008 naturally had huge implications for the property companies owned or controlled by the Walshs. Event Horizon ceased trading in December 2008 and a receiver was later appointed by the Bank of Ireland to Largreen Ltd. and Sherside Ltd. in 2009. Mr. Bergin said that he travelled to Nice in March 2009 in order to renew Mr. Mervyn Walsh's tax residency status. He and Mervyn Walsh also travelled to Amman in Jordan via Rome at the end of May 2009 in order to explore some new business possibilities. This plan had been put together by Dr. Sam Naser, but ultimately nothing came of it.

125. Mr. Bergin maintained that after the unsuccessful trip to Jordan, the Walshs essentially disappeared for the period between August 2009 to November 2009. He ascertained that they were not at Ballyvadden House and he heard at the time that all the family had gone to France. He denied a suggestion from Mr. Mervyn Walsh to the effect that Mr. Bergin had been informed of the bankruptcy proceedings involving Mr. Mervyn Walsh.

126. There then followed a series of emails between Mr. Bergin and Mr. George Walsh in August and September 2009. These emails are dealt with in detail at a later stage of this judgment. In these emails Mr. Bergin laid claim to what he described as "our agreement" and requested that Mr. George Walsh pay him, arrange for in calf-heifers to be taken to the mart and to transfer 6 hectares of land (including the ruined site at Chateau Meillard). There was one response from Mr. Walsh to that email correspondence on 21st September 2009 and it was in the following terms:

"Paschal,

"I am currently all too aware of the accumulated problems we are all under due to the credit squeeze. All business is very cautious here in France and even more so with [the] financial crisis. We are working night and day to try [to] find an answer for these problems.

We should have a result in 2-3 weeks.

George.”

127. There then followed further correspondence from Mr. Bergin at the end of September 2009 threatening litigation. Another email from this period of 22nd September 2009 gives a flavour of Mr. Bergin’s thinking at this time:

“Your email [of 21st September] is about 6 months behind time: you could have written this even a year ago. If you think having been left on my own in a hole to survive after bringing you [on] the journey you have come over the last 5 years, you are all very naïve or so you would like me to think. You obviously have not read my emails as what I needed was well within your remit and capabilities and nothing to do with [the] credit crunch. What I looked for and needed was very little in the overall scheme of things, but from your email you people don’t care about anybody except yourselves, eaten bread is soon forgotten. I think you know my capabilities at this stage, having been the only person to take you people out of the jaws of death 6 years ago. Its very easy to go back there: all you need to do is walk on the wrong toes, so chew on that.

Paschal.”

128. There is no doubt but that this exchange of emails was entirely authentic. There then followed an exchange of emails between the parties – or, at least, what purports to be a series of emails between the parties – on the 8th and 9th December 2009. This centres upon an email dated 8th December 2009 in which Mr. Bergin says that Mr. George Walsh (along with Mr. Samuel Walsh and Mr. Mervyn Walsh) consented to a judgment of €3.649m. with a stay until 31st March 2010. The three Walsh defendants dispute the authenticity of this email and maintain that it as a fabrication on the part of Mr. Bergin. I shall address the question of these emails in more detail at a later stage in the judgment.

129. Mr. Bergin stated that a meeting had been set up for 3 pm on the 10th December 2009 at the Camden Court Hotel by Timothy McEniry, solicitor. The Walshs failed to attend the meeting although they had attended Mr. McEniry’s office on the previous day. While it was accepted that Mr. McEniry had previously acted for Mr. Mervyn Walsh, George and Samuel Walsh maintained that he had never acted for either of them. Samuel Walsh said that he had agreed to accompany Mervyn Walsh to hand over books of accounts to Mr. McEniry, but not to discuss any alleged debts.

130. At that point Mr. Bergin said that by that stage he had lost faith with the Walshs. He travelled later that afternoon to the town house at No.50 Lansdowne Village. He said that he saw the three defendants who ran inside the door. Mr. Bergin said that he threw the summons at them and that it landed inside the door, saying something to the effect that they were now served. In cross-examination Mr. Bergin admitted that George Walsh was not in the country on the day in question and that he may have been mistaken.

131. The Walshs denied that they were present in the house at the time: George was in France and neither Mervyn nor Samuel were at No. 50 Lansdowne Village.

132. Mr. Bergin denied that he had fabricated the email of 8 December 2009 in order to make it look as if this email had emanated from George Walsh. He denied that this email had actually come from his own computer and he said that he would not know how to achieve the fabrication of an email in this fashion. He had no access to Mr. Walsh’s computer.

133. Mr. Bergin acknowledged that emails personal to Mr. George Walsh after October 2009 (i.e., at a time when the relationship had been sundered) were included in his discovery. These included, for example, an airplane ticket from Dublin to Paris on 25th November 2009 in the name of Mervyn Walsh which had been purchased using George Walsh’s email and an email which had been sent by George Walsh to a long lost friend from his College days. Mr. Bergin suggested that some of these emails may have been given to him from Mr. Shevet.

134. Whatever the rights and wrongs of the matter, it is fair to say that a frequent theme of Mr. Bergin’s evidence was that of betrayal. As far as he was concerned, he had an extensive business relationship with the Walshs lasting some six years. He never thought that they would let him down.

Myles Garland

135. Mr. Garland said that he was an information technology consultant with some 30 years’ experience. Data recovery was one of his specialities. He was retained to give evidence on behalf of Mr. Bergin on the question of whether the email of 9th December 2009 had been fabricated.

136. Mr. Garland explained that every personal computer has a unique internet protocol (“IP”) address. He explained that his task was to inquire whether Mr. Bergin’s personal computer had been hacked into or whether it had been otherwise tampered with. He stated that the person who had sent the email had logged on using an Eircom broadband account. He believed that the email had originated with Mr. George Walsh’s hotmail account and was then relayed through the eircom.net. He agreed, however, that whoever had Mr. George Walsh’s password could access his email account anywhere in the world and make it look as if a particular email had originated from that account.

Timothy McEnery

137. Mr. McEnery gave evidence that he had retired as a solicitor in April 2010 after 37 years in practice. He said that on 9th December 2009 he had thought he had arranged a meeting with the Walsh’s solicitors with a view to resolving the differences between them. He attended the meeting, but the Walshs did not attend.

138. Mr. Mervyn Walsh stated in response that he had not been aware of the meeting and that he was himself endeavouring to meet Mr. Bergin simply to ensure that certain books of account which were in the latter’s possession were returned to him for the purpose of other legal proceedings. Those books had, in fact, been returned by Mr. Bergin to Mr. McEnery’s office on the previous day.

Ian Skeffington

139. Mr. Skeffington said that he was a Fellow of the Institute of Chartered Surveyors. He said that having regard to the exceptional market conditions which prevailed in both 2004 and 2006, a fee of 3% in respect of the projects at Kilmuckridge, the Moyne and Kilminchy was not unreasonable having regard to the extent of Mr. Bergin’s involvement in these projects.

140. Mr. Skeffington said that during this period it was very common for arrangements of this kind to be made on a purely oral basis. It was not uncommon during this period for fee arrangements of this kind not to be reduced to writing. It was likewise understood that no commission fee of this kind would be charged if a particular project did not go ahead. He accepted, however, that he had no paperwork on which to make any of these assessments.

William Brennan

141. Mr. Brennan said that he was a legal costs accountant. He was conscious of the views which had been expressed by both Kearns P. and Kelly J. regarding the level of professional fees for accountants in matters such as examinerships. He suggested that a fee of €375 an hour was reasonable for this kind of work. Just as with Mr. Skeffington, Mr. Brennan accepted that he had no paperwork on which to make any of these assessments.

Paul Kelly

142. Mr. Kelly said that he was one of five investors who invested in Event Horizon in order to provide mezzanine finance in respect of the Kilminchy project. He said that this had been organised by Mr. Bergin and by Mr. Paraic Muldowney as an agent of Event Horizon. He accordingly entered into an agreement in October 2006 whereby he was allotted preference shares carrying a coupon of 25% in return for this investment.

143. By maturity, however, in October 2008 the Kilminchy project had ground to a halt and he received nothing on his investment of €455,000. Mr. Mervyn Walsh agreed to meet his brother, Richard, and himself at a particular public house in south Co. Dublin in December 2008/January 2009, but he found the meeting to be unsatisfactory.

144. Mr. Kelly then approached Mr. Bergin and he discovered that the latter was in a similar position. He later discovered that, contrary to his original understanding, Event Horizon merely had a licence in respect of the Kilminchy lands and that the property and contracts for the sale of the lands was actually owned by Largreen. Mr. Kelly said that he could get no further satisfaction from Mr. Mervyn Walsh who made no effort to repay the capital. He said that he had difficulties thereafter in tracing Mr. Mervyn Walsh and he and the other investors were annoyed to learn that the Walsh family had subsequently spent two weeks at a luxury hotel in Monaco in December 2009.

145. Cross-examined by Mr. Finan, counsel for George and Samuel Walsh, Mr. Kelly acknowledged that Mr. Bergin must have known about the structure of the Kilminchy project, yet he had never told the investors of these details. He also stated that another investor had successfully sued Mr. Bergin for negligence in respect of the advices which he had previously tendered to them in respect of this project.

Mervyn Walsh

146. Mr. Walsh said that he had been educated at King's Hospital School and at Gurteen Agricultural College. He returned home to Co. Wexford to the family farm. He had started the live export of lambs to France, but this trade ended with the BSE crisis in 1996. He travelled to Africa where he worked and he then returned to Ireland.

147. At this point he had re-started the live exports to France and had leased a farm near Angers for this purpose. This business was devastated by the foot and mouth crisis in 2001 and, in any event, the lease on the farm had expired. He then moved to Kenya where he became involved in the vegetable and coffee business with his brother, William. They both sold French beans and coffee for the French export market. There was, however, some unrest in Kenya and he decided to withdraw from the business and return to Ireland.

148. He returned to Ireland in September 2003 the day before the auction. He was collected at the airport by his brother, Samuel, and they drove to the Stillorgan Park Hotel. Here he met Mr. Bergin for the first time, although they had previously spoken by telephone. At that point they drove down to Wexford to attend the auction. As they drove down, they spoke about business issues. Mr. Mervyn Walsh asked Mr. Bergin whether he had any contacts with regard to the shipment of gold bullion and Mr. Bergin mentioned that he knew a Mr. Leonard O'Sullivan who specialised in these matters.

149. When they arrived at the auction Mr. Bergin said that he had been negotiating with the Bank, but there had been no resolution. When the auction started, Mr. Mervyn Walsh put in the best bid and the auction was suspended in order to allow him to go to the bank to secure a deposit, but the banks were closed. He understood that a deal was eventually reached by Mr. Bergin whereby the property was purchased for the sum of €460,000.

150. Mr. Bergin and Mr. Mervyn Walsh then travelled to Kerry to see Mr. O'Sullivan. Mr. Walsh said that he travelled with Mr. O'Sullivan to Kenya where he met the sellers, while Mr. Bergin also travelled to Switzerland. The plan was that the gold would ultimately be transported to Switzerland, but the plan fell through because the appropriate certificate (known as a Kimberley certificate) could not be secured.

151. Mr. Walsh acknowledged that he had borrowed €700 from Mr. Bergin in December 2003, but he stated that he had repaid the sum of €1,000 in December 2007 in discharge of that debt.

152. When Mr. Mervyn Walsh returned home in the wake of this unsuccessful venture, he then discussed the alternative option of developing certain lands and securing a cash flow. He arranged to purchase a shelf company named Event Horizon Ltd. from a Liam Grainger. He was also introduced to a solicitor friend of Mr. Bergin, Mr. Kingston.

153. They then looked at the Newtown property for which outline planning permission was obtained. Mr. Maurice Mason organised finance from ACC by means of a lien on Ballyvadden. Mr. Bergin then met Mr. Kinsella and it was agreed that Harside Ltd. would purchase the site. Mr. Walsh added that there was no mention of the Credit Union being involved at any stage.

154. Mr. Walsh said that he retained 99% of the shareholding of Event Horizon Ltd. and Harside Ltd., with his sister Dorcas being the other 1% shareholder in both cases. Construction work commenced on the Ballyhogue site on 2nd August 2004. Mr. Kinsella arranged for 40/50 employees to come onto the site. His brother William acted as a de facto foreman and Dorcas arranged for the interior design of the houses. His brother George was briefly employed by Event Horizon, but he (George) was never involved in the decision-making in relation to the affairs of the company.

155. By this stage Mr. Bergin and himself were in daily contact and they effectively jointly ran the various companies (Sherside, Harside, Event Horizon etc.). They would frequently meet at hotels in Carlow or in south Dublin and Mr. Walsh said that he regarded Mr. Bergin as a quasi-partner in the business.

156. Mr. Bergin had an office in Leopardstown which he ultimately shared with Mr. Mervyn Walsh and Event Horizon. One of Mr. Bergin's associates, Mr. Andrew McLaughlin, assisted with bookkeeping and records. Mr. Walsh nevertheless rejected Mr. Bergin's contention that he was entitled to a 3% commission in respect of any of these projects. By this stage Mr. Bergin was effectively a shadow director of the various companies owned and controlled by Mervyn Walsh, so that, for example, he sanctioned a new car for Mr. McLoughlin and sanctioned pay rises for the employees.

157. At this point Mr. Walsh sought to see whether there was another site that they could purchase. Having contacted the auctioneer's firm, Sherry FitzGerald in Wexford, they directed him to a site at the Moyne, Enniscorthy, which was, in their view, ready to go. He rang Mr. Bergin with this information and the site was ultimately acquired by Sherside Ltd. for the sum of €3.2m. The Moyne sites sold very well and he maintained that by this stage Mr. Bergin had acquired the status of a virtual quasi-partner and Mr. Bergin received frequent payments from Event Horizon.

158. By the end of 2005/2006 the acquisition of another site was in contemplation when he came across the Kilminchy site in Portlaoise. This ultimately came to be known as Rinuccini and it was named after the Papal Legate to Ireland during the course of the Confederate Wars in the 1640s.

159. Mr. Walsh said that at this point he had been advised to consider relocating to Monaco. He said that he was not aware of any involvement with Dr. Marrani in this process, although he acknowledged that he did have some discussion with him regarding both French properties and residency in Monaco.

160. Mr. Walsh stated that they had to cut short this trip to Monaco in order to return to Ireland to arrange for the Kilminchy deal, with the ultimate financial package being put together by Mr. Bergin and Mr. Muldowney, Mr. Bergin having secured finance from the Bank of Ireland in Waterford. The sites opened in December 2006 and sold extremely well. Mr. Bergin was paid €94,000 in wages at the time by Event Horizon and €1m. of bank debt was repaid.

161. Mr. Walsh denied that he ever had a tax liability in France. The reason why on the first trip to Monaco in July 2006 Mr. Bergin and himself travelled through Milan was because they could not get a direct flight to Nice. In any event, as he pointed out, they had to traverse French territory to cross from Italy to Monaco.

162. He met Mme. Savona in Monaco where they visited an apartment which he might rent. He then had his interview with the police and arranged for the appropriate paperwork. He denied that a fee of €250,000 regarding Monegasque residency was ever mentioned. He also stated that Mr. Bergin intended to join him as a resident in Monaco.

163. Mr. Walsh stated that they had to cut short this trip to Monaco in order to return to Ireland to arrange for the Kilminchy deal, with the ultimate financial package being put together by Mr. Bergin and Mr. Muldowney, Mr. Bergin having secured finance from the Bank of Ireland in Waterford. The sites opened in December 2006 and sold extremely well. Mr. Bergin was paid €90,000 at the time by Event Horizon and €1m. of bank debt was repaid.

164. Mr. Walsh said that he then returned to Monaco and found an apartment where Mr. Bergin stayed from time to time. He had plans to move to Monaco permanently. He envisaged that the Kilminchy properties would be purchased by a special purchase vehicle and the proceeds then subsequently remitted to Monaco.

165. Mr. Walsh stated that by 2006 he was sharing office space with Mr. Bergin in the latter's office in Stillorgan and that Mr. Andrew McLoughlin was performing bookkeeping and other functions for Event Horizon. Mr. Bergin was in effect a silent partner and there was more than enough work for both of them every day. One of his principal tasks was to raise mezzanine finance, especially for the Moyne and Kilminchy developments.

The November 2006 agreement

166. Mr. Walsh denied that the November 2006 agreement was an authentic one, saying that he had never previously encountered the document. While he acknowledged that this was his signature on the signature page, he maintained that this page containing his signature had been interpolated from another document on that page. Mr. Walsh observed that the disputed document purports to bind the rest of his family (including his mother) and he had no authority to bind any other member of his family.

The purchase of the French properties

167. So far as the French properties were concerned, Mr. Walsh said that he had never been personally involved in these purchases. He understood that as he was in the process of acquiring residency in Monaco he would not, for tax reasons, be allowed to own property in France. He described anything which he did in relation to the French property as just "helping out" his brothers, George and Samuel. This included paying the deposit for Saint- Fargeau personally and transferring some €1.165m. from his account from BSI in Monte Carlo which represented the final payment for the Angers property. He said that at least €500,000 of this sum was repaid.

168. Mr. Walsh also acknowledged that he had arranged for Event Horizon/Largreen to give his brothers a €500,000 loan to facilitate the purchase of Chateau Meillard, but he said that this money had been repaid in early 2008.

169. He acknowledged that Mr. Bergin had done some preparatory work for these purchases, such as arranging for tax clearance certificates, background documentation and the like.

The contract for the Vee

170. So far as the contract for the purchase of a property at the Vee was concerned, Mr. Walsh maintained that the contract produced in court by Mr. Bergin was a forgery and that the signature on the contract was in Mr. Bergin's hand. He said that he had never previously seen the contract and that it was not his signature. He did agree, however, that he had arranged that Event Horizon would help out Mr. Bergin by supplying equipment and employees to assist him in the construction of the house.

The attempts to raise finance in 2007

171. Mr. Walsh acknowledged that Mr. Bergin and himself had spent a good deal of time dealing with different individuals in Monaco, France, Luxembourg and Germany dealing with questions of tax, corporate structure and the raising of finance with regard to both the acquisition of properties in France by his brothers, but also in respect of the conclusion of projects such as Kilminchy and Wells. This including various meetings and correspondence with persons such as Sandra Savona in BSI, Dr. Hesse (a German financier), Branado consulting, Dan Shevet, and banks such as Dexia and Danske. None of this came to anything.

172. Mr. Walsh also pointed to an email which Mr. Bergin sent to Mme. Savona on 10th September 2007 which indicated that the two of them intended to split the proceeds of any new joint venture company which purchased the assets of Kilminchy and transferred the proceeds to Monaco as evidencing the true nature of their relationship, which was one of quasi-partnership.

The events of 2009

173. Mr. Walsh complained that Mr. Bergin had given him poor advice as to how to deal with the Bank of Ireland after the 2008 crash. He said that he had been advised to sue Bank of Ireland for failing to advance further funds and that this resulted in the Bank taking offensive action by sending in receivers over the Kilminchy site. Had there been some further forbearance, the sites could have been

completed and sold. These events had serious negative consequences for him and resulted in his ultimate bankruptcy in the summer of 2009.

174. Mr. Walsh said that by this stage Mr. Bergin had done a “vanishing act” himself and that he was forced to face the wrath of the Bank alone. Mr. Bergin had ejected him from the property which he had been renting from him and Mr. Walsh complained that Mr. Bergin was not present in court during this difficult period. He had no interest in speaking with him after that period. This is why he never replied to the chasing emails sent by Mr. Bergin in the summer of 2009. As far as he was concerned, he had given him over €2m. He had never promised that a cheque would be sent from France or that land would be transferred to him.

175. Mr. Walsh also denied the authenticity of the disputed December 2009 email which he described as a “complete fraud”. When this matter came to his attention, Mr. Walsh advised his brother, George, to go to the Gardai with a formal complaint which the latter did. Mr. Walsh said that he was computer illiterate and this is why he sometimes arranged prior to 2008/2009 for messages to be sent to him to be sent to Andrew McLoughlin’s email address. After 2009, he arranged for emails to be sent to him via George Walsh’s email address. But he stressed that he had been previously unaware of this disputed email at that time. This helped to explain for example, why Dan Shevet sent emails regarding the acquisition of the French properties by George and Samuel to Mr. Bergin’s office, since it was understood that this was the way in which they would come to Mervyn Walsh’s attention. Mr. Mervyn Walsh had informed Mr. Shevet that he wanted to be generally informed regarding the French property developments involving his brothers.

176. Mr. Walsh did say with reference to the email from George Walsh of 21st September 2009 - which appeared tacitly to acknowledge - that sums were due to Mr. Bergin that he had said that his brothers, George and Samuel, would pay any monies that were due to him (i.e., Mr. Bergin). But this was a reference to relatively small sums that might have been due either from minor loans or consultancy work and it did not embrace the huge fees which were said to have been still, owing.

177. So far as the events on the 8th, 9th and 10th December 2009 was concerned, he had understood from Mr. McEniry that certain documents were required by Mr. Bergin to do certain books of account. He agreed to leave in those books at the bottom of the stairs of Mr. McEniry’s office. He was completely unaware of a proposed meeting with Mr. Bergin in the Camden Court Hotel at this time and, in any event, his brother George, was in France during this period. He said that Mr. McEniry had never informed him of any such meeting.

178. Mr. Walsh denied that he had ever properly been served with the present proceedings. He was not present at 50 Lansdowne Village on the 10th December 2009, the day of the supposed service and as far as he was concerned the papers had been simply pushed through the letter box. He only got to learn of the proceedings at a much later stage.

Paraic Muldowney

179. Mr. Muldowney said that he was a mortgage broker based in Enniscorthy who had been introduced to Mr. Bergin some time in 2004. His task had been to seek finance in respect of the Moyne site and the Kilminchy development at Portlaoise. For this purpose he had organised a meeting with Ms. McCarthy, the business manager of the Bank of Ireland in Waterford with whom he had a strong working relationship.

180. While the Kilminchy project was funded by the Bank of Ireland (having being sourced through Mr. Muldowney), Mr. Muldowney helped to organise mezzanine finance and Mr. Bergin put in place the preference share system. All the company paperwork was organised through Com.Net company services. Mr. Bergin was responsible for the establishment of Sherside Ltd. and Largreen Ltd. Mr. Muldowney said that his firm Muldowney Financial Services Ltd. were the designated finance agents for the Kilminchy/Rinuccini development. He had developed a close working relationship during this period with Mr. Bergin and Mr. Walsh.

181. Mr. Muldowney stated that any meetings with Mervyn Walsh were also attended by Mr. Bergin. They normally met perhaps five to six times a week. He assumed that Mr. Bergin was the “silent partner”, but he also acknowledged the strength of this business partnership. He described Event Horizon as essentially Mervyn Walsh, Dorcas Walsh and Pascal Bergin. He rejected the suggestion that the company was run for the benefit of the wider Walsh family, but rather that it was operated for the benefit of both Mervyn Walsh and Pascal Bergin.

182. So far as the contentions made by Mr. Paul Kelly were concerned, Mr. Muldowney said that he had never been informed that the land was owned by Largreen Ltd. and that Event Horizon had simply been given a licence to build the properties on that land. He added that Mr. Bergin had advised on the corporate structure and had put the structure together.

183. Mr. Muldowney recalled travelling to see the property at Wells House along with Mervyn Walsh and Mr. Bergin in order to meet the then owners in April 2007. At that stage a plan for a sports complex in anticipation of the London Olympics was still under consideration.

184. Mr. Muldowney said that he thought that Mr. Mervyn Walsh was very honest and that he had done a “brilliant job.” Nevertheless, he considered that Mr. Bergin was the essential driver of the partnership.

Maurice Mason

185. Mr. Mason said that he was a mortgage broker who had first met Samuel Walsh and his brother Cecil Walsh in New Ross sometime in April or May 2003. At that point he, along with a colleague of his, Robin Jacob, sought finance in order to address the bank debt in respect of Ballinahown. He finally managed to get a loan from ACC in Kilkenny.

186. Mr. Mason also said that he had sought to raise finance from Anglo Irish Bank in respect of the Westbury Woods and Clonhassan projects. He had met Mr. Mervyn Walsh and Mr. Bergin along with a representative of Anglo at the Dolmen Hotel in Carlow in May 2005. Mr. Mason said that he thought that he had detailed knowledge of the various corporate vehicles used for these projects. He thought that Mr. Bergin was the effective 50/50 partner of Mr. Mervyn Walsh and one who was responsible for all the paperwork. It was never suggested to him that these projects were on behalf of the entire wider Walsh family.

Dr. David Marrani

187. Dr. Marrani said that he has degrees in both French and English law. He was formerly a lecturer in law at both UCD and the University of Essex. He is now a consultant in French law and business, specialising in real estate. Dr. Marrani said that he was retained by Mr. Bergin to assist the Walshs in their French business dealings. He said that he had known Mr. Bergin for about 20 years and that he had been retained by him anytime he needed assistance for his clients in relation to any aspect of French law or taxation of business dealings.

188. Dr. Marrani said that he had been introduced to the Walsh family by Mr. Bergin. He first met George and Samuel and then later

met Mervyn at a hotel in Wicklow in late 2003. He was initially involved – at Mr. Bergin’s instigation – in two issues: (i) the proposed gold transfer to Switzerland in 2003 and (ii) dealing with the Walshs’ tax affairs in France. He was later involved in questions of residency in Monaco and the purchase of the French properties.

189. So far as the transfer of the gold from Kenya/Tanzania to Switzerland was concerned, Dr. Marrani said that he had provided an introduction to the Walshs and Mr. Bergin to a Swiss bank, Banca del Gottardo and had vouched for their credentials. Dr. Marrani said that he had flown to Zurich for this purpose on 23rd October 2003 and he produced vouching travel documentation attesting that he had flown from Dublin to Zurich for this purpose. This was a hugely complex transaction and he spent a good deal of time putting the necessary plans in place with both commodity brokers and financial institutions.

190. He had no direct contact with either Mr. George Walsh or Mr. Samuel Walsh in relation to this transaction as they were based in Africa at the time. His direct dealings were rather with Mr. Leonard O’Sullivan, Mr. Mervyn Walsh and Mr. Bergin. He was present, however, when Mr. Bergin made many telephone calls to George and Samuel.

191. The entire project turned out to be a colossal waste of time because, as he understood it, customs clearance was not forthcoming in the absence of the appropriate certificate of origin in relation to the gold shipment.

192. Dr. Marrani said that he then subsequently dealt with the French tax affairs of the Walshs. He had understood that at that stage the Walshs could not then go back to France because of concerns in relation to unpaid taxes. He said that he was instructed by Mr. Bergin for this purpose and was given the requisite information.

193. Dr. Marrani said that from 2006 to 2007 he had liaised in this regard with a French tax lawyer who was based in Nice, Maitre Jean-Michel Urbani. It was subsequently discovered that the unpaid taxes were covered by the French statute of limitations and that after a lapse of four years they were now either time-barred or, at least, substantially time-barred. Dr. Marrani said that he had arranged for a meeting with a notary and the relevant tax officials and the matter was then resolved for a relatively small amount. Dr. Marrani stated that he had the appropriate documents regarding the Walshs’ French tax affairs at the time, but these were no longer in his possession.

194. Dr. Marrani then recounted how, following the resolution of the tax problem, the Walshs became interested in purchasing substantial properties in France. This presented huge logistical problems, ranging from the use of cattle as security to the appropriate corporate structure necessary to manage these properties.

195. In the case of Chateau Meillard, Dr. Marrani said that he was asked by Mr. Bergin to inspect the files in relation to this property and to ascertain its value. This was an enormous transaction and he was required to liaise frequently with the Walshs. He did not, however, meet or know of Dan Shevet.

196. Dr. Marrani said that his role was rather to look at the legal documentation and to examine the transaction from a tax perspective. He also investigated the possibility of re-zoning part of the lands. The files for this transaction were enormous and involved different structures and different corporate vehicles. He acknowledged, however, that he had not been involved in either locating Chateau Meillard, drafting the conveyancing documents or attending any of the signings.

197. In the case of Blvd. Foch in Angers, this involved the conversion of the existing bank property into a hotel. He arranged the pre-contract documentation (“promise de vente”) with a notary, although he did not personally source the property. He further arranged mortgage approval with a mortgage broker, Mme. Marie France, at the Nice branch of a credit institution, CAPFI, specialising in home loans and mortgages. He also said that he met George Walsh on a number of occasions for this purpose and was in regular contact with him in relation to this acquisition. Dr. Marrani maintained that the Walshs would never have been able to acquire the property at Angers without Mme. France’s assistance.

198. Dr. Marrani also said that he had sought unsuccessfully to arrange finance for the renovation and refurbishment of the Angers property. In this instance, the instructions had come directly from Mr. George Walsh himself, rather than (as in all other dealings) from Mr. Bergin.

199. In the case of Saint-Fargeau, Dr. Marrani said that he was involved at a preliminary stage, but that the transaction did not go ahead. He never visited the site himself: his role was rather to check the title documents and to organise finance. He also liaised with Me. Urbani to check the proposed ownership structure from a tax perspective.

200. Dr. Marrani stated that he was very familiar with the procedure regarding the acquisition of Monegasque residency and he believed that none of the Walshs would have acquired such residency were it not for his involvement and that of Mr. Bergin. While a French national cannot obtain residency in Monaco (due to a bilateral agreement), it is possible for Irish residents to become domiciled there. This, however, was not a straightforward matter as the public safety police (“direction de la sureté publique”) had to have access to the file. This required proof of sufficient income in a savings account in a Monegasque Bank and a rented property. A figure of €1m. was normally required for the savings account, but Dr. Marrani maintained that Mr. Bergin and himself had persuaded Mme. Savona to accept a lower figure.

201. He stated that Mr. Bergin was one of the few Irish persons who was authorised to give the appropriate vouching statements to the Monegasque authorities. He stated that he knew that Mr. Bergin had previously organised such residency in the case of a number of very prominent Irish businessmen whom he named. He said that there is a recognised fee of €250,000 for the processing of this application. He said that in those instances he had an agreement with Mr. Bergin whereby the residency fee was to be split on a 50/50 basis.

202. Dr. Marrani introduced them to Mme. Sandra Savona in BSI in Monaco and Mr. Bergin said that all three wanted to become tax resident in Monaco. He said that he met Mr. Mervyn Walsh at the Hotel Meridien in Nice in 2007 with a view to commencing the discussion regarding the former’s tax residency in Monaco. He rejected Mr. Mervyn Walsh’s suggestion that the meeting had nothing to do with residency, but was concerned with property acquisition only.

203. While Mr. Bergin told him that all the Walshs were interested in residency in Monaco, as it happens, however, Dr. Marrani said that he gave no advice to George Walsh or Samuel Walsh regarding this issue. He had assembled some basic information regarding George and Samuel (such as dates of birth, bank account details etc.). He recalled a meeting with Mme. Savona regarding residency at which Mr. Bergin, Mr. Mervyn Walsh and Mr. Samuel Walsh attended at which the residency applications of all three brothers were discussed. He also stated that George and Samuel wished to meet an estate agent in Monaco and he introduced them for this purpose to a Mme. Alexandra Holze.

204. Mr. Marrani said that Mr. Bergin had organised the Monaco residency for Mervyn Walsh, including bank approval, confirmation of property acquisition from an estate agent and a certificate of good standing.

Mary McCarthy

205. Ms. McCarthy said that she was the senior business manager in the Bank of Ireland, The Quay, Waterford.

206. She stated that she had received applications for loans in respect of Sherside and Largreen and for this purpose she met Mr. Mervyn Walsh along with Mr. Bergin. While she never met Dorcas Walsh, she may have met another Walsh brother in passing. Bank of Ireland granted finance originally to take over various Anglo loans. The Bank also advanced further monies for the development of housing estates.

207. Ms. McCarthy said that she assumed that Mr. Bergin was either an adviser or business partner of Mr. Mervyn Walsh.

208. The entire purpose of a particular meeting with Mr. Bergin and Mr. Mervyn Walsh was to fund an equity release so that Mervyn Walsh could purchase a property in France, specifically Chateau Meillard. She thought that the final purchase figure was in the order of €3.6m. She stated that €1.5m was released to a solicitor, but she was not sure for what precise purpose the funds had been released.

Liam Grainger

209. Mr. Grainger said that he was a company formation agent and a director of Com.Net Corporate Consultants. He had established various "off the shelf" companies which he had later sold on to Mervyn Walsh. He said that he had been responsible for the preparation of the relevant company records for the Companies Registration Office.

210. He was asked about the B10 Annual Return for Event Horizon Ltd. dated 30th August 2007 which had been attached to a letter sent by Mr. Bergin to Mme. Marie France of CapFi on 7th August 2008. Mr. Bergin had said that the B10 return had identified "Mr. George Walsh as the sole director and owner of Event Horizon Ltd." Mr. Grainger said that he had never seen these B10 forms previously. He had not been aware that Mervyn Walsh or Dorcas Walsh had resigned as directors. The details on the document which purportedly show the details of Mr. Grainger's fax number and email address were wrong.

211. It was suggested to him in cross-examination by counsel for the plaintiff, Mr. Bergin that these documents were prepared by the plaintiff at the behest of Mervyn Walsh for the purpose of raising finances in Angers. Mr. Grainger said that he was unaware of any of the business dealings of the parties`.

Anthony O'Gorman

212. Mr. O'Gorman said that he was a solicitor and partner in the firm of Anthony F. O'Gorman in Wexford. He acts as the solicitor on record in these proceedings for George Walsh and Samuel Walsh and his firm was the family solicitor for the wider Walsh family.

213. Mr. O'Gorman explained the background to the auction in September 2003 and the subsequent events. At that time the Bank of Scotland Ireland ("BOSI") was about to repossess Samuel Walsh's 55 acre farm at Ballinahown, Co. Wexford. This perturbed the family and this was the reason why Mr. Bergin originally got involved.

214. In the end, a loan was done with BOSI where the debt was purchased for some €460,000, although Mr. O'Gorman said that he was not aware of any dealings involving Mr. Bergin and BOSI. Mr. Samuel Walsh then obtained a loan from the Educational Building Society. The loan cheque for €350,000 came through on 2nd October 2003. Mr. O'Gorman said that the cheque had been made out to AIB so that Mr. Walsh could in turn arrange for a bank draft in the sum of €46,000.

215. Mr. O'Gorman said that Mr. Samuel Walsh telephoned on the afternoon of 2nd October 2003 and arranged to pick up for the bank draft for €46,000 to be given to Norths auctioneer by way of deposit.

Francis Crossan

216. Mr. Crossan gave expert evidence as a computer specialist on behalf of George Walsh and Samuel Walsh.

217. Mr. Crossan explained how each individual has a specific internet protocol ("IP") address and that by this basis one can determine the computer from which a particular email was sent. He compared the IP addresses of the emails sent on both the 8th December 2009 (the "consent to judgment" email) and the response thereto on the following day, 9th December 2009. Mr. Crossan said that both emails came through a wireless router from the same IP address. As this address was an eircom IP address, this meant that, in his opinion, both emails were sent from a computer geographically located in Ireland and not in France. The "consent to judgment" email had been deleted from the "sent" box.

218. Mr. Crossan acknowledged that one possibility was that if there were an open wifi system operating in the immediate vicinity of a computer with a specific IP address then it would be possible for another person using, say, a laptop to access that wifi system and thereby share the same IP address. Mr. Crossan said that so far as he was aware there was no commercial wifi system in Mr. Bergin's office. He remains of the view that the most likely explanation was that Mr. Bergin gained access to Mr. George Walsh's Hotmail account and contrived to send a forged email to Mr. Bergin's own email address in order to make it look as if Mr. Walsh had sent that email personally.

Michael Walsh

219. Mr. Michael Walsh gave evidence that he was a solicitor and partner in the firm of O'Hare, O'Connor, Walshe. He confirmed that he simply shared the same surname as the defendants, but was not a relation of the defendants.

220. Mr. Michael Walsh said that he had been retained by Mr. Bergin and had never represented George Walsh or Samuel Walsh. He had, however, acted for Mr. Bergin in an unrelated matter. He had prepared a draft of a commercial service agreement which he sent to Mr. Bergin for comments on 8th November 2006. The draft agreement might be described as a bespoke commercial agreement which envisaged a 50/50 profit share between Mr. Bergin and Mr. Mervyn Walsh: The draft was not a standard pro forma agreement. All of these drafts had been generated by email.

221. Mr. Bergin seemed happy with this draft which he (Mr. Michael Walsh) had then sent on for execution, but he never received a signed copy. Mr. Michael Walsh said that he never previously saw a copy of the agreement of 10th November 2006. Insofar as that agreement referred to O'Hare, Connor, Walsh as the solicitors this was something which had been done without his agreement or involvement from his firm.

222. Mr. Michael Walsh acknowledged that the draft agreement of 10th November 2006 had been drawn up in places using a different font than other parts of the agreement. His firm had used the font Tahoma 11 which was on the signature page, but the body of the agreement was in a different font.

223. He was not aware of any potential involvement of any of the other Walsh siblings or that George Walsh or Samuel Walsh might be involved.

Jacob Mucheke

224. Mr. Mucheke gave evidence that in November 2007 he was a security guard employed by Event Horizon Ltd. He was deputed by Mr. Mervyn Walsh to stand guard outside Mr. Bergin's house in Stillorgan following a major break-in and robbery at Mr. Bergin's house. Mr. Mucheke said that he guarded the house for about 2 weeks and that during this time his salary was paid for by Event Horizon Ltd.

Violet Walsh

225. Ms. Walsh said that she was a fashion designer and that she had lectured on fashion at the Grafton Academy in Dublin.

226. She said that in or about 2004 she had become a fashion designer for Event Horizon Ltd. and was employed by the company for that purpose. She picked out curtains, tiles, carpeting and sanitary ware for the houses under construction at Westbury Woods. She regularly liaised with house purchasers and handed over the keys on completion of the properties. She had also assisted with the Ballyhague properties.

227. She principally worked with her brother, Mervyn, for this purpose, but she had never given him any authority in respect of her own business affairs. Specifically, she had not given him any authority in respect of the settlement of November 2006. While she had met Mr. Bergin from time to time when he visited Ballyvadden House, any discussion with him was purely in a social context. She was never present when business matters or the sale of family properties was discussed.

228. She said that she was the owner of the property at No. 50 Lansdowne Village, Ballsbridge, Dublin 4 where Mr. Bergin said that he had served her brothers. Her brother, George, had stayed in the premises from time to time in the mid-1980s and she said that he used it as an address of convenience in respect of bank statements for some old bank accounts. George was not resident in the property, certainly not for some time. Samuel and Mervyn occasionally stayed, but none of them had a copy of the key.

229. Asked about the events of Thursday 10th December 2009 – which was the day on which Mr. Bergin said that he had served the three defendants at Ms. Walsh's house in Lansdowne Village – she said that according to her diary she had travelled to Wexford to spend the long weekend there. The house was locked on Thursday, 10th December 2009, the day on which Mr. Bergin claims to have effected service.

230. Ms. Walsh stated that she arrived back in Dublin on Monday 14th December 2009 because she was due to travel to France on the following day. When she arrived, she described finding three red strips through the letter box with letters addressed to her brothers, George, Samuel and Mervyn. She opened the envelopes to find that they contained legal documents which emanated from Mr. Bergin's then solicitors, Messrs. Eugene F. Collins.

231. Ms. Walsh said that she re-bundled the documents and took them immediately to the premises of Eugene F. Collins. There she met a James Meighan and she explained that this documentation had nothing to do with her and that she valued her privacy. According to her Mr. Meighan was embarrassed and stated that he fully understood her position.

232. She said that she travelled to Paris on the next day and travelled on from there by train to Moulins (which is about 30kms from Meillard) where she was met by George Walsh. She did not discuss business affairs with him or the arrival of these legal documents during the 12 days which she spent with George at Chateau Meillard.

Samuel Walsh

233. Mr. Samuel Walsh said that he had graduated from Gurteen Agricultural College in the early 1980s. He then had become involved in the export of both lamb and livestock to France where he had built up a lot of contacts. By the late 1990s he had leased a farm in France, but this business was severely curtailed by the closure of the ferry link to Cherbourg which resulted in the end of live exports from Rosslare Harbour. His business was further affected by the outbreak of foot and mouth disease in 2001. All of this served to place him and his business under considerable financial pressure. This all led to a situation where Mr. Walsh's own personal farm land in Ballinahown – which he had inherited from his uncle – has put up for sale in September 2003

234. Mr. Samuel Walsh described how he met Mr. Bergin immediately prior to the auction. A dinner party was held in Ballyvadden House in September 2003 as a token of thanks to Mr. Bergin in respect of his role at the auction. He was also aware that Mr. Bergin had various business plans for the Walshs in order to take advantage of the land assets at the time. He agreed that Mr. Bergin had a vision for getting the family out of their financial difficulties.

235. Mr. Walsh seemed appreciative of the fact that Mr. Bergin had a plan for getting the family out of the difficulties in which they found themselves. He acknowledged that Mr. Bergin had given him a loan of €16,000 around that time, but he later repaid it following the sale of the property. This was the only money which he had obtained by way of loan or gift from Mr. Bergin.

236. Mr. Walsh insisted, however, that he himself had raised the monies for the €46,000 deposit with Norths auctioneers, as his brokers Mr. Mason and Mr. Jacob had arranged for a mortgage. He then went to Mr. O'Gorman's office with a bank draft for this sum and subsequently gave Mr. Bergin the receipt for that sum when they met at the car park of the Stillorgan Park Hotel in Dublin. He acknowledged that the receipt was in Mr. Bergin's name, but this was because Mr. Bergin had purchased the property in trust.

237. In November 2003 Mr. Walsh returned to Kenya to meet up again with his partner (and, later, wife) and child. He used some of the proceeds of the sale to discharge local creditors in addition to reach an agreement with Bank of Scotland Ireland. Mr. Samuel Walsh remained in Africa for about five/six years where he worked on a number of telecommunications projects. He and his brother William were also involved on a 500 acre coffee farm.

The gold transaction

238. So far as the gold transaction was concerned, Mr. Samuel Walsh said that he had met his brother, Mervyn, and Mr. O'Sullivan on their arrival in Nairobi. He (i.e., Samuel Walsh) then travelled on to Dar-es-Salaam, Tanzania, where he stayed for about four days. He was aware that Mr. O'Sullivan had a contract to buy the gold. In the end, however, no certificate of origin (Kimberley certificate) could be procured and the deal was off. So far as he was aware, Mr. Bergin never sought to be paid for his services in respect of this project.

239. He was not thereafter involved in the development of the Ballyhoge site, although he was informed of these developments by telephone by various family members. He agreed, however, that the farm could be pledged as collateral for Event Horizon Ltd. and Harside Ltd. He understood that this plan had been agreed between Mervyn Walsh, Dorcas Walsh and Mr. Bergin, but he was not personally in touch with Mr. Bergin during this period.

240. He could not comment on Mr. Bergin's claims to be entitled to a share of profits at Ballyhogue or Kilmuckridge or the Moyne site at Enniscorthy or the Kilminchy site at Portlaoise, as he was not involved in any of these developments. He had spent the bulk of the years between 2003 and 2006 in Kenya. His wife secured a three month visitor's visa to travel to Ireland for the period from 10th December 2006 until early March 2007 and the couple and their child stayed in Wexford during that period.

241. Mr. Samuel Walsh then turned to issues concerning his business activities in France. He stated that he had given up what had been a nine year lease of the French farm near Angers at the end of 2002, although he had wanted that lease to be extended. He had been back to France on many occasions, but he denied that there was any inhibition on him travelling to France, whether for tax or other reasons. He was still endeavouring at the time to get compensation in France following the slaughter of livestock in the wake of the foot and mouth crisis in 2001. He rejected the suggestion that there had been any warrant for his arrest in relation to tax matters in France. He also stated that he had never received an invoice regarding from Mr. Bergin regarding his tax affairs. He had an accountant based in Angers, Patrick de Ferrier, who arranged for his tax affairs.

242. Mr. Walsh denied that he had ever employed Mr. Bergin to act as his tax adviser in France and nor was there any agreement with regard to a 3% of the purchase price claim in respect of any of the French properties at St. Fargeau, Angers or Chateau Meillard. What had happened instead was that George, Mervyn and himself had met a meat trader in Paris with whom they had been acquainted, M. Jacques Peters, for dinner in Paris in early 2007. He introduced them to M. Bernard Adele, an estate agent.

243. These contacts led them to being introduced to M. Gilles de la Poterie, an estate agent, working in the area. They looked at about four sites with M. de la Poterie which led them to the site at St. Fargeau. He had been put in touch with an architect, Aleksander Cvoric, at the suggestion of a Wexford-based architect of his acquaintance, Pat O'Connor.

244. While he acknowledged, however, that Mr. Bergin had done consultancy work, both for him and for his brother George in relation to these matters in both France and Luxembourg, Mr. Bergin had never done any of the advisory, title investigation or other work in relation to the acquisition of any of these properties. Mr. Bergin had never introduced them to any of these French consultants and professionals. He stressed that it was George and himself who looked at many of these properties (including a number which they did not acquire) and who had made the decisions which to acquire.

245. Mr. Walsh said that he had accumulated some money over the years and he and his brother George tried to source a farm in France as agricultural prices there were stable. They found Chateau Meillard in February 2007 and the sale finally closed on 23rd April 2008. He had an account in Monaco where he withdrew €500,000 to assist with the purchase. Event Horizon Ltd. provided further mezzanine finance for the project in the sum of €500,000, but this sum was repaid in 2009 when a mortgage was obtained for the Angers property.

246. So far as his French advisers were concerned, he had never previously met Dr. Marrani, albeit that he had spoken with him twice on the telephone. They had used a local estate agent, Bernard Adele, to source the property. Mr. Walsh acknowledged, however, that Dr. Marrani, along with Mr. Bergin, had helped to raise finance in respect of the Angers property, but he said that they had both been paid for that work.

247. Mr. Walsh said that while he had a bank account with the Banque Populaire in Monaco, he was never resident there for tax purposes and nor had he discussed this with Mr. Bergin. He had met Mme. Savona of BSI in the presence of Mr. Bergin and Mervyn and had opened an account there.

248. He had never wanted to become a resident in Monaco. He found opening a bank account there relatively easy. He had simply spoken to the manager of the Banque Populaire and all that was required was that he produced his passport, proof of address and a certificate of good standing from his notary. He had done all of this himself.

The proposed purchase of the Wells Estate

249. So far as the Wells estate was concerned, he knew that his brother Mervyn and Mr. Bergin were working on the Wells project. A large scale brochure had been produced and the property had the advantage that it was situated close to the lands at Ballinacorney. Mr. Walsh said that Mr. Bergin was very interested and supportive of the project. He understood that Mr. Bergin had spoken to prominent persons in the Olympic movement and they were very supportive of this venue in advance of the Olympic Games which were then scheduled to be held in London in 2012.

250. Mr. Samuel Walsh stated that he was also interested and would have been a business partner had this enterprise proceeded. It was agreed that Mr. Bergin would be entitled to charge a fee of €150,000 in the event that the project proceeded to completion, but this never happened.

George Walsh

251. Mr. George Walsh stated that he had studied pure science at UCD and later graduated with a Master's degree in exploration geography. He first worked with Tara Mines and then worked off-shore in the oil exploration business. This enabled him to save money by working (quite legitimately) in a tax free environment. He had his banking arrangements in Jersey.

252. He was aware at the time that it was proposed to auction Samuel's farm in order to meet bank demands. He was, however, away at the time and he was not directly involved, although he had heard of Mr. Bergin's name through family discussions and met him after the auction. He had also met Mr. Bergin in April 2004 on the Ballyhogue site. He had come home to Wexford from Africa in early 2004 and he was to live there until April 2008. Prior to this hearing he had not been aware of any loans which Mr. Bergin advanced to other family members in December 2003.

253. He stated that he was never involved in the affairs of Ballyhogue, but he helped out occasionally in the development of the site. Nor was he involved in the development of the Moyne site, as such. He was thus never a director of Event Horizon Ltd., but he had again occasionally helped out. He had arranged for agency workers to be hired for the Moyne site and was paid for this purpose as an employee by Event Horizon.

254. Mr. George Walsh accepted that the house at Lansdowne Village "could well be" owned by Violet. He further agreed that for reasons of convenience he had given this address as his address for all AIB bank statements. But he said that he had no key to the

premises. Mr. Walsh denied any involvement in the African gold project.

255. So far as his business affairs in France were concerned, Mr. Walsh said that he had a lease on a farm near Angers which had ended in 2003. He denied a central charge of Mr. Bergin to the effect that he and his brother Samuel had an outstanding tax liability in France or that they had been at one stage afraid to enter France for fear of arrest. He had never met Dr. David Marrani prior to this litigation, albeit that they had spoken twice by telephone. He had never received an invoice from Dr. Marrani (or from anyone else associated with Mr. Bergin) in respect of tax affairs.

256. He explained that in 2007 Samuel and himself decided to purchase in France as agricultural prices were stable. He first saw Chateau Meillard in February 2007 with a local estate agent, Bernard Adele. He signed the mandate to acquire the property on 28 February 2007, but he had no discussions with Mr. Bergin regarding that mandate.

257. Mr. Walsh fully accepted that the acquisition of a property of this vast size involved a due diligence of very considerable proportions. He insisted, however, that this work was performed for him by Michele Jonchiere, his French accountant, and that Mr. Bergin was not involved at all.

258. Mr. Walsh acknowledged that Mr. Bergin had seen Chateau Meillard once in the course of a road trip which the Walsh brothers and Mr. Bergin had taken from Nice through to Paris sometime in October/November 2007. They had stopped overnight in Vichy where he said Mervyn and Mr. Bergin had stayed up late in a local hostelry. The next morning they drove to Meillard which is about 30 minutes drive from Vichy. The entire drive through the farm took about 12 minutes and Mr. Walsh stated that Mr. Bergin did not walk the lands having drunk heavily the night before.

259. Mr. Walsh stated that he and his brother Samuel signed the mandate to purchase the Chateau on 28 February 2007, but that he had had no conversation with Mr. Bergin regarding the mandate. While they had retained a local notaire, Pierre Bihan, they wished to have other legal and tax advice, especially in relation to the structure of the agricultural company (known as *Société Civile d'Exploitation Agricole* or "SCEA") which it was envisaged would run the farm at Meillard, along with issues arising from the transfer of undertakings.

260. In July 2007 they were put in contact with a Paris-based lawyer, Dan Shevet, apparently in the belief that he was Irish. He was, in fact, Danish, but he also worked in France. Whatever his nationality or domicile, Mr. Shevet seemed to have an Irish sense of fun and informality and he got on well not only with the Walshs, but perhaps especially with Mr. Bergin. It was agreed that all emails would also be sent to Pascal Bergin as well.

261. The completion of the Meillard project was a very difficult one and required expert accountancy and other advice. The sale had, in any event, been delayed by a serious flood which had taken place in early 2008 when a pipe burst in an upstairs bathroom. He had retained Michele Jonchiere of the firm ABL to do the accountancy due diligence for Chateau Meillard. He denied that either Mr. Bergin or Dr. Marrani was involved in the preparation of these accounts, albeit that some of the ABL documents were also sent to Mr. Bergin as well. Mr. Walsh nevertheless maintained that he had received any advice in relation to this transaction from Mr. Bergin. He had not promised any land, cattle or the proceeds of any transaction to Mr. Bergin. Specifically, he had not promised to transfer a derelict hunting lodge on the grounds of Chateau Meillard as Mr. Bergin had contended. He acknowledged that he had borrowed €10,000 from Mr. Bergin and that he still owed him that sum of money.

262. Mr. Walsh said that friends of his brother, Mervyn, Andrew Healy and Kyle Thompson, put them in touch with a German financier, Dr. Hesse. He tried to raise finance for the Meillard project, but nothing came of it.

263. He was aware that Sandra Savona of BSI had organised a Monegasque taxation firm, Branado, to give advice re taxation structures. But this advice was for both his brother, Mervyn, and Pascal Bergin and not for him and he had not benefited from it. It is true that he attended one of those meetings in Monaco, but he was there only really because he had driven the others to the meeting. He had never provided any personal details to Ms. Savona, he never inquired about residency in Monaco and he never had a bank account in Monaco.

264. He acknowledged, however, that along with his two other brothers he had met representatives from Dexia in Luxembourg in July 2007 in order to discuss a tax structure which could avail of a special Danish/French tax treatment arrangement along the lines that Branado had mentioned. It is clear, however, that structure would have had to have been put in place to enable them to avail of it.

265. He had, however, secured two subprime mortgages in respect of two of the properties at Westbury Woods which he owned and he used those monies as part of the overall finance package to raise money for Chateau Meillard. Much of the money for Chateau Meillard came through Largreen and Harside.

The proposed development at Saint-Fargeau

266. In relation to Saint-Fargeau, he said that he had noticed certain land for sale as one drove into the town. Upon enquiries, he learnt that the local estate agents, Dominique and Virgil Gourant, were selling this property. He retained an architect, Aleksander Cvoric, to design a plan which would be compatible with the local development plan ("plan local d'urbanisme"). Saint-Fargeau was about two hours from Paris and Mr. Walsh and his brother, Samuel, saw the possibility of a housing development that might appeal to Parisians looking for a second home in the countryside.

267. He placed a deposit on the property, subject to planning permission. His brother, Mervyn, put up the money which he, George, later repaid. In the end the planning permission never came through and the deposit was returned on 27th February 2010.

The proposed development at Angers

268. Mr. Walsh explained that he had previously leased a farm near Angers, so that he was familiar with the town. He noted that the town was short of hotel bed spaces and he noticed a property in the commercial area, 21 Blvd. Foch, which he sought to have converted into a four star hotel with 50 rooms.

269. While this was a pet project of his, he immediately met opposition from the French equivalent of An Taisce which would not allow such a development of this scale in a heritage town. It was clear that he was going to be allowed 37 rooms at best, a figure which was insufficient. The property was ultimately sold in September 2010.

270. Mr. Walsh accepted that both Dr. Marrani and Mr. Bergin had a significant role in arranging the mortgage finance for Blvd. Foch. But Mr. Walsh stated that Mr. Bergin was paid for this work in October 2008 and that he had never sought any further payment.

The November 2006 settlement agreement

271. Mr. Walsh said that he had never previously seen the November 2006 settlement agreement prior to the hearing in this Court. He had not authorised it and he gave no authority to anyone to execute it on his behalf.

The December 2009 email

272. With regard to the succession of emails, culminating in the authenticity of the hotly disputed email of 8th December 2009, Mr. Walsh acknowledged that he had received a series of emails from Mr. Bergin seeking payment in August and September 2009. For all of this relevant period he was in France. He was aware that his brother Mervyn had a business relationship with Mr. Bergin and he did not see the necessity to reply to the emails. He had never discussed getting involved in the meat business or the solar business with Mr. Bergin, although he had discussions about the latter project with Mervyn and he did explore the issue of providing solar panels in the French market. He said that Mr. Bergin often used his email to contact his brother, Mervyn.

273. Mr. Walsh said that the reference to payment in the email of 4th September 2009 which he sent to Mr. Bergin was a reference to the €10,000 which he owed. He said that he had sent a further "diplomatic" response to Mr. Bergin. During this period his brother, Mervyn, was first in France and then in Africa.

274. Mr. Walsh maintained that what for convenience I will term as the "consent" email of 9th December 2009 was procured by fraud. At various times over the previous three to four years he had used the suite of offices in Stillorgan which Mr. Bergin and Mr. Mervyn Walsh shared for the purposes of arranging flights and he said that one of the employees in that office accordingly had access to his email password so that, in particular, boarding cards could be printed off. He had never changed that particular password.

275. Mr. Walsh said that he was in Angers during the entirety of this period. While Mr. Walsh acknowledged that the disputed email had been sent from his Hotmail account, he had never sent it or authorised it to be sent. It was not in his "sent items" box. He was convinced from the documents which turned up in Mr. Bergin's discovery that Mr. Bergin must have had access to his email. He cited in particular an email dated 7th November 2009 which he had sent to a long-lost University friend which featured in that discovery. How, he asked, could Mr. Bergin have been in possession of that email without gaining access to Mr. Walsh's email account?

276. Mr. Walsh maintained that he formally referred the matter to the Gardaí in Enniscorthy and he was awaiting their response. He said that the matter had first come to light in March 2010 when judgment had been first obtained against them by Mr. Bergin.

Part V: The method of service of the defendants

277. In the wake of this evidence, it is next necessary to make findings of fact and conclusions in respect of the evidence which was tendered, commencing with the issue of whether the defendants were properly served with the proceedings.

The manner in which the defendants were served

278. The method of service of proceedings is governed by Ord. 9, rr. 1-3 of the Rules of the Superior Courts 1986 which provides:

"1. No service of a summons shall be required when the defendant, by his solicitor, accepts service, and undertakes in writing to enter an appearance.

2. Service of any summons on the defendant shall, except in the cases in the following rules of this Order specified, be effected by personal service if it be reasonably practicable. Where it shall appear by affidavit that such defendant is personally within the jurisdiction and that due and reasonable diligence has been exercised in endeavouring to effect such personal service, service of such summons may be effected by delivering a copy thereof at the defendant's house or place of residence, or at his or her office, warehouse, counting house, shop, factory, or place of business, to the wife, husband, child, father, mother, brother, or sister of the defendant, or to any servant or clerk of the defendant (the person to whom such copy shall be delivered being of the age of sixteen years or upwards) and showing to such person the original or duplicate original of such summons.

3. Personal service shall be effected by delivering a copy of the summons to the defendant in person, and showing him the original or duplicate original."

279. In the present case in his affidavit of service of 11th December 2009 Mr. Bergin maintains that he personally served George Walsh, Samuel Walsh and Mervyn Walsh "by delivering unto and leaving with them a true copy of the summary summons" dated 10th December 2009. As I have noted, the gist of Mr. Bergin's evidence was to the effect that he travelled to the townhouse of Violet and Dorcas Walsh on the afternoon of 10th December 2009 with a view to meeting George, Samuel and Mervyn Walsh. He says that he encountered the three brothers about to leave in a car and they hurried back into the house. He said that he left the papers in the doorway of the house as the door was closed and said "You are now served" or words to that effect.

280. All three defendants deny that they were physically present on the afternoon in question. Indeed, Mr. Bergin acknowledges that he may have been mistaken with regard to the presence of George Walsh, although he insists that three persons were present. As it happens, there seems little doubt but that George Walsh was in France at the time. It should also be recalled that Mr. Bergin had previously been in the Camden Court Hotel in Camden St., Dublin 2 at 3pm. He waited for about 30 minutes for the Walshs to turn up and he went from there to Lansdowne Village by car. One imagines that the light was starting to fade by 4pm at that time of the year and, as it is doubtful if Mr. Bergin arrived any earlier than this, it may well be that he did not get a good view of events.

281. For my part, I am not satisfied that there was personal service on any of the three defendants. The onus of proof rests in this regard squarely on the plaintiff. It is not now really in dispute that there could have been no such service on George Walsh on the basis that he was in France at the time. In these circumstances and given that both Mervyn Walsh and Samuel Walsh have sworn that they were not present at that time, I am not satisfied that there was personal service on any of these two defendants either.

282. What is not in dispute is that the papers were placed in the letterbox of No. 50 Lansdowne Village addressed to the three defendants and that these papers were discovered by Ms. Violet Walsh in an envelope upon her return from Wexford to Dublin on the following Monday, 14th December 2009. She then brought the papers to Mr. James Meighan, a solicitor with Messrs. Eugene F. Collins, the then solicitors for the plaintiff. Ms. Walsh maintained that Eugene F. Collins accepted that there had been a mistake.

283. What is striking – and, in many respects, quite surprising – is that Ms. Violet Walsh maintained that she travelled to Meillard (via Paris) on the following day and said nothing to her brother George or any other member of the family about this. While I am not sure that this was necessarily the wisest course of action, I nonetheless accept Ms. Walsh's evidence to this effect. In light of Mr. George Walsh's subsequent conduct in seeking to have the default judgment set aside, I feel certain that had his sister said anything to him regarding the service of proceedings he would have taken immediate action.

284. It follows that insofar as the plaintiff relied on this service to found a later default judgment that judgment could not have been allowed to stand for want of compliance with the requirements of Ord. 9, r. 2. In the light of the actual evidence and my findings thereon, "due and reasonable diligence" was not exercised in endeavouring to effect personal service on the defendants. Nor am I satisfied that 50 Lansdowne Village was the defendant's house or place of residence within the meaning of Ord. 9, r.2, even if the defendants occasionally stayed there or used that address for certain other purposes (such as bank statements, mortgage applications or in returns made to the Companies' Registration Office in respect of the companies of which they were directors). Even if it was, there was no delivery to the sister of the defendants, nor was she shown the original or the duplicate of the summons.

285. The proceedings undoubtedly came to the defendants' attention at a later stage. But since the default judgment which the plaintiff obtained in February 2010 was later set aside by this Court when the matter was remitted to plenary hearing on 15th February 2011, I am not sure that anything greatly turns on this so far as the wider resolution of the substantive issues in these proceedings is concerned.

Part VI: The allegations of fraud

286. A critical issue of credibility in the present centres on the allegations of fraud which the defendants have levelled against the plaintiff. Before examining these allegations, it is necessary first to re-state the law on this topic.

Allegations of fraud: general principles

287. The onus of proof rests with the person alleging fraud. It is clear from the case-law that, as Kearns P. put it in *Michovsky v. Allianz Ireland plc* [2010] IEHC 43 where:

"Proof of fraud is largely a matter of inference, such inference must not be drawn lightly or without due regard to all the circumstances, including the consequences of a finding of fraud: see *Derry v. Peek* (1889) 14 App. Cas. 337 and *Banco Ambrosiano s.p.a. v. Ansbacher & Co.* [1987] I.L.R.M. 669."

288. In *Banco Ambrosiano s.p.a. v. Ansbacher & Co.* [1987] I.L.R.M. 669,691 Finlay C.J. had previously stated:-

"...the onus is to prove the matters necessary to establish fraud as a matter of probability, and that where, as in the present case, such proof is largely a matter of inference, that the inference must not be 'drawn lightly or without due regard to all the relevant circumstances, including the consequences of a finding of fraud'."

Thus, the onus is on the defendants to prove the fraud on the balance of probabilities.

289. In his concurring judgment in that case, Henchy J. rejected the contention that an intermediate standard of proof should be required ([1987] I.L.R.M. 669, 701):

"If, as has been suggested, the degree of proof of fraud in civil cases is higher than the balance of probabilities but not as high as to be (as is required in criminal cases) beyond reasonable doubt, it is difficult to see how that higher degree of proof is to be gauged or expressed. To require some such intermediately high degree of probability would, in my opinion, introduce a vague and uncertain element, just as if, for example, negligence were required to be proved in certain cases to the level of gross negligence."

290. Henchy J. then posited the test in the following fashion ([1987] I.L.R.M. 669, 702):

"Proof of fraud is frequently not so much a matter of establishing primary facts as of raising an inference from the facts admitted or proved. The required inference must, of course, not be drawn lightly or without due regard to all the relevant circumstances, including the consequences of a finding of fraud. But that finding should not be shirked because it is not a conclusion of absolute certainty. If the Court is satisfied, on balancing the possible inferences open on the facts, that fraud is the rational and cogent conclusion to be drawn, it should so find."

291. This general approach has been subsequently endorsed by the Supreme Court in two other important judgments: *Georgopolous v. Beaumont Hospital Board* [1998] 3 I.R. 132 and *Lawlor v. Tribunal of Inquiry* [2009] 2 I.L.R.M. 400. In *Lawlor*, Murray C.J. noted that the Supreme Court in *Banco Ambrosiano* was satisfied that an allegation of fraud did not require to be proved to the criminal standard where the proceedings take place other than in a criminal court. Nevertheless, echoing that which had been previously said by the Supreme Court in *Georgopolous*, Murray C.J. stated ([2009] 2 I.L.R.M. 400, 414):

"The findings made must clearly be proportionate to the evidence available. Any such findings of grave wrong doing should in principle be ground upon cogent evidence."

292. These, accordingly, are the governing principles which I am required to apply to the present case.

The December 2009 email

293. One critical aspect of the case is that the plaintiff maintains that the defendants have in effect accepted the debt by exchange of emails in December 2009. The defendants flatly deny these emails were authentic and maintain that these are a forgery. The plaintiff certainly deployed and exhibited the emails in his endeavour to obtain summary judgment against the defendants.

294. Since the question of the authenticity of these emails assume central importance in this case it is necessary to set them out in full. The first email was expressed to be from Georgewalsh@hotmail.com and it was dated 8th December 2009 at 15:55. The email was sent to Pberginassociates@eircom.net and the subject was "Seek consent to uncontested judgement". The body of the email ran as follows:

"Paschal,

This is to confirm that Samuel, Meryvn and myself consent to an uncontested judgement being obtained by you against us in the amount of €3,649.000.000 in full and final settlement of all loans and fees due to you by us. We accept your agreement not to register the judgement against us until after the 31st March 2010.

George Walsh for and on behalf of: Samuel Walsh, Mervyn Walsh and George Walsh".

295. This email was responded to by Paschal Bergin on the following day. It was sent by Mr. Bergin@pbergin.com and was sent at 10:26 on 9th December 2009. It was sent to George Walsh and the subject was Re: Money advances and fees. The body of the email read as follows:

"Dear George,

I refer to email of consent, talks with Mervyn, conference call to Timothy McEniry Solicitor and Mervyn, I also note that Sam Mervyn and yourself attended at the Office of Tim McEniry Solicitor.

Regarding the meeting set for tomorrow Thursday at 3pm in Camden Court hotel to structure payment of my moneys to me, would you please set out for me your schedule of payments over the next 3 months so that the meeting can be conclusive and productive?

Regards

Paschal."

296. This was followed by a further email from Mr. Bergin on the 11th December, 2009, at 11:34. The subject matter was headed "Debt" and it provided:

"George,

I am still waiting the schedule of payments to clear my debt. You are obviously immune to me registering the judgment against all of you, from my part what I want to achieve is payment not only of my fees, but in the first instance my own money paid back: I have always been accommodating and now I need you to accommodate me in giving me some upfront payment and a schedule to complete by the 31st March as previously set out as a three month payment period. You will have received the EU Agricultural subsidies both in France and Wexford at this stage, this on top of other receipts for grain and livestock sales: I note that you made several payments to third parties to include machinery payments "tinkers for furniture" [quote], several people who I can name in France and Ireland, particularly architects in both places. All I need you to do is to pay me something now and as stated the balances set out above.

Paschal."

297. There then followed a further email on the 15th December, 2009, at 9:29. This subject was headed "Loan and Debt".

"George,

You people have not made any effort to pay me or to set out the schedule of payments, you obviously have no fear of judgment registration against all of you, that be[ing] the case I will in the absence of any effort to pay me, will have to enter separate legal proceedings or extend the existing process if I can to include all the beneficiaries of my toil to include your mother, sisters and two other brothers. You will recall that when I met you, you were on the "long acre" and indeed your first Christmas I met you in Leopardstown Inn, and gave you money to put food on the table for Christmas, you appeared to be a far from where you are now in your comfort zone. I am once more suggesting that you contact me with a view to resolving payment.

Paschal."

298. And then the final email dated 23rd December 2009 at 15:26, subject "Outstanding Money" is again sent by Mr. Bergin to George Walsh.

"George,

Following my meeting with you (Mervyn) and telephone discussions over the last two weeks, it is evident that no effort is or has been made to pay me. Please be advised that there is not much point in communicating with me unless you have a substantial payment for me together with a specific payment schedule. I have looked at extending the existing legals and judgment over the other members of your family, but unfortunately this cannot be done, so I have to consider separate actions which I will be looking at in the New Year. In the meantime, while I have realised that registering a judgment against you means nothing to you, so deferring registration as agreed, or indeed in pursuing registration has little value to anyone. However, there are other ways of enforcing judgment without registering it: I intend to explore these which may help to focus your attention to sort the matter out.

Paschal Bergin."

299. It was common case between the experts, Mr. Garland and Mr. Crossen, that each personal computer has a unique internet protocol ("IP") address. Mr. Crossen duly identified that address as one based in Ireland and not in France. As he said in his report:

"The email in question came from a computer connection with the IP address [details supplied]. This [IP address] is allocated to Eircom Ltd....As Eircom only operate in Ireland the computer that the message came from was located in Ireland."

300. Mr. Crossen stated that the person who had sent the email which was said to have come from George Walsh on 8th December 2009 ("the disputed email") had logged on from an Eircom broadband account, although the email itself had originated with Mr. George Walsh's Hotmail account which was then relayed by the Eircom broadband system.

301. Critically, however, both Mr. Garland and Mr. Crossen agreed that whoever had George Walsh's password could access it from an account anywhere in the world and make it look as if a particular email had originated from that account. It is also clear that the disputed email was deleted from the "sent" section of the Mr. George Walsh's Hotmail account.

302. As we have noted, in civil matters, allegations of fraud of this kind require to be proved on the balance of probabilities, albeit that the evidence of fraud must be cogent and compelling: see, e.g., the comments of Henchy J. in *Banco Ambrosiano*. In the present case, however, I find myself coerced to the conclusion that the disputed email was, in fact, a fraud which was perpetrated by Mr. Bergin. I reach that conclusion for the following reasons.

303. First, it is clear from the expert evidence that the disputed email was sent from an Irish IP address on the afternoon of 8th December 2009. As we have noted from the evidence given in relation to the service of documents on 10th December, it is now more or less agreed by the parties that George Walsh was in France during this period. There is certainly nothing to suggest that he was physically in Ireland on the 8th December 2009. It follows, therefore, that this strongly suggests that whoever sent the disputed email, it was not George Walsh.

304. Second, in his report dated 26th May 2013 Mr. Garland noted that the account contained nineteen messages which were sent in

December 2009, but the disputed email was not contained in the "sent" folder. Mr. Garland thought that this was unusual and suggested that "message in question was selectively deleted." This in turn leads to the inference that whoever sent the disputed email was careful to delete the record of the email from the "Sent" outbox in the Mr. George Walsh's Hotmail email account. It further seems unlikely that this would have been done had the sender been Mr. Walsh (or, for example, any other member of the Walsh family). After all, it would presumably have been in Mr. Walsh's interest to have a record of such a momentous email.

305. Third, of far greater significance is that the fact that Mr. Bergin's discovery documentation contained a sheaf of material dating from November 2009 and December 2009 which was clearly accessed from Mr. George Walsh's email account. This material includes, for example, purely private correspondence which had been sent by Mr. George Walsh to a long lost College friend from his undergraduate years on 7th November 2009. There was no suggestion at all that this old friend had any connection at all with Mr. Bergin or with these proceedings. The significance of these dates is that this material was created after the friendship between Mr. Bergin and the Walshs had been sundered during the course of the summer of 2009 and the parties no longer met each other.

306. The question arises, therefore, as to how Mr. Bergin came to have such private material which post-dated the summer of 2009 (i.e., after the sundering of the relationship) in his possession? In his evidence Mr. Bergin stated that this material (i.e., the private correspondence emails) must have been given to him by Mr. Shevet, but this strikes me as unlikely. When Mr. Bergin was pressed in cross-examination by Mr. Finan, counsel for the George Walsh and Samuel Walsh, for an explanation for his possession of the material, I thought that he could give none or, at least, none that was credible.

307. It was, perhaps, also striking that the emails which were contained in Mr. Bergin's discovery were all printed "screenshots" which showed a constant number of emails in the "inbox" (namely, 133) even though some of the emails were dated June 2009 whereas others were dated November 2009. This suggests that these emails were all printed out at the same time after November 2009. If they had been printed out at different times (such as on the date they were received), it is very likely that the number of emails in the inbox would have changed from date to date.

308. Fourth, Mr. Bergin stated in his evidence that he had no knowledge of how another email account of this kind could be "hacked". I accept that he did not have that knowledge and that the irregular accessing of the email account of another in this manner would ordinarily prove a significant challenge to all but perhaps the most technologically proficient. Yet there is, however, a straightforward explanation for all of this. George Walsh gave evidence that some employees who worked with Mr. Bergin were quite legitimately aware of the password for the email account, since he (i.e., Mr. George Walsh) had given it to them in order to facilitate the printing off of flight confirmation details and boarding passes.

309. I am accordingly driven to the conclusion that Mr. Bergin must have become aware of this password from either casual inquiry or the existence of some note kept in the office of the details of Mr. George Walsh's password. He then must have accessed Mr. George Walsh's email account. He clearly printed off material from recent emails, but he also must have sent the disputed email from George Walsh's account to his own account in order to make it look as if he (i.e., Mr. Bergin) was receiving an email from Mr. Walsh consenting to judgment. He then deleted the consent email from the "sent" inbox.

310. I reach this conclusion reluctantly, as I would prefer to think that no litigant – not least a professional person whose profession of accountancy ought to be a by-word of integrity and probity in financial matters – would fabricate a document so as to obtain a large monetary judgment from this Court. Yet, applying the test posited by Henchy J. in *Banco Ambrosiano*, there can be little doubt that fraud is "rational and cogent conclusion to be drawn." For all of the reasons, therefore, I am driven to the conclusion that the disputed email was not authentic and that it was fabricated by Mr. Bergin.

Whether the November 2006 settlement agreement was authentic?

311. Another critical document relied on by Mr. Bergin was the alleged settlement agreement of 10th November 2006. It should be said immediately that the defendants denied the authenticity of this agreement. It is accepted by Mr. Bergin that he cannot now locate the original of this document and that what is produced in court is a copy of that executed document.

312. Mr. Bergin's evidence regarding the agreement was that he had been pressing the defendants (and the wider Walsh family) for payment ever since he had reached an agreement with regard to the sale of the farm in the autumn of 2003. At some stage after that date it had been suggested that Mr. Mervyn Walsh had been given an informal authority on behalf of the wider Walsh family to reach an agreement. That agreement was ultimately reached on 10th November 2006 when Mr. Mervyn Walsh agreed with the terms which had been suggested by Mr. Bergin. This involved, for example, the acknowledgment that a sum of €1,038,000 was due in respect of Mr. Bergin's involvement in the various projects with which he had been involved to date. There was also an acknowledgment that Mr Bergin's status was that of consultant to the Walshs.

313. At first blush the agreement certainly *looks* authentic. On further consideration, however, the agreement exhibits certain unusual features. The cover page carries the name of O'Hare, O'Connor, Walshe solicitors and their address. Mr. Michael Walsh (who is no relation of the defendants) of that firm of solicitors gave evidence in which he acknowledged that he had been retained by Mr. Bergin and that he had prepared a draft of a commercial service agreement which he sent to Mr. Bergin for comments on 8th November 2006. The draft agreement might be described as a bespoke commercial agreement which envisaged a 50/50 profit share between Mr. Bergin and Mr. Mervyn Walsh. Mr. Bergin seemed happy with this draft which he (Mr. Michael Walsh) had then sent on for execution, but he never received a signed copy.

314. Mr. Michael Walsh said that he never previously saw a copy of the agreement of 10th November 2006. Insofar as that agreement referred on the cover page to O'Hare, O'Connor, Walshe as the solicitors, this was something which had been done without his agreement or involvement from his firm. Mr. Michael Walsh acknowledged that the draft agreement of 10th November 2006 had been drawn up in places using a different font than other parts of the agreement. His firm had used the font Tahoma 11 which was on the signature page, but the body of the agreement was in a different font. I fully accept the evidence of Mr. Michael Walsh in that regard.

315. The curiosities of the agreement do not end there. The attestation clause stated "this Agreement has been executed the day and year first herein written". But someone has now written over these words so that they read "the 10th day" and "Nov 2006" has been written in hand over the words "and year first herein written." The witness has signed in the wrong place and no address of the witness is given. Nor does the attestation page contain a recital as to the number of pages contained in the agreement such as, for example, "page 5 of 6". The Schedule purports to give a definition of the Walsh family as "including" the following persons, namely, Mrs. Anna Walsh (the mother of the defendants) and the seven siblings (including the three defendants). There is, however, nothing to indicate that any of these persons ever agreed to being bound by any decision reached by Mr. Mervyn Walsh.

316. There are other signs that this was not prepared professionally. An apostrophe is frequently wrongly used where there is a simple

plural ("Walsh's" instead of "Walshs", "payment's" instead of "payments").

317. A further striking feature of this evidence was that Mr. Bergin's erstwhile secretary, Ms. Donna Moore, was not called as a witness, even though she had ostensibly witnessed the agreement. Mr. Bergin maintained that Ms. Moore had witnessed his signature and that of Mr. Mervyn Walsh. He said that he asked Ms. Moore to come down from the nearby offices to the Montrose Hotel in Stillorgan for this purpose.

318. It must be recalled that the execution of the signature was flatly denied by Mr. Mervyn Walsh. While he acknowledged that the signature was his, he maintained that the signature part of the document must have been spliced in from another one of the many similar such documents which he had signed in the course of his dealings with Mr. Bergin. A further feature of the agreement was that it purported to bind the entire Walsh family, even though no other member of the family had signed the document and nor was it suggested that any other member of the family had executed a power of attorney giving Mr. Mervyn Walsh authority to bind his other siblings and his mother.

319. The other Walsh witnesses – George, Samuel and Violet – all emphatically denied any prior knowledge of this agreement or that they had either given Mr. Mervyn Walsh the authority to bind them in this manner.

320. Faced with this evidence, it might have been anticipated that Ms. Moore would have been called by Mr. Bergin as a witness to describe the circumstances in which the agreement was witnessed. She was doubtless called upon to witness such agreements on many occasions in the past and it might be said that she could hardly be expected to recall every such occasion. On this particular occasion there were, however, some different features. If Mr. Bergin is correct, she was requested to leave her office and come down the short distance at lunchtime to the Montrose Hotel in order to witness the signature. It was all the more likely, therefore, that Ms. Moore would have recalled such an event if it had happened in the way Mr. Bergin described.

321. It is true that the court should be reluctant to draw an inference from a failure to call a witness. As Charleton J. stated in *Leopardstown Club Ltd. v. Templeville Developments Ltd.* [2013] IEHC 526 at para. 77:-

"Making an inference on the basis of the failure of a litigant to call readily available and highly important evidence should only be engaged in sparingly."

322. Yet there are circumstances in the course of civil litigation where, *provided that at least some evidence* to the contrary has been made out by the opposing party, the appropriate inference can be drawn. The decision in *McQueen v. Great Western Railway Company* (1874-1875) L.R. 10 Q.B. 569 is, perhaps, still the leading authority.

323. In *McQueen* the plaintiff sued for the value of a parcel of drawings which he had entrusted to the defendant railway company for delivery. The goods never arrived, having been stolen while in the custody of the defendant. The defendant pleaded a defence under the Carriers Act. The plaintiff responded that the defence was not available because the goods were lost by reason of having been stolen by the railway company's employees. The trial judge directed the jury that, if the facts, in their opinion, were more consistent with the guilt of the defendant's servants than with that of any other person not in their employ, that was sufficient to call upon the defendants for an answer, which not having been given, the inference might well be that a felony had been committed by some of the defendant's servants.

324. It was held that the direction was wrong and that the jury's verdict in favour of the plaintiff was wrong. The leading statement of principle is that contained in the judgment of Cockburn C.J. ((1874-1875) L.R. 10 Q.B. 569, 574):

"If a *prima facie* case is made out, capable of being displaced, and if the party against whom it is established might by calling particular witnesses and producing particular evidence displace that *prima facie* case, and he omits to adduce that evidence, then the inference fairly arises, as a matter of inference for the jury and not as a matter of legal presumption, that the absence of that evidence is to be accounted for by the fact that even if it were adduced it would not disprove the *prima facie* case. But that always presupposes that a *prima facie* case has been established; and unless we can see our way clearly to the conclusion that a *prima facie* case has been established, the omission to call witnesses who might have been called on the part of the defendant amounts to nothing."

325. It was held that a *prima facie* case had not been made out that the defendant's servants, rather than somebody else, had stolen the goods. All that had been established was that the defendant's servants had a greater opportunity of committing the theft.

326. This statement from *McQueen* was recently re-affirmed by the Supreme Court in *Whelan v. Allied Irish Banks plc* [2014] IESC 3. Here the Supreme Court held that the High Court judge was correct not to draw any adverse inference from the failure on the part of the bank to call a potentially key witness in circumstances even where that witness – a senior bank official who had played a key role in an important and complex financial transactions – might well have faced a testing and searching cross-examination. Fennelly J. held that it was critical in this context that the customer had not succeeded in establishing a *prima facie* case against the bank and absent that no proper inference could be drawn from the failure to call that witness.

327. Similar principles have been applied in other common law jurisdictions. Thus, for example, in *Jones v. Dunkel* (1959) 101 C.L.R. 298 the plaintiff sued for damages in negligence arising from a road accident in which her husband was killed. The accident itself arose from a collision between two trucks on a dark wet night. There were no witnesses to the accident, but it occurred on a steep winding road which wound up through wood hills. Some evidence of tyre marks suggested that the driver of the other vehicle had crossed on to the wrong side of the road, but he was not called as a witness.

328. A majority of the High Court of Australia held that in those circumstances an adverse inference could be drawn from the defendant's failure to give evidence. The various judgments of the majority stress, however, that while the absence of a witness cannot, as Menzies J. put it ((1959) 101 CLR 298, 312), "cannot be used to make up any deficiency of evidence" of the opposing party, nevertheless "evidence which might have been contradicted by the defendant can be accepted more readily if the defendant fails to give evidence."

329. Applying similar principles to the present case, I feel justified in drawing an adverse inference from the failure of the plaintiff to call Ms. Moore. The defendants have, after all, established a *prima facie* case that the settlement agreement is not authentic. While Mr. Mervyn Walsh admits that the signature is his, he insists that the signature comes from another document. The font on the signature page is different from the rest of the document.

330. We know, moreover, from the evidence of Mr. Michael Walsh that he never previously saw a copy of the agreement of 10th

November 2006, even though Mr. Bergin seemed happy with a very much different draft which his firm had prepared in the previous weeks. Insofar as that agreement of 10th October 2006 referred to O'Hare, O'Connor, Walshe as the solicitors, this was something which had been done without Mr. Michael Walsh's agreement or involvement from his firm, as Mr. Michael Walsh himself made clear in evidence.

331. The other defendants have denied executing the document and nothing has been produced to show that Mr. Mervyn Walsh was given legal authority to execute such an agreement on their behalf.

332. Against this background, therefore, the plaintiff's failure to call Ms. Moore to authenticate the claim that Mr. Mervyn Walsh signed the document on behalf of the Walsh family must be regarded as telling. Unlike some of the other potential witnesses who were based in France or Monaco and who were not called, there would not seem to be any justification based on reasons of cost or the general accessibility for this witness not to be called.

333. In these circumstances, I am driven to the conclusion that the November 2006 settlement is not authentic and that it was fabricated by Mr. Bergin.

What conclusions should flow from these findings?

334. There is no doubt but that these are serious and disturbing findings. I think it nevertheless likely that Mr. Bergin was driven to taking these quite improper steps out of desperation. He believed that he was entitled to these payments as commission payments and that the defendants had somehow wriggled free from prior commitments to payment. So convinced was he of the righteousness of his cause that – in his mind – the end justified the means.

335. Yet it must be recalled that the plaintiff's claim is damages for breach of contract and in *quantum meruit*. These are quintessentially common law claims, the remedy for which normally lies in an award of damages. These remedies are not discretionary remedies.

336. It should be noted that there is no counterpart in respect of a claim of this kind to the provisions of s. 26(1) of the Courts and Civil Liability Act 2004 ("the 2004 Act"). Section 26(1) of the 2004 Act provides:

"(1) If, after the commencement of this section, a plaintiff in a personal injuries action gives or adduces, or dishonestly causes to be given or adduced, evidence that:

(a) is false or misleading, in any material respect, and

(b) he or she knows to be false or misleading,

the court shall dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

(2) The court in a personal injuries action shall, if satisfied that a person has sworn an affidavit under s. 14 that—

(a) is false or misleading in any material respect, and

(b) that he or she knew to be false or misleading when swearing the affidavit,

dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

(3) For the purposes of this section, an act is done dishonestly by a person if he or she does the act with the intention of misleading the court.

(4) This section applies to personal injuries actions—

(a) brought on or after the commencement of this section, and

(b) pending on the date of such commencement."

337. It is clear that if this were a personal injuries action, Mr. Bergin's irregular and quite improper conduct would have brought him within the scope of s. 26(3) of the 2004 Act, since these false affidavits were designed to mislead the court. It is equally clear that if the plaintiff had sought an equitable remedy such as an injunction or had maintained an entitlement to equitable relief such as the imposition of a constructive trust, then this Court would have been obliged to refuse such relief in the light of this wrongful conduct: see, e.g., generally the judgment of Costello J. in *Parkes v. Parkes* [1980] I.L.R.M. 137, 142-145.

338. There is, however, no equivalent to s. 26 of the 2004 Act so far as the present claim is concerned. Since the plaintiff's claims lie in common law, he is entitled to damages in respect of such breaches where such has been established. For the purposes of this judgment it is unnecessary to examine the extent to which law and equity have fused since the enactment of the Judicature Acts (see generally, Delany, *Equity and the Law of Trusts in Ireland* (Dublin, 2011) at 7-12) or to repeat the analysis of this question which I conducted in *Meagher v. Dublin City Council* [2013] IEHC 474.

339. It is, perhaps, sufficient to state that in the 140 years or so since the enactment of the Supreme Court of Judicature (Ireland) Act 1877 it has never yet been suggested that, as I put it in *Meagher*, the common law remedies should, "like their equitable cousins, become entirely discretionary, even though this would be the logical corollary of any substantive fusion of law and equity." The fact, moreover, that the Oireachtas clearly amended the law by giving the courts a new statutory power whereby they could exercise a discretion to strike out the claims of a plaintiff who has dishonestly pursued certain types of common law claims (i.e., claims for personal injuries), suggests that it was not intended to disturb the common law generally so far plaintiffs pursuing other common law (i.e., claims which either do not come within the 2004 Act or which are either equitable in origin or which seek equitable relief).

340. All of this reflects the fact that common law actions are designed to give effect to legal rights, the enforcement of which is not dependent on the discretion of the court. If, for example, it is clear that A. owes B. €50,000 could it be suggested that B. is not entitled to recover that sum because, for example, B. falsely claimed that A. owed him an even greater sum? B.'s deceitful conduct might well give A. a separate cause of action, but it surely could not take from B.'s entitlement to recover the €50,000 by way of an

action for debt or (as the case may be) an action for breach of contract.

341. While, therefore, I deplore the endeavours by Mr. Bergin to deceive the court by resorting to fraudulent emails and exhibiting this correspondence in an affidavit in support of a motion for judgment, this cannot take from his legal right to damages for breach of contract or for an award based on *quantum meruit* where this had otherwise been established.

Part VII: Other Irish issues to be determined

The approach of the court to the evidential difficulties and the principles of quantum meruit

342. Before proceeding further, it is now necessary to consider how the Court should approach the nature of the plaintiff's claim. One consequence of the fact that I have held that the purported settlement document is not authentic is that the Court is left in the situation where there is a complete lack of clarity as to the manner in which the plaintiff was to be remunerated.

343. The judgment of Charleton J. in *Donnelly v. Woods* [2012] IEHC 26 is a very helpful authority on this point. In that case the plaintiff claimed to be entitled to payment in respect of financial services which he said to have provided over the years to the defendants. This issue was clearly identified by Charleton J. when he stated at para. 9:-

"Here, there is a problem. The nature of the services provided by the plaintiff to the defendant and his partner are left uncertain due to lack of documentation. This is compounded by an understandable vagueness in evidence by all of the parties who gave testimony; after the lapse of up to twelve years. If people put their obligations in writing, even through the exchange of letters, then there is at least something to refresh the memory and there may also be the clarity that written language can bring to the definition of obligations. All of that is absent in this case. The court is left uncertain as to the nature of the professional services provided by the plaintiff; what exactly this consisted of; how many hours were involved; and what the hourly rate of charge would be.

10. In the absence of a defined agreement as to remuneration, whether by reference to an hourly rate of charge or on the basis of a percentage profit share, no contract in law is concluded. As to the profit share that would normally be acceptable to the plaintiff, he gave evidence as to figures ranging between 1% and 10%. His normal rate of charge he said was 10%. Unless a custom of a trade or profession is established whereby the evidence supports a rate of charge claimed as notorious to the parties with whom the plaintiff dealt, or unless it is otherwise clearly specified, no contract enforceable in law is capable of being formed for professional services in the absence of agreement on remuneration. The absence of paper and the understandable vagueness of the evidence for the plaintiff cannot amount to a probability in the absence of such evidence. I cannot find the testimony in relation to the alleged meeting at the plaintiff's office of the 13th March, 2001 sufficient to supplant this unfortunate absence. Of itself, that kind of evidence is insufficiently strong to establish a probability."

344. Having identified the difficulties in relation to contract, Charleton J. went on to deal with the issue of *quantum meruit* at para. 11:-

"An entitlement to be paid on a *quantum meruit* basis can be established where it is clear from the course of dealings between the parties that the claimant worked for the defendant on request and on the basis of a mutual understanding that the service provided would be remunerated. If there is absence of agreement as to rate, then despite their failure to conclude a contract, the law will intervene to provide a remedy. This is done on the basis of fairness: where a worker is hired to do a job, that worker is entitled to be paid, a principle perhaps derived from Luke 10:7. The law does not look in appropriate circumstances to the technicality of a precise concluded agreement: once the work is expressly sought and properly done there should be fair remuneration. There must be an understanding fairly arising on both sides that such reasonable remuneration will be payable, however. Sometimes this is a necessary inference from the circumstances under which the work was done; on occasions the inference goes the opposite way.

12. (...)

13. (...)

14. The remedy of *quantum meruit* applies where there is work done on the basis of a mutual understanding of an obligation to pay. Such an understanding may be tacit and in some circumstances the law may fairly imply the obligation from the context. This has been recognised in a series of cases dealing with the provision of professional services: see Clark, *Contract Law in Ireland* (5th Ed., 2004) at 599-600. In *Henehan v. Courtney & Hanley* (1967) 101 I.L.T.R. 25 an estate agent was instructed by a purchaser to find a suitable farm. Such a farm was located by the agent and the sale subsequently closed. Teevan J. held that the estate agent was entitled to recover quantum meruit, since even though nothing was said about the commission or fees that entitlement arose from the circumstances. In *Chaieb v. Carter* [1987] IESC 5, the plaintiff was appointed to negotiate a contract for the sale of cattle to Egypt. After that first contract, with which there were difficulties, another contract was secured for the export of cattle but no remuneration was fixed. The Supreme Court found that the securing of the new contract flowed from the work carried out by the plaintiff and, as Finlay C.J. observed, the plaintiff was 'entitled to reasonable remuneration having regard to the work carried out by him and having regard to the expenditure which he clearly made on behalf of the defendants during this period.'

15. In this case there is yet a further problem. It has been impossible to establish in evidence as a probability as to what the rate of remuneration of the plaintiff is. At one stage a figure of €100 was mentioned per hour. This is a substantial sum but one that is possibly capable of being established and there should have been definite evidence in that regard, and definite evidence is absent. It is also impossible to say how many hours the plaintiff worked. Various figures of 40 or 50 hours were put to the plaintiff, but he was not inclined to agree with, and perhaps could not remember, any definite figure. Had the plaintiff established that he had worked for 50 hours at €100 per hour, he would gain an entitlement to €5,000 once that hourly rate was established as a reasonable standard which might be expected to be paid for that kind of work within the community. Even that evidence is absent. On the basis of what the court has been told, and in the absence of any documentary timesheets or detailed diary entries, it is impossible to estimate as a probability how many hours the plaintiff worked. During the course of this, the plaintiff was also meeting with Patrick James Woods and Kevin McKenna on other projects, for which he charged and was paid. One of these was referenced in evidence as 'the Oasis project', an apparent aside to a nightclub development which never got off the ground.

16. The interaction of the plaintiff on any substantial basis ceased once the housing association interest had been replaced by that of another party. In terms of actual quantifiable work there is not enough evidence to establish a probability that he was providing professional services, whatever these might be, at any date beyond March, 2001. (...).

Conclusion

17. Parties are entitled to deal with each other on the basis that in the future one will negotiate a fee when a profit becomes

apparent. This may have been the nature of the transaction between the parties in this instance. This kind of loose arrangement is not however a course of business dealings which becomes enforceable in law absent concluded agreement as to the essentials of remuneration and the nature of the service to be provided. Where people are dealing as quasi partners merely on the basis of good faith and high expectation it becomes impossible to say that a contract for professional services has been agreed."

345. The decision in *Donnelly* captures neatly many of the difficulties inherent in the present case. Once the disputed email and the November 2006 agreement fall away from the case, the court is then forced either to assess whether there was an oral agreement or, whether, alternatively, the plaintiff should be paid on a *quantum meruit* basis. A further complication is that at some point – perhaps from 2006 or, at the latest, 2007 onwards – the business affairs of Mr. Bergin and Mr. Mervyn Walsh became so close that they in effect became quasi-partners.

346. As if that were not enough, one must also take into account the fact that for a good part of this period Mr. Bergin was also paid on a PAYE basis by Event Horizon in respect of on-going professional services supplied by him to the company, even though he stressed that he was never an employee of the company as such. This makes it even more difficult to say what additional services were provided by the plaintiff over and above this agreement.

347. As every page of this judgment pretty well testifies, disentangling all of this is no straightforward exercise. There is no doubt, however, but that Mr. Bergin did significant work for which he is entitled in principle to be paid for these professional services, whether by way of contract or, failing that, *quantum meruit*. Where, however, no clear contractual agreement can be established then the court must fall back on the principle of *quantum meruit*. This principle, however, of necessity lacks the clarity and precision of a contractual agreement and any awards made under this heading of necessity have a certain artificial aspect to them.

348. These, however, are the principles which I propose to apply in assessing the merits of the plaintiff's claims.

The payment of the deposit of €46,000 to the auctioneering firm, Norths

349. The plaintiff claims the payment of €46,000 which was the deposit paid to the auctioneering firm Norths in respect of the refinancing of the property owned by Mr. Samuel Walsh at Ballynahown, Oulart, Co. Wexford. As we have noted already, Mr. Bergin had been originally retained with a view to rescuing the farm.

350. It seems clear that Mr. Bergin did make arrangements with Bank of Scotland (Ireland) to arrange for the debt to be effectively sold, although there is also evidence that Mr. Samuel Walsh also had a re-financing offer. At all events, Mr. Bergin put in a bid on the 25th September 2003 through Norths Auctioneers and he bought the land in trust on behalf of the Walshs.

351. Mr. Bergin said that he had put up the required deposit of €46,000 himself through his own funds and he produced a receipt for this sum from Norths which was dated 2nd October 2003. The receipt stated that the sum had been received from Pascal Bergin.

352. This contention was disputed in evidence by Samuel Walsh and the Walsh's family solicitor, Anthony O'Gorman. They both maintained that Mr. Samuel Walsh had put up the money for what was his farm (and not the family farm) and that a cheque for this sum issued from Mr. O'Gorman's office. So far as these witnesses were concerned, Mr. Bergin was purchasing the property in trust using money which had been advanced by Mr. Samuel Walsh.

353. Mr. Samuel Walsh insisted, however, that he himself had raised the monies for the €46,000 deposit with Norths auctioneers, as his brokers Mr. Mason and Mr. Jacob had previously arranged for a mortgage with the EBS Building Society on Ballyvadden House. This mortgage had been approved on the 8th August 2003. He then went to Mr. O'Gorman's office with a bank draft for this sum and subsequently personally handed the bank draft to a Mr. Donal Fitzpatrick of Norths. Mr. Walsh then gave the receipt to Mr. Bergin at the car park of the Stillorgan Park Hotel. He acknowledged that the receipt was in Mr. Bergin's name, but this was because Mr. Bergin had purchased the property in trust.

354. This account was corroborated by the evidence of Mr. Anthony O'Gorman, Mr. Samuel Walsh's solicitor. Mr. O'Gorman stated that the €46,000 came from Mr. Walsh's own client account. Mr. Walsh had, as we have just seen, previously obtained a mortgage on Ballyvadden House in the sum of €350,000 on 8th August 2003. This loan cheque was then drawn down by Mr. O'Gorman's office. A cheque was then written and deducted from the mortgage moneys in the sum of €46,000 which was used to obtain a bank draft in favour of Norths. Mr. O'Gorman produced vouching documents to this effect, including a contemporary client statement dated 22nd September 2003 showing this payment and a bank statement from AIB confirming that a particular bank draft purchased from AIB Gorey on 2nd October 2013 was made payable to Norths auctioneers.

355. It is true that Mr. Samuel Walsh acknowledges that Mr. Bergin did advance him a loan of €16,000 at this time, which sum he says he repaid when he obtained mortgage financing. I nevertheless think on the whole that it is unlikely that Mr. Bergin would have advanced €46,000 to individuals he scarcely knew. Furthermore, Mr. O'Gorman has meticulously explained by reference to his own office records how Mr. Samuel Walsh came to obtain this finance, albeit that the property was purchased in trust by Mr. Bergin. This, of course, explains why the receipt was in Mr. Bergin's own name.

356. In these circumstances, I prefer the account given by Mr. Samuel Walsh and by Mr. O'Gorman to that of Mr. Bergin. I will accordingly dismiss the claim for €46,000 based on the Norths' receipt.

The Ballyhogue site

357. Following the successful deal with Bank of Scotland Ireland, Mr. Bergin then turned his attention to securing a cash flow for members of the Walsh family. Mr. Bergin made various approaches to lending institutions to secure finance for a variety of projects. By November 2003 Event Horizon Ltd. had been acquired by Mr. Mervyn Walsh as a special purpose vehicle to acquire 140 acres at Ballynahown and Ballyvadden, Kilmuckridge, Co. Wicklow. At that point Event Horizon had secured funding of some €580,000 over a 12 month period which was secured on 140 acres of land at Ballynahown and Ballyvadden, Kilmuckridge, Co. Wexford.

358. A B10 form filed in the Companies Registration Office on 5th July 2005 shows that Mr. Mervyn Walsh and Ms. Dorcas Walsh were appointed as directors of Event Horizon on 3rd December 2004, with Mr. Mervyn Walsh nominated as company secretary. The B10 form also shows that both were already directors of Largreen Ltd. and Ms. Walsh was a director of Sherside Ltd.

359. As we have already noted, it is common case that Mr. Bergin was heavily involved in the development of the Ballyhogue site just south of Enniscorthy. It is clear that Mr. Rossiter had originally been given planning permission on 21st September 2001 for the development of twelve houses and ancillary works on the 3.5 acre site. Mr. Rossiter then sold the site to an acquaintance of Mr. Bergin, a Mr. Denis Kinsella or, perhaps, more accurately, a special purpose vehicle known as D.C. Site Development Ltd. By the middle of 2004 Mr. Kinsella was encountering financial difficulties as he endeavoured to complete the project. Mr. Bergin then raised the

finance to enable the site to be purchased by Harside Ltd. ("Harside") and the twelve houses were then subsequently completed. Harside was a special purpose company which had been acquired by Mervyn Walsh for this purpose. As we have noted, other members of the Walsh family came on site to help with the construction work. Ms. Violet Walsh and Ms. Dorcas Walsh arranged for the interior decoration.

360. After that, the Walshs got involved in the development and completion of twelve further houses. Mr. Bergin contended that it had been agreed that he would receive a fee of €500,000 for this work. This figure was asserted by the plaintiff and denied by the defendants. There is no documentary record of any agreed figure. It should also be recalled that Samuel Walsh had by this stage returned to Africa and he was not involved in any meaningful way with the developments at Ballyhogue. It is true that Mr. George Walsh was involved in the construction work, but it was really, I think, to help out on a Walsh family project for which Mervyn Walsh and (to a lesser extent) Dorcas Walsh were heavily involved rather than, as such, to become involved in the running of Harside.

361. The Ballyhogue site itself had been valued at €1.5m. by a Mr. Harold Young, a local auctioneer, in a report dated 19th April 2004, albeit that this was at a time when four houses and the bases for eight more houses had been actually completed. Even if it is accepted that the fully completed site with twelve houses – and bearing in mind that the houses were on sale for a figure between €180,000 and €212,000 – had a value in the region of €2.5m., a figure of €500,000 by way of commission strikes me as very high, even if the (valuable) work which had been performed by Mr. Bergin for Samuel Walsh (and the wider Walsh family) during the previous September/October 2003 is also factored into the equation. A figure of this nature would amount to a gross commission of something in the order of 20%. Having regard to the acquisition and other construction costs associated with the Ballyhogue site, it would have wiped out any possible profit or income which Mervyn or Dorcas or, for that matter and to the extent (if any) to which he was involved, George Walsh might have obtained from the completion of the site.

362. If forced to choose, I think it more likely that Mr. Bergin would have agreed to waive a reasonable commission payment in respect of the Ballyhogue site (and, for that matter, in respect of his work in respect of the auction in September 2003) following a request from Mr. Mervyn Walsh, even if that payment was far less than €500,000. There can be little doubt, however, but that Mr. Bergin's involvement and expertise was invaluable. He found the Ballyhogue site, he helped to raise the finance (including raising money from Tramore Credit Union) and, employing his standing and financial expertise, he generally opened the doors to the banking and commercial worlds for Mr. Mervyn Walsh and other members of the Walsh family. Why, one might ask, would Mr. Bergin have agreed to waive his fees in respect of the Ballyhogue project in particular without an agreement of this nature into the future?

363. Even though Mr. Bergin and Mr. Mervyn Walsh appear to have struck up an instant friendship, I think that the former would nonetheless have driven a hard bargain. Mr. Bergin's financial experience and expertise were invaluable and without the benefit of this expertise, it seems unlikely that Mr. Mervyn Walsh's business ventures would have flourished. To that extent, therefore, I think that there was an agreement that Mr. Bergin would receive a 3% commission on other projects which he identified and helped to develop.

364. In this respect, I must take account of the evidence given by Mr. Skeffington on behalf of Mr. Bergin that the exceptional market conditions which prevailed between 2004 and 2006 cannot be ignored. Oral agreements in this market at this time were extremely common and a commission payment of 3% in respect of successful projects could not be regarded as uncommon.

The Tramore Credit Union payment

365. As we have just seen, Mr. Bergin said he had arranged finance in his own name for the Ballyhogue site from the Tramore Credit Union in the sum of €120,000 and that he had used these monies to buy the site from Mr. Kinsella. Mr. Bergin produced a cheque dated 24th February 2004 from Tramore Credit Union which would appear to substantiate his contention that he had borrowed the money in his own name. It is equally clear that on 4th September 2007 Mr. Mervyn Walsh made a payment by bank draft of €20,000, albeit – possibly through inadvertence – the payment was expressed to be in favour of Waterford Credit Union. A further cheque was paid by Mr. Mervyn Walsh to Tramore Credit Union on 19th March 2008 in the sum of €20,000.

366. While Mr. Mervyn Walsh suggested that these payments were intended to be remuneration in the hands of Mr. Bergin I rather think that this was unlikely. In my view, this payment can best be regarded as a tacit acknowledgment that the funds had been borrowed by Mr. Bergin for the ultimate benefit of Mr. Mervyn Walsh and that he (Mr. Bergin) had used his good financial standing at the time to secure such a loan. It is equally clear that Mr. Bergin has been left to carry this loan himself.

367. In these circumstances, Mr. Bergin is entitled to judgment as against Mr. Mervyn Walsh in respect of this loan in the sum of €80,000.

368. Around this time Mr. Bergin was also involved in the development of two further sites, namely, the Swan, Abbeyleix Co. Laois and another site at Clonhassen, Co. Wexford. Mr. Bergin purchased the 10 acres Clonhassen site in Co. Wexford from a Mr. Eugene O'Leary in October 2004. The site was purchased in trust for a corporate vehicle, Sherside Ltd. ("Sherside") which Mr. Bergin had established for the benefit of Mervyn Walsh.

The Moyne site

369. As already mentioned, the next site which Mr. Bergin identified was the Moyne site at Enniscorthy, Co. Wexford, which was known as the Moyne. That site originally being on the market in September 2004 and, following negotiations with the vendor, Mr. Bergin said that he had negotiated the price down to €3m. This was a large site with full planning permission for 90 units. The Walshs arranged for a corporate vehicle, Sherside Ltd., to acquire the site. The development itself was known as Westbury Woods. The property itself was purchased by Mr. Bergin on behalf of Sherside on 20th April 2005.

370. In the light of the view which I have just expressed, I conclude that Mr. Bergin is entitled to a 3% commission payment in respect of the Moyne development. I think that Mr. Mervyn Walsh was the person responsible for the development of both the Ballyhogue and the Moyne sites. I accordingly hold that Mr. Bergin is entitled to a payment of €90,000 as against Mr. Mervyn Walsh.

The purchase of the motor car

371. The next issue is the purchase of a motor car from Arrowdell Ltd. (trading as Sheehy Motors) in Carlow. There seems little doubt but that in March 2007 the plaintiff wished to acquire a new motor car, while the defendants did not wish to be seen driving in a new motor car. Mr. Bergin purchased a new motor car from Sheehy Motors by way of trade-in. Mr. Bergin then purchased the trade-in (bearing registration number 06 D 35519) from Sheehy Motors and sold it to the defendants for the sum of €100,000. This appears to have been a perfectly regular transaction.

372. Mr. Mervyn Walsh contended that Event Horizon Ltd. purchased a car (bearing registration number 06 D 35519) from Sheehy Motors in 2006 for €85,000. He said that in March 2007 the plaintiff was given €100,000 by Event Horizon to enable him to purchase a new vehicle (registration number 07 D 20520). He further stated that Mr. Bergin did not use the money for this purpose, but that he

rather leased the vehicle. At all events, the significance of this, Mr. Mervyn Walsh contended, is that the plaintiff received €100,000 from Event Horizon to purchase a new vehicle.

373. This dealing really has little significance so far as the overall case is concerned, save that it shows that the particular sum was paid by the defendants for the vehicle when it was purchased from Mr. Bergin. It follows that this particular payment cannot be ascribed to some form of other payment by way of commission or otherwise by the defendants.

The purchase of No. 9 Westbury Woods

374. The plaintiff contends that he arranged for an investment to be made by Dr. Sam Naser in the Westbury Woods development in Enniscorthy. He says that he arranged for Dr. Naser to invest in the defendants' building projects. While Mr. Bergin maintained that the Walshs were all inseparable from this perspective, the available evidence suggests that of the defendants only Mr. Mervyn Walsh was involved in this project.

375. By this stage Mr. Bergin had purchased No. 9 Westbury Woods with a loan from a building society for €295,000. It turned out that the defendants – in reality, Mr. Mervyn Walsh – were unable to supply Dr. Naser with a property as promised. They then came to Mr. Bergin and sought his assistance. Mr. Bergin maintains that the parties came to an agreement whereby they would re-take the house, pay off the loan and transfer No. 9 to Dr. Naser.

376. The plaintiff says that he did re-convey the property to the defendants who then transferred the property in turn to Dr. Naser. The defendants were then to pay off the plaintiff's loan, but this did not occur. The effect of this – the plaintiff contends – was that the house was vested in Dr. Naser's name, but the plaintiff was left with the debt which Mr. Bergin is still paying off.

377. All of this was denied by the defendants. Both George Walsh and Samuel Walsh stated that they had had no involvement with the project and, as there is no evidence to the contrary, this must be accepted. For his part, Mr. Mervyn Walsh stated that Mr. Bergin still owns the property and that it is currently let by him to a tenant. He also maintained that the property was in fact extended – with a new kitchen and conservatory – at Mr. Bergin's request.

378. Not for the first time in this case, the resolution of these differing accounts is not an easy one. What Mr. Bergin says may well be correct. Yet the onus of proof lies upon him and there was simply little evidence – other than his personal testimony – to support these claims. One might have expected the plaintiff to lead evidence regarding the current title to the property and the nature of the mortgage agreements. While I do not say that his evidence was vital to the claim or that I am compelled to draw an adverse inference from his absence, one might nonetheless have expected that Dr. Naser himself would have been called to give evidence in order to substantiate Mr. Bergin's contentions.

379. In the absence of such evidence, I find myself coerced to say simply that Mr. Bergin has not substantiated an onus of proof which rests upon him. I will therefore dismiss the claim based on No. 9 Westbury Woods.

The Rinuccini site at Kilminchy

380. In July 2006 when Mr. Bergin was in Nice with Mr. Mervyn Walsh in connection with the latter's application for Monegasque residency he received a telephone call from an estate agent to the effect that a site at Kilminchy, Portlaoise, Co. Laois was on the market. Mr. Bergin and Mr. Mervyn Walsh hurriedly travelled back to Ireland where Mr. Bergin negotiated a deal at the K Club, Co. Kildare with the effective vendor of the site, the well known property developer, Bernard McNamara. After some contretemps and threats of litigation, the property was ultimately acquired by Mr. Mervyn Walsh through a special purchase vehicle, Largreen Ltd. ("Largreen") for the sum of €9.75m. Largreen had been acquired by Mr. Bergin for this very purpose.

381. Mr. Bergin had arranged finance of some €11m. through Ms. Mary McCarthy, the business manager of the Bank of Ireland in Waterford. This led to the development of a major housing development of 150 dwellings on the Rinuccini site. (The Bank of Ireland were ultimately to appoint a receiver in respect of that site in December 2008.) Along with Paraic Muldowney he also helped to raise mezzanine finance from a number of private investors. These included his brother Vince Bergin (who was based in Canada) and a Canadian investor, Glenn Dawson. These latter investors were re-paid after they threatened litigation, but the other investors were not so lucky as many of them – such as Mr. Paul Kelly who gave evidence before me – lost out on their investments. I was informed during the course of the hearing that another one of the investors had successfully sued Mr. Bergin for negligence in respect of representations which he had made to them prior to that investment.

382. It also seems clear that Mr. Bergin was heavily involved with aspects of the administration of the site. He made the arrangements whereby Largreen licensed the land to Event Horizon who then built the dwellings. He was the contact person for the National Development Home Bond Scheme. He also negotiated with Laois County Council so far as the payment of planning contributions was concerned. He also negotiated with Council officials in relation to the making of arrangements for social housing under Part V of the Planning and Development Act 2000. He also arranged for an architect, Mr. Conor O'Sullivan, to do the design work in respect of the housing development.

Was the plaintiff a de facto partner with Mervyn Walsh?

383. A central feature of Mr. Mervyn Walsh's defence is that the plaintiff was, in effect, a silent partner in the former's business enterprises and that he must share the losses as well as the profits. I think that there is little doubt but that over the five/six years which are in question in these proceedings Mr. Bergin's role vis-a-vis Mr. Mervyn Walsh evolved from that of business consultant to that of quasi-partner in the various business enterprises. The pair met and spoke almost daily during this period and I could not but be struck by the fact that a number of witnesses who were familiar with their business methods during this period (such as, e.g., Paraic Muldowney) stated that they had assumed that they were in effect business partners.

384. The difficulty really lies in assessing when that quasi-partnership began. The plaintiff maintains that his business arrangements were with the Walsh family generally. While his principal contacts during this period were with Mervyn Walsh, the latter was simply the appointed intermediary on behalf of the wider Walsh family. Mr. Bergin contended that the defence which has been proffered on behalf of George Walsh and Samuel Walsh is designed to manoeuvre a situation in which the greatest liability falls exclusively on the shoulders of Mervyn Walsh who is an undischarged bankrupt.

385. For my part, I am not persuaded that the evidence establishes that either George or Samuel Walsh had any real involvement in Mervyn Walsh's business dealings in Ireland during this period, save for the proposal in respect of the Wells Estate in which Samuel Walsh was heavily involved, but which ultimately did not come to fruition. (The position with regard to the French property acquisition is, of course, completely different). It is also true that Mr. Samuel Walsh allowed his lands at Ballinahown to be used as security by Mr. Mervyn Walsh to facilitate his brother's property acquisitions. But there is no evidence that either Samuel or George Walsh were involved in any of these Irish developments, save that George Walsh helped out in the final "build out" of the Ballyhogue site.

386. Mr. Mervyn Walsh had become a director of Event Horizon in June 2005 (if not earlier). The company then had its registered office at the Cornelscourt Business Centre, Stillorgan, Co. Dublin, immediately adjacent to the plaintiff's own office. Event Horizon leased this office from Mr. Bergin until some time in late 2008. Mr. Bergin was also subsequently employed by Event Horizon as a consultant and he was paid a salary on a PAYE basis.

387. The principal evidence relied upon by Mr. Mervyn Walsh to point to the existence of a quasi-partnership related to the events of mid to late 2007. It seems clear that by this stage Mr. Mervyn Walsh and Mr. Bergin envisaged a plan to establish a Monegasque company which, in turn, would acquire and then lease out the Rinuccini development at Portlaoise. Mr. Bergin undoubtedly wrote by email to Mme. Savona on 10th September 2007 seeking finance in respect of the Rinuccini project. In effect, what seems to have been proposed was that a Monegasque company would be incorporated which would buy 70 of these apartments for some €20.5m (including stamp duty and conveyancing costs). Mr. Bergin sought €12m funding from BSI.

388. It is, perhaps, significant that in that email Mr. Bergin stated:

"The purchase will be made in a company local to the bank, *owned by Mervyn and myself*, the project needs to be completed immediately. The property will be owned by this company, the bank can then have a charge on the company locally." (emphasis supplied)

389. The timing of this request probably reflects a rapidly slowing Irish property market. Presumably if this project had gone ahead – and BSI seems to have had limited enthusiasm for the project – the funding would have enabled Largreen and Sherside to clear their Irish debts with any profits then lying in the hands of the Monegasque company for distribution to Mr. Mervyn Walsh and to Mr. Pascal Bergin.

390. It is perhaps significant, however, that this proposal came towards the end of their business relationship, rather than at the start. As I have already indicated, I agree that as time went on the relationship between Mr. Mervyn Walsh and Mr. Bergin drew closer to the point of a proposed joint venture of this kind in 2007 would scarcely have been surprising. But I do not think that one can – so to speak – extrapolate backwards from that in order to conclude that there was a partnership or quasi-partnership all along. For my part, I do not think that there was and certainly not at the time when Mr. Bergin agreed to do this work in return for commission payments. More specifically, I do not think that Mr. Bergin was anything other than a close business adviser who claimed a commission share on these earlier Irish property developments. There is no evidence that he stood to share in any of the profits.

The proposed acquisition of the Wells Estate

391. So far as the Wells Estate is concerned, there is no doubt but that Mr. Bergin endeavoured to secure some €5.6m of funding for this project from various financial institutions in the autumn of 2007. Wells House was itself a magnificent 19th century mansions of enormous proportions situate on a parkland estate of some 40 ha.

392. Mr. Bergin had also commissioned a valuation of the property from Finnegan Mention and a project report from Mr. Conor O'Sullivan, an architect frequently retained by Mr. Bergin. He met the Walshs on the estate and they walked the land. Mr. Bergin also spoke to senior personnel in Ulster Bank regarding the project, but in the end they had no interest in advancing any money to fund it. He also arranged for special purpose companies to be incorporated in contemplation of the project.

393. At one point it was suggested that the property might be used as a complex to accommodate visiting athletes in anticipation of the Olympics which were to be held in London in 2012. Mr. Bergin contacted high level personnel in the Olympic movement who were very doubtful about these prospects. In the end, however, even though a €350,000 deposit was paid, the sale was not completed. Mr. Bergin mentioned that he had a meeting in the summer of 2007 at Powerscourt, Co. Wicklow where he advised the family not to proceed with the purchase.

394. Mr. Bergin rejected the suggestion advanced by Mr. Mervyn Walsh that he had done little work in respect of the project. As he put it, very few accountants had the relevant experience as would facilitate the realisation of the project and he claimed to be entitled to be paid for the work he had put into the project. I believe that Mr. Bergin is correct in saying that he had put considerable time and effort in to the project, but I still do not think that by reference to the understanding between the parties that Mr. Bergin is entitled to payment for the Wells Estate project.

395. The understanding, after all, was that Mr. Bergin would obtain a 3% commission on the purchase price of any of these developments. To that extent, therefore, it was implicit that a fee would be payable only if the development proceeded to completion. As this did not happen, Mr. Bergin is not entitled to payment of any fees whether by reference to contract or quantum meruit in respect of the Wells Estate.

Part VIII: Two specific defences advanced by Mr. Mervyn Walsh

396. Two specific defences raised by Mr. Mervyn Walsh now require separate consideration. First, it was said that Event Horizon and Mr. Mervyn Walsh had already provided a form of compensation to Mr. Bergin by providing free labour and other services in respect of the construction of the house at the Vee, Co. Waterford. Mr. Bergin countered that he had a contract with Event Horizon for this purpose and that it was that company which was responsible under the contract for payment of suppliers. He said that he had to pay the suppliers personally when Event Horizon failed to do so and that these payments from Event Horizon were in recompense for this. Mr. Walsh denied the authenticity of the contract and claimed that it was a forgery.

397. Second, it was contended that Mr. Bergin had already been amply compensated through various individual cheque payments made by Event Horizon, Largreen and Sherside during these hectic years.

398. A particular consideration here is that all these payments were made by companies (Event Horizon, Largreen and, in one instance, Sherside) of which Mr. Mervyn Walsh was a director and which he controlled. The companies were obliged by s. 202 of the Companies Act 1990 ("the 1990 Act") (which was the law then in force) to keep proper books and records. Specifically, s. 202(1)(a) of the 1990 Act required the company to keep such books and records as "correctly record and explain the transactions of the company." Compliance with this obligation is a key duty resting upon directors and, indeed, as if to underscore the point, s. 202(10) of the 1990 Act provide that the failure of a director to comply with this obligation without reasonable excuse is an offence.

399. In many of the instances we are about to examine it is obvious that this obligation has either not been complied with or else that the documentation which has been supplied to the Court is at least presently inadequate to explain the transactions of the company in question. Since in this respect the onus of proof rests in any event upon Mr. Mervyn Walsh (as he who asserts must prove), in the absence of clear evidence the issue must be resolved adversely to him or to the companies which he controlled and of which he was director.

400. These issues may be considered in turn.

Whether the building contract for the house at the Vee, Co. Waterford is authentic

401. It is not in dispute but that Mr. Bergin wished to construct a house at the Vee, Co. Waterford in an area of outstanding natural beauty near Lismore. Mr. Bergin produced a contract dated 24th April 2007 which purports to show an agreement between Mr. Bergin and Event Horizon Ltd. whereby the latter was to construct a house at Carrignagower, East Lismore, Co. Waterford for €180,000. While the Law Society's standard *Building Agreement* (2001 edition) was used, it is clear that the operative part of the contract was completed in Mr. Bergin's own handwriting, although the contract is also apparently signed by Mr. Mervyn Walsh on behalf of Event Horizon. The seal of the company also appears to have been applied to the agreement.

402. Mr. Mervyn Walsh maintained that the contract was a forgery and that the signature was not his. There were a number of unusual features to the contract over and above the fact that the contract was filled out in the plaintiff's own hand. The front page of the contract describes the solicitors as Charles B. Kingston, 32 Bachelor's Walk, Dublin 1, but there is almost nothing else to suggest that this firm had anything to do with the building contract. The signatures of both the employer (Mr. Bergin) and the Contractor (Event Horizon Ltd.) were supposedly witnessed by a "Kevin Curran, Solicitor, Dundrum, Dublin 18".

403. It was suggested to Mr. Bergin in cross examination that the name "Kevin Curran" was a pure fiction and the plaintiff, when challenged, could not produce any evidence that such a person ever existed. It is also perhaps significant that an incomplete address was used by a solicitor who happened to be witnessing these signatures. Why did "Mr. Curran", if he did exist, not use a full address? There is also the point that Dundrum is, in fact, in Dublin 14, not in Dublin 18. This is admittedly a small point, yet it might be thought quite unlikely that any solicitor who was in truth based in Dundrum would make this elementary mistake when witnessing a deed of this nature.

404. It is also accepted that Mr. Bergin wrote the words "Event Horizon Ltd." under the name of Mervyn Walsh. The signature admittedly looks like that of Mervyn Walsh, even if Mr. Walsh denied any knowledge of this particular contract. When pressed on the point under cross-examination from Mr. Mervyn Walsh, Mr. Bergin appeared to relent on the question of whether the signature was that, in fact, of Mr. Walsh.

405. Once again I find myself compelled to the conclusion that this document is a forgery. No satisfactory evidence of the existence of a solicitor named Kevin Curran has ever been produced and this, along with the curiosities in relation to the address which I have just described, is sufficient to excite suspicion which has not been satisfactorily allayed. It is also striking that the agreement was almost completely filled out in Mr. Bergin's own hand, itself an unusual feature in respect of a building contract where there was – ostensibly, at least – a solicitor's firm named on the front page.

406. It is true that the agreement *appears* to have been signed by Mr. Mervyn Walsh and the seal of Event Horizon was attached. There is, however, a straightforward explanation for this, since as Mr. Mervyn Walsh suggested during the course of the hearing, I think it likely that either someone did a good copy of Mr. Walsh's signature or (as I think actually more likely) Mr. Bergin simply inveigled Mr. Walsh to sign the attestation page of the contract while passing it off as something else such as a routine house sale, so that the latter did not realise the nature of the document he was supposed to have been signing. As the Event Horizon shared offices with Mr. Bergin, it was relatively easy for him to procure the seal of the company and to fix it to the contract at some later stage. One way or another, I feel compelled to hold that the contract is not authentic.

407. If, however, the supposed contract of 24th April 2007 is a forgery, what consequences flow from this? Beyond deploring the fact of yet another serious deception, in some respects this matter is possibly not of critical significance because even on Mr. Mervyn Walsh's own case, Event Horizon were heavily involved in the supply of goods and services to Mr. Bergin in respect of the house at the Vee.

408. The gist of the plaintiff's complaint, however, is that Event Horizon did not pay the suppliers in respect of the goods delivered, even though he had already entered into a contract with the company. Mr. Bergin says that he paid these sums to the suppliers but was reimbursed to the extent of €175,000 by Event Horizon by means of five separate cheques drawn on the Largreen account between April 2007 and December 2008.

409. Mr. Walsh contended that Event Horizon supplied goods and services in relation to the construction work (by supplying, for example, equipment and employees) to assist with this project, so that, in any event, Mr. Bergin received monies worth in respect of these goods and services and that this was designed to remunerate him on behalf of his activities for the company. Mr. Bergin certainly produced a range of invoices in respect construction work and services supplied by a range of suppliers in respect of the Vee property. Most of them were addressed to Event Horizon, but some were addressed to Mr. Bergin personally.

410. The absence of any clear documentary record of these transactions means that the court is once again placed in almost an impossible position in terms of adjudication as between these competing claims. The fact that many of the suppliers' invoices were in the name of Event Horizon tends to corroborate Mr. Bergin's contention that Event Horizon were indeed retained by him to construct the house even if the building contract which he produced for this purpose is not authentic and, is, indeed, a forgery. It is, of course, possible that, given his close affinity with Event Horizon at this time (2007-2008), Mr. Bergin simply took it upon himself to make these orders in the name of the company. This possibility, however, was never suggested in evidence or put to Mr. Bergin and I accordingly propose to discount it.

411. The court is then left in the situation where Mr. Bergin admits that he received money from Largreen (on behalf of Mr. Mervyn Walsh) which he says was in respect of the payment of suppliers which under the company was itself obliged to pay. As, however, I have found that there was no such contract and the contract which was actually produced is a forgery, then the implication must be that at least some of these payments were for purposes other than the repayment of Mr. Bergin in respect of the payment of suppliers. As against this, Mr. Walsh admits that Event Horizon was involved in the construction of the house and it has not been suggested that the invoices which were addressed to it were not authentic or that these goods and supplies were not ordered by it.

412. In this well nigh impossible situation I propose to resolve it by saying that as the documentary records of the company are insufficient for the purposes of s. 202(1)(a) of the 1990 Act to demonstrate the nature of these transactions, Mr. Mervyn Walsh has failed to discharge the requisite onus of proof to demonstrate that these payments were by way of remuneration.

The cheque payments made by Event Horizon to Mr. Bergin

413. So far as the other cheque payments are concerned, it has to be said that the position is confused and not particularly well documented. We here find ourselves reverting to a familiar problem as far as this litigation is concerned, namely, the absence of detailed records and the absence of specialist witnesses (such as, in particular, a detailed report from a forensic accountant) who

could help the court to chart its way through a morass of payments over the years.

414. In fairness, however, to both Mr. Bergin and Mr. Mervyn Walsh, they both appear to have done their best to reconcile the various payments. I propose to deal with the cheques issue in three separate tranches: (i) cheques made between 2005 and 2006; (ii) cheques for under €10,000 made between 2006 and 2008 and (iii) cheques for sums greater than €10,000 between 2006 and 2008.

Cheques paid between 2005 and 2006

415. Mr. Walsh referred to 13 cheques which Event Horizon had paid in the period between 2005 and 2006, with one of the cheques dated 20th March 2007. The evidence of these was cheque stubs, accompanied in 9 cases by an extract from Event Horizon bank statements with National Irish Bank. These payments can be considered in turn.

The payment of 13th February 2005 to Wexford County Council

416. Mr. Mervyn Walsh produced the cheque stub of a cheque dated 13th February 2005 for €19,384.23 apparently paid by Event Horizon to Wexford County Council. Mr. Walsh claimed that this cheque was requested by Mr. Bergin for the purposes of remuneration. The bare evidence available – a copy of a cheque stub – does not bear this out, since it suggests that it was a payment to Wexford County Council arising out of the planning process, most likely in relation to the Ballyhogue site which had been in the course of development by Event Horizon since the previous year. The word “planning” is also written across the top of the stub. The ungainly nature of the figure itself – €19,384.23 – also suggests that it was the product of a mathematical calculation, thus tending further to corroborate the view that this was a payment in respect of the planning process.

“Loan” of €25,000 to Paschal Bergin on 7th March 2005 and 28th April 2005

417. Mr. Walsh referred to a cheque stub dated 7th March 2005 which was described as “PB loan” for €25,000. There was a further cheque stub dated 28th April 2005 for €25,000 which was also described as “P Bergin loan”. Indeed so far as the first cheque stub of 7th March 2005 is concerned, Mr. Walsh contended that this was all done in Mr. Bergin’s own writing and that this was a loan to Mr. Bergin.

418. Mr. Bergin emphatically denied that there had been any such loans to him. The only loans which he had been involved with were loans made by him to members of the Walsh family which he had made to them as the Ballyhogue site was in the course of being developed in 2004. At that stage the Walshs were under severe pressure to clear their own debts and had little income flow. Mr. Bergin said that he helped them financially by giving them loans during this period and these cheques were evidence of the repayment of the loans previously given to the Walshs.

419. Given the equivocal state of the evidence, I do not accept that Mr. Walsh had discharged the onus of proof of demonstrating that these payments were indeed a loan to Mr. Bergin.

Payment to Christy O’Malley dated 28th February 2005

420. Mr. Walsh next referred to a cheque stub dated 28th February 2005 which indicated a payment of €25,000 to Mr. Bergin’s brother-in-law, Christy O’Malley. Mr. Walsh contended that Mr. Bergin requested that he make a loan of €25,000 to Mr. O’Malley and that this loan was never re-paid.

421. But even on Mr. Walsh’s own case this would not establish that there had been any payment by way of remuneration to Mr. Bergin. It establishes at most that Mr. Bergin asked Mr. Walsh for a favour and that the latter was benevolent in the manner in which he helped out Mr. O’Malley.

Payment of €100,000 of 20th March 2007 (sale of motor vehicle)

422. A cheque stub dated 20th March 2007 is headed “P Bergin Capital Equipment”. Mr. Walsh contended that this payment was entirely for Mr. Bergin by way of remuneration, as there was no question of any capital equipment payment for this sum.

423. Mr. Bergin contended that the payment was in relation to the purchase of the 2006 Mercedes motor vehicle by the defendants from him and his purchase in turn of a new 2007 model from Sheedy Motors. Given that I have already found that Mr. Bergin sold that vehicle to the defendants for €100,000 at the end of March 2007, this cheque is clearly referable to that purchase and was not by way of remuneration.

Payment of 26th February 2006 (Noel O’Sullivan)

424. A further cheque stub records a payment of €20,000 on the 26th February 2006. The stub contains the following writing “P.B. NOS Noel O’Sullivan Ask Paschal.” Mr. Walsh contended that this was a payment directly to Mr. Bergin and that Noel O’Sullivan had nothing to do with the payment. For his part Mr. Bergin maintained that the payment was to Mr. O’Sullivan who was a plant hire contractor.

425. For my part, I consider that in the absence of clear vouching documentation I cannot conclude that Mr. Walsh has satisfied the onus of proof and demonstrated that the cheque was in the nature of remuneration to Mr. Bergin.

Payment of 3rd August 2005 (Advance to Paschal Bergin)

426. Yet a further cheque stub shows a payment of €20,000 to Mr. Bergin on 3rd August 2005. This payment is described as an “advance.” Mr. Bergin steadfastly denied that he received any advance payments of this kind.

427. I fear that this isolated description in a cheque stub is simply too slender a basis to justify me holding that there was an advance payment by way of remuneration. To repeat a point I have frequently made in this context, the onus was by law on these companies to keep proper records to explain these transactions. In this instance that explanation simply is not there.

Other payments from 2005

428. There were other payments to Mr. Bergin during this period, including €6,000 on 31st January 2005, a €25,000 payment which was cashed on 18th July 2005, a €10,000 payment which was cashed on 3rd August 2005, another €10,000 payment which was cashed on 18th October 2005, and a €25,000 which was cashed on 29th December 2005. There is no doubt but that these payments of €76,000 in total are significant. It is quite possible that payments of this magnitude were for the purposes of remuneration, but again Mr. Walsh has simply failed to discharge the onus of proof in that regard.

The cheques for sums under €10,000

429. Mr. Mervyn Walsh produced 28 separate cheques under €10,000 made out either to Mr. Bergin or to Bergin and Associates between December 2006 and early 2008. All of these cheques were drawn on the account of Event Horizon with Northern Irish Bank,

Waterford and all the cheques were personally signed by Mervyn Walsh. The total sum paid came (with rounding) to €55,790. Some five of the cheques were for sums of €2,208 each, representing the rental paid in respect of Mr. Bergin's Stillorgan premises. Three cheques were in the sum of €1,153.85 which represented the plaintiff's remuneration. The remainder of the cheques were expressed to be in respect of Mr. Bergin's expenses, albeit that no vouching documentation was ever produced.

430. Even on Mr. Mervyn Walsh's own case, therefore, none of these particular cheques are referable to remuneration payable to Mr. Bergin. They can, accordingly, be discounted so far as these proceedings are concerned.

The cheques for sums over €10,000

431. In addition to the cheques (or, in a few cases, bank drafts) which were for sums under €10,000, Mr. Mervyn Walsh also pointed to 19 other cheques/bank drafts which were for sums in excess of that figure. Two separate cheques/bank drafts were produced in respect of the Tramore Credit Union for €20,000 each. (One of the bank drafts was actually expressed to be to for the Waterford Credit Union, but I do not think that anything turns on that since I assume that this is simply another branch of the same local credit union.) As the payment of these sums has been dealt with elsewhere in this judgment (these being repayments of the original loan which Mr. Bergin obtained in respect of the Ballyhogue site), this leaves 17 other cheques/bank drafts.

432. There were 15 payments made by Largreen between December 2006 and 2008. 13 of these payments were made by cheque in the name of Largreen and there was also one bank draft dated 11th December 2006 which Largreen requested. These fifteen cheques (including one bank draft) came to the sum of €1,145,000. There was in addition a cheque made payable to O'Hare, O'Connor, Walshe in the sum of €34,388 which was paid by Event Horizon on 7th November 2006. There was one other payment by bank draft drawn on the National Irish Bank account of Sherside Ltd. in the sum of €150,000.

The O'Hare, O'Connor, Walshe cheque

433. We may start with a consideration of the O'Hare, O'Connor, Walsh cheque in the sum of €34,388. This cheque was dated 7th November 2006, signed by Mr. Mervyn Walsh and drawn on the Event Horizon account with Northern Irish Bank at Waterford. Mr. Mervyn Walsh stated that this payment was in respect of legal fees which Mr. Bergin had been obliged to incur as a result of litigation in August 2006 involving a Cork based company, Bothwell Developments Ltd., which, although quite unconnected with these proceedings, was one in respect of which Mr. Bergin had separately advised.

434. For his part Mr. Bergin stated that the payment was in respect of work done in connection with Darnway Ltd., a company then owned by Mr. Mervyn Walsh, at Fermoy, Co. Cork. Planning permission for twelve apartments was originally obtained, but this was extended to twenty four apartments. Mr. Bergin said that despite having worked on this project and structured the special vehicle company, he was never paid for this work. The conveyancing and other legal fees for which O'Hare, O'Connor, Walshe had invoiced Event Horizon were, however, discharged.

435. In this context Mr. Mervyn Walsh produced an invoice from Kennedy Solicitors dated 18th October 2006 for the sum of €34,388. The invoice was addressed to "Event Horizon c/o Paschal Bergin" and it clearly refers to litigation arising from what was described as a "disciplinary process" stemming from "your suspension from employment.". There is no question but this detailed invoice is referable to the personal activities of Mr. Bergin which are divorced from his role in Event Horizon. The sum paid by cheque matches the invoice from O'Hare, O'Connor, Walshe. A note on the file stated that this firm and Kennedys later merged.

436. Treating purely *for present purposes* the payment made by Event Horizon as one *de facto* emanating from Mr. Mervyn Walsh, it follows that this documentation shows that this payment must be regarded as a form of quasi-remuneration. In other words, Event Horizon paid a bill which was strictly the responsibility of Mr. Bergin. To that extent, therefore, *so far as these proceedings*, are concerned, Mr. Mervyn Walsh is entitled to treat this payment as a form of remuneration which can be credited to this action given that it may be recalled that Mr. Bergin maintained that he had received no remuneration whatever from Mr. Mervyn Walsh.

Payment of €100,000 on 10 May 2007 (Cork property)

437. On 10th May 2007 Mr. Bergin was paid €100,000 by a cheque drawn on Largreen and signed by Mr. Mervyn Walsh. The latter contended that this was payment of Mr. Bergin's professional fees, whereas Mr. Bergin maintained that this was in respect of a deposit for the purchase of the old Kodak factory at Francis St., Fermoy, Co. Cork which he had paid on behalf of Mr. Mervyn Walsh who was considering acquiring this property using a special purpose company called Darnwell Ltd. Mr. Walsh accepted that he had given consideration to the purchase of this site, but, on reflection, decided against it on the basis that it was too far from his own centre of operations. He maintained that Mr. Bergin had in fact proceeded to acquire the property himself. In this respect, it appears to be common case that after the original sale fell through, the property was offered for sale to Mr. Bergin in a personal capacity and he duly acquired it

438. Both of these two explanations are plausible and could well be true. My difficulty is that there is almost no way of adjudicating as between these competing claims without further evidence such as invoices or documentation, although the detail of the account given by Mr. Bergin of this transaction so far as this issue is concerned seems more convincing.

439. In both this and, indeed, other contexts, I have given consideration to the question of whether I should discount Mr. Bergin's evidence in its entirety given that it is clear that he has fabricated three documents (namely, the November 2006 agreement, the Vee contract and the December 2009 email) which he nonetheless sought to rely on in evidence. In addition, on some issues his evidence has been shown to be completely wrong (e.g., in relation to the payment of €34,388 to O'Hare, O'Connor, Walshe). At the same time, much of what he else says has been shown to be substantially correct. In these circumstances, beyond treating Mr. Bergin's evidence with some circumspection, I do not think that it would be altogether fair to treat it as worthless.

440. But since in this respect the burden of proof falls upon Mr. Mervyn Walsh - as he is asserting a defence of prior payment - I think that the most straightforward way of approaching this matter is to say that Mr. Walsh has simply failed to discharge the onus of proof in this regard. It was incumbent on him as a director of Largreen to be in a position to produce documentary evidence to show the nature of this payment and, since he cannot do this, he has not been able to demonstrate that this particular payment was for the purposes of remunerating Mr. Bergin.

Three payments of €100,000 on 18th October 2007, 27th October 2007 and 15th November 2007 (Vince Bergin and Glenn Dawson)

441. As noted elsewhere in this judgment Mr. Paschal Bergin raised mezzanine finance for Event Horizon from a number of sources. He seems to have persuaded his Canadian based brother, Vince Bergin, and another Canadian, Glenn Dawson, to invest in Event Horizon. Mr. Mervyn Walsh produced a copy of a cheque for some Can \$200,000 which Mr. Vince Bergin had paid to Event Horizon in May 2005, but this very probably was not the only such investment.

442. Mr. Walsh could point to a payment of €100,000 paid to Mr. Vince Bergin in an (undated) credit transfer. There also appears to have been a series of 12 coupon payments to Mr. Vince Bergin for €3,000 each between 2005 and 2006. There was a further payment of €9,000 to Mr. Vince Bergin on 28th June 2006, but this presumably reflected three further coupon payments paid in one transaction.

443. On 18th October 2007 there was a further payment of €100,000 to Mr. Bergin. This payment was made by Largreen and was signed by Mr. Mervyn Walsh. Two further Largreen cheques dated 27th October 2007 and 15th November 2007 for identical sums were paid to Mr. Bergin. Mr. Walsh claimed that these payments (i.e., €300,000 in total) was in respect of the remuneration of Mr. Bergin, whereas Mr. Bergin claimed that this was to repay him for monies which he had been obliged to pay to his Canadian based brother, Vince, and another Canadian based investor, Glenn Dawson, in respect of their investment in Event Horizon. Mr. Paschal Bergin had solicited this investment and clearly felt honour bound to ensure that his brother and his close friend were repaid.

444. There is no doubt but that Mr. Vince Bergin and Mr. Dawson were anxious to recoup a significant investment which they had made by way of mezzanine finance to Event Horizon. There was significant email correspondence in the early summer of 2007 between Mr. Paschal Bergin and his brother in relation to this matter. Indeed, Mr. Vince Bergin had gone so far as to instruct solicitors to send a letter on 26th July 2007 to Mr. Mervyn Walsh, Ms. Dorcus Walsh and Mr. Paschal Bergin requesting repayment of €750,000.

445. It would appear that some significant payments to Messrs. Vince Bergin and Dawson must have been made at this time as the threatened litigation did not materialise. Certainly Mr. Paschal Bergin's then solicitors, Patrick Troy and Co. wrote on 15th July 2008 to Giffen & Co. in Ontario who acted for Mr. Vince Bergin. In that letter Messrs. Patrick Troy stated that they had been instructed that "your client has already received back all his capital together with an additional sum of €50,000, together with two units in the Westbury Woods development." A further letter sent from Mr. Vince Bergin's Irish solicitor, Mr. Ben O'Rafferty, dated 7th May 2009 to the receiver for Event Horizon enclosed the earlier letter from Patrick Troy & Co. as evidence of the agreement.

446. Here again the court is placed in the unenviable situation of seeking to ascertain the nature of certain large payments for which there is no proper record or accounting treatment and in respect of which there are two tenable or potentially credible explanations. Nevertheless, having regard to the amounts in question and the timing of these payments (i.e., the Autumn of 2007), it seems to me that Mr. Bergin's explanation is, in any event, the more probable one. It is clear from the correspondence and email traffic that Mr. Paschal Bergin was being held personally responsible for the repayment by his brother Vince Bergin, but that ultimately both Mr. Vince Bergin and Mr. Dawson had their capital investment refunded.

447. In these circumstances I think on balance that it is likely that Mr. Paschal Bergin did make such repayments to his brother and Mr. Dawson and that, accordingly, these three payments for €100,000 from Event Horizon were designed to make good these sums to him and were not for the purposes of remuneration. It would, of course, have been altogether more satisfactory in this regard if Mr. Paschal Bergin had produced positive proof of such payments. As I have already noted, however, the onus of proof rests on Mr. Mervyn Walsh to demonstrate the nature of the payments and I am not satisfied that he has discharged that onus showing that these particular payments were in respect of remuneration for Mr. Bergin.

Payments to Laois County Council

448. Mr. Walsh produced a cheque stub for €12,500 in respect of a payment by Event Horizon to Laois County Council on 23rd March 2007 in respect of a fire certificate. He suggested that this contradicted the case made by Mr. Bergin to the effect that he (i.e., Mr. Bergin) had made such payments on behalf of Event Horizon and was later repaid.

449. For my part, I think that the evidential value of this cheque stub is relatively slight. All it really tends to show is that Event Horizon made direct payments to local authorities in respect of their charges and contribution requirements. The same can be said for a variety of other payments made by Event Horizon to both Laois County Council and Wexford County Council between 2006 and 2008, often for significant sums (e.g., a payment of €250,000 to Laois County Council on 15th December 2006).

450. But Mr. Bergin never suggested otherwise: all he said was that he made some payments to local authorities for planning contributions etc. and that he was repaid these sums at a later stage by the relevant company on whose behalf the payment was made.

The three payment payments of €100,000 on 4th July 2007, 5th March 2008 and 28th October 2008 (share buy back)

451. There were three separate payments of €100,000 made by Largreen on cheques signed by Mr. Mervyn Walsh dated respectively 6th July 2007, 5th March 2008 and 28th October 2008. Mr. Bergin claimed that these payments amounted to what he described as share buy backs, which I would rather understand to mean that this amounted to the repayment of mezzanine finance to Event Horizon/Largreen which he had provided. Mr. Mervyn Walsh contended that these sums were rather for the purposes of remuneration.

452. Yet again this conflict of evidence presents the court with an unwelcome and almost impossible dilemma. Mr. Bergin did give evidence that he had made investments by providing finance of this kind and I did not understand that evidence to have been challenged. It is accordingly quite possible – indeed, plausible – that these payments amounted to a repayment of this mezzanine finance.

453. It is, of course, equally possible that these repayments could have amounted to the payment of remuneration to Mr. Bergin. The critical point, however, is that one would have expected that payments of this kind would have been appropriately documented so that their true purpose could be appropriately ascertained in the manner required by s. 202(1)(a) of the 1990 Act. In these circumstances I find myself obliged to hold that Mr. Mervyn Walsh has not discharged the onus of proof of showing that these payments were for the purposes of remuneration to Mr. Bergin for services rendered.

The payment by €150,000 by Sherside in September 2007

454. On 4th September 2007 there were two payments made by way of bank draft drawn on the Sherside account with National Irish Bank in Waterford. One of these payments was for €20,000 for the Waterford Credit Union and this payment is obviously by way of part repayment of the €120,000 loan which Mr. Bergin obtained in the respect of the Ballyhogue transaction in 2004. This payment is dealt with elsewhere in this judgment.

455. So far as the Sherside payment is concerned, Mr. Bergin claimed that this was a repayment of the purchase of the Clonhasson site in Co. Wexford from Mr. O'Leary which he (i.e., Mr. Bergin) had purchased in trust for Sherside in October 2004. While the timing of the payment with the part repayment of the Tramore Credit Union loan may be co-incidental, I think that the most likely explanation of this payment is that it was a repayment of the sum paid by Mr. Bergin to acquire Clonhasson in trust. At all events, I am not satisfied that Mr. Walsh has discharged the onus of showing that this payment was by way of remunerating Mr. Bergin.

Part IX: The acquisition of the French properties and residency in Monaco

456. In this part of the judgment I propose to deal with the acquisition of the various French properties by George and Samuel Walsh, the opening of bank accounts in Monaco and issues of residency in the Principality by the defendants. I will start, however, with the question of whether the three defendants previously had tax liabilities in France which required the advice and assistance of Mr. Bergin to resolve.

Whether the Walshs had tax liabilities in France which needed to be resolved prior to the acquisition of any French properties

457. It is common case that the Walsh family had leased a sheep farm near Angers up to 2003 and that they were effectively forced to cease these activities following the outbreak of foot and mouth disease. There remains the question of whether the Walshs had outstanding tax liabilities in France which required to be addressed prior to the acquisition of any French properties.

458. Mr. Bergin contended that the Walshs had such liabilities and that for that reason they could not travel to France. Dr. Marrani said that he then subsequently dealt with the French tax affairs of the Walshs at the request of Mr. Bergin. He had understood that at that stage the Walshs could not then go back to France because of concerns in relation to unpaid taxes. He said that he was instructed by Mr. Bergin for this purpose and was given the requisite information.

459. Dr. Marrani said that from 2006 to 2007 he had liaised in this regard with a French tax lawyer who was based in Nice, Maitre Jean Michel Urbani. It was subsequently discovered that the unpaid taxes were covered by the French statute of limitations and that after a lapse of four years they were now either time-barred or substantially time-barred. Dr. Marrani said that he had arranged for a meeting with a notary and the relevant tax officials and the matter was then resolved for a relatively small amount. Dr. Marrani stated that he had the appropriate documents regarding the Walshs' French tax affairs at the time, but these were no longer in his possession.

460. All three defendants denied that there had been any such liabilities. Mr. George Walsh and Mr. Samuel Walsh maintained that their French tax affairs were handled by their own French accountants.

461. Neither party produced any documentary proof on this point one way or the other, although Dr. Marrani stated that he had been contacted by Mr. Bergin about this matter at the time and that the latter had forwarded documentation as to these tax arrears at the time. He confirmed that the documentation from the French tax authorities stated that the individual taxpayer was liable to arrest by reason of non-payment, but that these documents were no longer in his possession. What objective evidence is there on this issue, beyond assertion and denial?

462. In his evidence Mr. Bergin pointed to the fact on his first trip with Mr. Mervyn Walsh to Monte Carlo in July 2006 the latter insisted on flying to Milan and avoiding Nice for this very reason. For his part Mr. Mervyn Walsh rejected this explanation out of hand, saying that the reason for this was because they simply could not obtain tickets for the Nice flight. Of course, Mr. Bergin is mistaken in thinking that one can travel overland from Milan to Monte Carlo without traversing French territory, as perhaps 50km. of the *département* of *Alpes-Maritimes* lies between the Italian and Monegasque borders. Perhaps this is a small point, as a person wishing to avoid coming to the attention of the French authorities would probably find it easier to do so by means of a land border crossing than at Nice airport.

463. As I have already recounted, Mr. Bergin's evidence on this point was supported by Dr. Marrani, the only third party evidence called by either party. While I found Dr. Marrani to be a credible witness, he could not – or, at least, did not – produce any documentary proof in relation to these taxation arrears, although, of course, he maintained that he had seen such documentation in the past. It must also be recalled that the onus of proof in this regard falls on the party so asserting, namely, Mr. Bergin.

464. This entire issue is in its own way a sort of microcosm of the considerable difficulties confronting the court in this litigation. The account given by Mr. Bergin – and corroborated by Dr. Marrani – could well be true. We know that the defendants were, by their own admission, in the farming business in France, but were hit hard by the outbreak of the foot and mouth crisis in early 2001. It is entirely possible, therefore, that they found themselves exposed to arrears of tax in France.

465. On the other hand, however, all of the defendants have robustly denied that there were ever such arrears or that they were ever as a result dissuaded from travelling to France. In that respect, Mr. Mervyn Walsh has given a convincing explanation for the method of travel to Monaco in July 2006, because, as has just been noted, it is simply not possible to travel overland from Italy to Monaco without traversing French territory. Nor has the plaintiff produced any documentary evidence at all to support the claim. The emphatic denial by the defendants of this claim again also appears plausible and could well be correct.

466. Given, however, that there is almost no objective means of resolving this conflict of assertion and denial, I would prefer to base my conclusion on the simple basis that the plaintiff has simply failed to discharge the onus of proof which rests on him, specifically by failing to point to anything which is in the nature of a documentary proof.

467. It follows therefore the plaintiff is not entitled to any commission payment in respect of the work which he claims to have done in respect of the defendants' French tax affairs.

Chateau Meillard

468. In December 2006 Mr. Samuel Walsh returned to Wexford as his wife had obtained a three month visa which would expire in mid-March 2007. During that trip Mr. Samuel Walsh discussed the acquisition of French properties with his brother Mr. George Walsh. Mr. Samuel Walsh then asked M. Jacqui Peters, a sheep buyer based in Paris to look out for a farm for sale. Mr. Walsh also contacted M. Gilles de la Potterie about some farms which had been advertised for sale in trade journals.

469. In February 2007 the two brothers travelled to France and viewed about five different farms. They liked the property owned by the Bichs family at Chateau Meillard the best and signed a mandate to acquire that property on 28th February 2007. A deposit was paid to the notary, Me. Pierre Bihan. Mr. Samuel Walsh then contacted the principal at the accountancy firm Audit Pays de Loire, M. Jonchere, to arrange for the due diligence in respect of the project.

470. In July 2007 Mr. Samuel Walsh and Mr. George Walsh met Mr. Shevet, a Danish lawyer practising in Paris. He agreed to act as advocate in respect of the completion of the Chateau Meillard property, along with the proposed development at Angers and a 24 acre site at Saint-Fargeau.

471. Following some delays, the Chateau Meillard property was ultimately acquired by Samuel and George Walsh in April 2008. I will deal presently with Mr. Bergin's involvement in this acquisition, but it is first necessary to deal with three other issues relating to

France/Monaco.

Saint-Fargeau

472. Saint-Fargeau is a pleasant town located some 200km directly south of Paris. In the course of their travels to locate a farm, George Walsh and Samuel Walsh came across a site which was being advertised by the local estate agents, Dominique Gourant and his son, Virgil Gourant. Mr. George Walsh and Mr. Samuel Walsh considered that the site would be suitable as a location for the development of holiday homes with the Parisian market. They retained M. Aleksander Cvoric as an architect for the development. They paid a deposit of €62,000 with the assistance of Mervyn Walsh. Me. Bihan acted as notary.

473. In the end, the development did not proceed, chiefly because the relevant planning permission (*certificat d'urbanisme*) was not forthcoming. The deposit was ultimately returned at some stage in 2010. Both Mr. George Walsh and Mr. Samuel Walsh stated in evidence that they had independently sourced the property and retained the agents which they themselves paid.

474. It does not appear to me that Mr. Bergin had any appreciable role in either the acquisition of the Saint-Fargeau site or in respect of its proposed development. Indeed, it was telling that Mr. Bergin only found out in the course of the hearing that the site was never developed and that the transaction never went ahead. I accept the evidence of Mr. Samuel Walsh and Mr. George Walsh that it was they who sourced the property and that it was they who retained the appropriate professional advisers. Insofar as Mr. Bergin had any role at all in respect of this development, it was at most a peripheral one. He may well have walked the land and generally surveyed the scene as he stated in evidence. But beyond this there is little evidence of active involvement. In these circumstances, I do not believe that he is entitled to claim any fee or commission in respect of this development or, for that matter, payment by way of quantum meruit.

The development at 21 Boulevard Foch, Angers

475. Mr. George Walsh was familiar with the Angers region from the time he had lived and farmed in France. He believed that Angers was a major regional town which did not have enough hotel accommodation. He located a property which was a vacant former bank premises near the city centre at 21 Boulevard Foch which he thought would be suitable for this purpose. It seems that Mr. Walsh bought this property in November 2007 for the sum of €1.2m along with financial assistance from the other two defendants. Mr. Bergin certainly had a hand in ensuring that Mme. Savona in BSI transferred €1.165m. from the accounts of Samuel Walsh and Mervyn Walsh on 19th November 2007 once Mr. Shevet alerted him to the urgency of the situation.

476. There is equally no doubt but that following the acquisition Mr. George Walsh then sought to have the Angers property re-financed. It is accepted that he retained Mr. Bergin and Dr. Marrani for this purpose and they secured re-financing in the sum of €811,000. Mr. Bergin invoiced Mr. George Walsh in the sum of €68,000 and this sum was then duly paid.

477. The re-financing efforts certainly had some odd features. Following the completion of the Meillard transaction in April 2008, Mr. Bergin turned his attention to a number of other projects, one of them being the development of the Angers premises. To that end he liaised with Mme. France of CAPFI, a finance house based in Nice. He sent her a series of documents with curious features. These included a purported tax return in the name of "George Mervyn Walsh", even though Mr. George Walsh's full name is George Albert Walsh. That tax return gave an address for Mr. George Walsh at a particular location in Leopardstown, Co. Dublin, even though there is no evidence that Mr. George Walsh ever lived there. Mr. Bergin then signed a letter on 22nd July 2008 confirming that Mr. George Walsh resided at 21 Boulevard Foch in Angers, even though this was simply not correct. Mr. Bergin also sent Mme. France profit and loss accounts in the name of "George Mervyn Walsh"

478. This was not all. On 7th August 2008 Mr. Bergin further sent Mme. France a copy of what purported to be a print-out of a B1 Annual Return for the Companies Registration Office. This B1 form purported to show that George Walsh was the sole director of and shareholder in Event Horizon Ltd. and that his address was at 21 Boulevard Foch. All of this was plainly false.

479. The B1 form itself is not stamped with the Companies Registration Office receipt date stamp in the place reserved for this on the right hand side. The form purports to emanate from Mr. Grainger's office, Com-Net Corporate Consultants, even though Mr. Grainger said he knew nothing of this. While the form appeared authentic at first blush, on closer examination further irregularities came to light. The company secretary was described as a Ms. Louise Chambers, even though Mr. Grainger said that this name meant nothing to him. There were other minor details which were wrong: the B1 form gave the wrong email address for Com-Net and also failed to give any reference number for the company's agents in the manner required by the B1 form. As I stated, however, the form as thus completed looked authentic and a French finance house – and anyone else who was not very familiar with the detail and layout of CRO forms – might well think that this amounted to official proof that Mr. George Walsh was the sole owner of Event Horizon.

480. These series of documents constitute further examples of Mr. Bergin's wholly casual attitude to the completion of important documents. This, perhaps, is all together too charitable a description because Mr. Bergin – not for the first or, indeed, the last time in respect of the events giving rise to this litigation – was prepared to attest to the authenticity of documents which he knew were untrue and were actually false. In the course of cross-examination of Mr. Grainger it was suggested that at some stage Mr. George Walsh had become the sole director of Event Horizon for the day and that Mr. Mervyn Walsh had facilitated this. But even if this were so, so that it was technically correct that on a given day (or days) in the summer of 2007 Mr. George Walsh was, in fact, the sole director of Event Horizon, this statement would nonetheless have been essentially misleading.

481. To add to the confusion Mr. George Walsh maintained that Mme. France did not work for CAPFI at all, but rather for a different company, Credit Immobilier de France. He said that he had no dealings with Mme. France, but that he did see her business card once. He said that the person he dealt with in CAPFI was Mme. Beatrice Ruozzi-Carround

482. In the end, the proposed development at Angers did not proceed, partly because opposition from local conservation groups was too strong. Mr. Walsh sold the property in September 2010, although this was something of which Mr. Bergin only learnt during the course of the hearing. I will return presently to the question of whether Mr. Bergin is entitled to any fee in respect of this project.

The trips to Luxembourg

483. The first trip to Luxembourg took place in April 2007. It had been arranged by Mr. Bergin's contact at BSI in Monaco, Mme. Savona who in turn liaised with Mr. Bergin in relation to this meeting. All three defendants along with Mr. Bergin attended a meeting at Dexia Bank. It seems that while Mr. Bergin and Mr. Mervyn Walsh were anxious to secure financing for the projects in Kilminchy, the other defendants were anxious to raise their own financing. It transpired that Dexia required a downpayment of at least €1m. before any project could be considered. The meeting was not a success.

484. The second trip to Luxembourg involved the three defendants only and took place at the end of July 2007. It had been arranged by Mr. Mervyn Walsh through Mr. Shevet's office. On this occasion the defendants met Mr. Klaus Monsted, the head of Danske Bank.

Mr. Mervyn Walsh gave a presentation in relation to Kilminchy, while Mr. George Walsh performed a similar exercise in relation to the proposed development at Saint-Fargeau. While the matter was considered by Danske, in the end they decided not to proceed.

The communications between Mr. Shevet and Mr. Bergin

485. There is no doubt at all but that there was a significant amount of email traffic between Mr. Shevet and Mr. Bergin, especially in the latter half of 2007. There were several reasons for this. First, Mr. Mervyn Walsh was a novice in relation to information technology matters and could not use email. Second, Mr. Mervyn Walsh wished to be kept informed about what was happening in France and he could ensure this by arranging for emails to be sent in the first instance to Mr. Bergin who could then brief him as to developments. Third, Mr. Bergin himself had requested that he be kept informed of what was happening in France.

486. Yet it would not be altogether fair to Mr. Bergin to suggest that he was the mere conduit of these emails. It is absolutely clear from the tenor of these emails that Mr. Shevet fully engaged with Mr. Bergin on the problems which he encountered in relation to these transactions. It is also clear from this correspondence that Mr. Bergin was immediately attentive to the various requests in relation to these projects which emerged from the various French professionals. In these circumstances it must be accepted that all three defendants must have known that Mr. Bergin was heavily involved on their behalf in attending to Mr. Shevet's various requests and suggestions.

487. Thus, for example, on 3rd August 2007 Mr. Shevet sent a detailed letter which was headed "Walsh French Investment Strategy" to Mr. Mervyn Walsh by email to Mr. Bergin's address which by agreement was also to be copied to Mr. Bergin and to Mr. George Walsh and to Mr. Samuel Walsh. In that letter Mr. Shevet stated that he agreed with Mr. Bergin's analysis in relation to the tax structure to be followed in respect of the three sites and with his proposals in relation to funding. Mr. Shevet adverted to the proposed meeting with Mr. Monsted of Danske and stated:

"Pascal has confirmed over the phone yesterday that you expected to have a presentation package ready for today, Friday 3rd, and, true to his word, the package just arrived. Very clear and convincing presentation of the projects and the players."

488. Mr. Shevet continued by referring to the special and detailed arrangements that would have to be made in relation to the establishment of these companies and their inter-company affairs:

"This will leave us some time to complete not only funding, but also the intercompany agreements between the holding structure and the special purpose vehicles, including, if possible, a royalty for the name 'Event Horizon', treasury agreements, management agreements and current account interest bearing agreements.

We shall work with Pascal on the detailed drafting of these documents."

489. The question of the tax structure of these holding companies was something which was of concern to all the professionals concerned. At the time there had been a number of individual tax treaties – often dating from the 1950s and 1960s – involving France and Denmark and France, and Luxembourg which were in the course of being phased out. The peculiar tax advantages which these arrangements conferred lent themselves to manipulation and were considered to be generally inconsistent with the EU's internal market as a form of State aid. By this stage (2007) these arrangements were in the course of being phased out.

490. Throughout September 2007 and October 2007 Mr. Bergin appears to have handled a range of requests from Mr. Shevet, Mme. Savona and a variety of other professionals in relation to the company formation, bank funding, the transfer of monies and the closing of sales. He also sought expert tax advice from Branado financial consultants, specialist tax advisers based in Monaco and he further liaised with Dr. Maranni on aspects of French real estate law.

491. One of the many difficulties was that the French professionals required a certificate from BSI in Monaco that it held sufficient funds on account for both the Angers and Meillard deals. Thus, by late September and early October 2007 Mr. Shevet was pressing Mr. Bergin for confirmation that funds would be available to complete both purchases. Judged from the range of email transactions in the last ten days of October, it would seem that Mr. Bergin arranged for the transfer of €1.165m. on the instructions of George Walsh and Samuel Walsh to facilitate the completion of the Angers transaction.

492. Returning to the question of the company formation structure in respect of Meillard, of these possibilities would have been to use either a Luxembourg or a Danish holding company established before a particular day. Mr. Shevet and Mr. Bergin corresponded frequently throughout November 2007 for this very purpose, especially as the demands for the closure of the Meillard sale became more pressing. During this period Mr. Bergin also sought financing from various banks in Ireland, including AIB. It is clear from the correspondence that Mr. Bergin and Mr. Samuel Walsh and Mr. Mervyn Walsh met with AIB for this purpose, but that AIB said that such financing was outside their French property guidelines. Mr. Bergin was also liaising for this purpose with Branado, a Monegasque firm of tax advisers.

493. On 29th November 2007 Mr. Shevet wrote to Mr. Bergin confirming that following a meeting with Mr. George Walsh and Mr. Samuel Walsh in Paris last week it had been decided to proceed with a Danish holding company. Mr. Shevet asked him to make "arrangements for the transfer of share capital and formation costs." Mr. Shevet then discussed aspects of the existing planning permission. He suggested that the company's articles of association should be drafted in such a way as to ensure that it could apply for planning permission for property development, while ensuring that no reference was made to the buying and selling of property. If the company had the right to buy and sell property, this might render it liable to be subject to designation as a property development company ("*marchand des biens*"), thus exposing it "to heavy accounting and registration requirements."

494. By early 2008 Mr. Shevet was still in frequent contact with Mr. Bergin, including a trip to Ireland for this purpose. On 23rd January 2008 Mr. Shevet wrote to Mr. Bergin confirming that three Danish companies which had been formed prior to 1st October, 2007 had been reserved by him. That date was significant because a special Franco-Danish special tax treaty which have special tax treatment to Danish companies trading in France was being abrogated with effect from that date. There then followed a series of further faxes and emails regarding the completion of the Meillard property.

495. On 19th February 2008 Mr. Bergin, acting with the authority of Mervyn Walsh and Samuel Walsh, instructed Ms. Savona to transfer €100,000 to Mr. Shevet in connection with the completion of the acquisition of Meillard for €3.5m. While all of this was happening, Mr. George Walsh managed to raise a mortgage of some €225,000 on 8th February 2008 in respect of the property at Westbury Woods in Enniscorthy, Co. Wexford.

496. The sale of the Meillard property was finally completed on 23rd April 2008. There were still plenty of issues which required to be attended to even after the sale, including the precise company structure, which were required to run the estate. In the end the

decision was taken not to avail of the Danish holding companies, but rather to have the estate operated through French special purpose companies which were then owned and controlled by George and Samuel Walsh. The exact price paid was to be determined in part by the financial state of the company which ran the estate and which George and Samuel Walsh were acquiring. There was also a question of whether a special payment should be made to one of the employees as a token of esteem for this loyalty and, if so, how this payment should be treated for both tax and employment law purposes. In all these respects Mr. Shevet liaised frequently with Mr. Bergin during this period and sought his advice on virtually every aspect of the transaction.

The Monaco residency

497. It seems to be accepted that Mr. Bergin was the point of contact between the parties so far as the majority of the defendants' dealings in Monaco are concerned, the details of which I will presently describe. Mr. Bergin gave evidence that he enjoyed – or, perhaps, it might be more accurate to say, did enjoy – a special status with the Monegasque authorities in relation to recommendations regarding residency and opening bank accounts in the Principality. I accept Mr. Bergin's evidence to the effect that through his recommendation a number of prominent and wealthy Irish citizens had acquired tax residency there in the past. This evidence was corroborated by Dr. Marrani and was not, in any event, seriously challenged.

498. I think it fairly clear that it was Mr. Bergin (with Dr. Marrani's assistance) who opened the doors for the Walshs in Monaco. This appears to have started in early May 2007 after Mr. Bergin made contact with Mme. Savona in BSI in Monte Carlo. Mme. Savona sent an email to Mr. Bergin on 4th May 2007 in the following terms:

"We have a meeting with M. WALSH on 2007.10.22 and he decided to open an account.

Mr. WALSH Samuel decided to open an account to[o] and he do it on 2007.05.24

These two persons are introduced by Paschal BERGIN."

499. While the dates given by Mme. Savona for the meeting with Mervyn Walsh and Samuel Walsh must be wrong – she presumably meant to refer to 22nd April 2007 – it will be seen that the introduction provided by Mr. Bergin was obviously of considerable importance to this banking relationship.

500. Having spoken with her by telephone on 29th May 2007, Mr. Bergin sent her an email later that day in the following terms:

"Further to our telephone conversation of today, I am requesting that you incorporate a property holding company in Monaco for Mervyn Walsh. The main object of the company is to buy and sell property, manage, develop and carry on all business associated with property.

The purpose of the company is to purchase about 3,000 acres of agricultural land and a number of development sites in France..."

501. While Mr. Bergin did not say so in terms, it seems implicit in this that the Walshs envisaged that Chateau Meillard might be acquired by a Monegasque property company. Mme. Savona responded by inquiring when Mr. Bergin and "his friends" were next travelling to Monaco, because it would be necessary to meet the appropriate financial advisers there. There was a burst of email traffic and telephone calls between Mr. Bergin and Mme. Savona in late June and early July 2007. One of the emails from Mme. Savona on June 28th referred to obtaining further details about the "properties (where are the properties and the value) for S...and G..." which is obviously a reference to the purchases envisaged by George Walsh and Samuel Walsh. Around this time Mr. Bergin received correspondence from a specialist accountant based in Monte Carlo regarding these plans, just as Mme. Savona had advised.

502. Correspondence along these lines continued throughout the summer. It is, perhaps, noteworthy that Mme. Savona sent an email on 7th August 2007 to Mr. Bergin requesting full details of the address, family history and general curriculum vitae in respect of Mr. Mervyn Walsh.

503. There seems little doubt but that residency in Monaco is a coveted prize and I do not doubt but that Mr. Bergin's assistance was a critical factor in securing such status for Mr. Mervyn Walsh. It was Mr. Bergin who arranged for Mr. Mervyn Walsh to travel to Monaco in July 2006 and to meet Mme. Savona and BSI. It was he who with arranged with Mme. Alexandra Holze for Mr. Mervyn Walsh to lease an apartment, without which Mr. Walsh would not have obtained residency status. His recommendation clearly appears to have carried great weight with the Monegasque authorities.

504. As it happens, Mr. Mervyn Walsh acquired residency status. It seems to have been envisaged that Mr. Samuel Walsh and, possibly, Mr. George Walsh would wish to acquire this status as well, although this possibly was dependent on how Mr. Mervyn Walsh's application fared. A further complication was that there was some suggestion in the evidence that French law frowns upon – and may even forbid – Monegasque residents owning farm land (and other assets) in France. In those circumstances it might not have been prudent – or even possible – for George and Samuel Walsh to become resident in Monaco while simultaneously acquiring the Meillard property.

505. It is true that Mr. Bergin cannot produce any document from the Monegasque authorities to vouch for the level of fee to be charged, even though he was called upon by the defendants to produce such a document if he could. This, perhaps, is not altogether surprising because one may suspect that this is just not how things are done at this level in Monaco. In this respect – if in little else – the gilded world of Monegasque banking and residency may well resemble the manner in which episcopal appointments within the Church of England in the mid-19th century – so fondly recounted in Trollope's *Barchester Towers* – took place: those "who know anything either of high or low government places will be well aware that a promise may be made without positive words." There is, accordingly, probably no document emanating from either official or even banking sources in Monaco which would be crass enough to contain the positive words to the effect that the payment of a high commission fee for such services is required or expected, yet the fact that such a payment is expected as part of the entire process would scarcely be surprising or unusual.

506. The absence of such a document does, however, present its own difficulties in making an assessment of the amount of the claim. In this respect this feature of the Monaco claim is different to that of the claim with regard to the French tax liabilities. If there were such liabilities, one would have expected the production of such documents whereas the existence of any document setting out the commission rates for those successfully introducing wealthy foreigners to Monegasque banking and arranging for residency is inherently unlikely.

507. Even allowing for the fact that €250,000 might well only represent small change for some of the very wealthy who take up residence in Monaco, I do not think that the Walshs ever quite fell into this bracket. Proceeding on a *quantum meruit* basis which seeks to ascribe some value to the services provided by Mr. Bergin, I will allow the plaintiff to recover the sum of €75,000 in respect

of the acquisition of a bank account and residency status for Mr. Mervyn Walsh and €25,000 in respect of the acquisition of a bank account for Mr. Samuel Walsh.

Conclusions regarding the acquisition of the French properties and the Monaco residency

508. It remains to consider whether Mr. Bergin is entitled to any payment in respect of these acquisitions by George and Samuel Walsh. I do not think that he is entitled to any payment in respect of either Saint-Fargeau or Angers. I think that these sites were both identified by George and Samuel Walsh and there is no evidence that Mr. Bergin had any role in locating them. Over and above the re-financing of Angers (for which Mr. Bergin was separately paid), there is little to suggest that he had any real role in the development of either of these sites and his involvement was at best peripheral.

509. In any event, as we have seen, the Saint-Fargeau site was never developed, so that Mr. Bergin would not have been entitled to payment in respect of it in any event.

510. The situation with regard to the acquisition of the Chateau Meillard site is somewhat different and more complex. In the first instance I accept that the evidence of George Walsh and Samuel Walsh to the effect that they located the site in February 2007 and it is clear that Mr. Bergin had no role in this. It follows that Mr. Bergin is not entitled to claim the sum of €12,000 which he claimed in respect of advices regarding the acquisition of these properties.

511. On the other hand, however, I do not accept that Mr. Bergin did not have a significant role in seeing that this project came to fruition: his correspondence and dealings with Mr. Shevet alone attest to this. At the same time, while his role was less extensive and central than in the case of, for example, the acquisition of the Moyne and Kilminchy sites, he was entitled to be paid for his work.

512. At this remove it is all but impossible to determine precisely the extent to which there was any contractual agreement between the parties. Perhaps by this stage Mr. Bergin was so deeply enmeshed in the affairs of the Walshs that none of the defendants gave any real consideration to this question. Yet it cannot be denied that Mr. Bergin spent a great deal of time in both 2007 and (to a slightly lesser extent) in early 2008 addressing the many problems posed by the Meillard acquisition and he is entitled to be paid in respect of this work, if only on a *quantum meruit* basis.

513. I propose to treat by analogy the 3% commission payment figure applied in the case of Moyne and Kilminchy as a starting point in any assessment of the *quantum meruit* figure. Having regard, however, to the fact that Mr. Bergin had no role in identifying these properties, I consider nevertheless that a slightly lower percentage figure than 3% would be appropriate. I will accordingly allow a figure of 2% based on the acquisition price of €3.5m. in favour of Mr. Bergin as against George and Samuel Walsh, so that Mr. Bergin is entitled to recover the sum of €70,000 as against these two defendants.

Part X – Overall conclusions

514. It remains only to summarise my conclusions.

515. First, it is clear that there was no personal service of the proceedings on George Walsh at 50 Lansdowne Village on 10th December 2009 as he was in France at the time. Nor am I satisfied that the plaintiff has discharged the onus of proof of showing that the other two defendants, Samuel Walsh and Mervyn Walsh were physically present on that afternoon.

516. Second, the service of the proceedings which was effected at Ms. Violet Walsh's property at 50 Lansdowne Village did not satisfy the requirements of Ord. 9, r. 2 RSC. Insofar as this purported service was relied upon by the plaintiff in order to satisfy the default judgment, it is clear that such service was inadequate for this purpose. It follows that the default judgment was correctly set aside by order of Hedigan J.

517. Third, the email of 8th December 2009 which purports to be from George Walsh and consents to judgment in the sum of €3,649,000 is a fabrication. For the reasons set out in the judgment, I am satisfied that Mr. Bergin secured improper access to Mr. George Walsh's email and falsely contrived to send this email.

518. Fourth, the settlement dated 10th November 2006 which is expressed to be an agreement between Mr. Bergin and the Walsh family is not authentic. It was likewise fabricated by Mr. Bergin.

519. Fifth, the causes of action for breach of contract and for *quantum meruit* which have been pursued by Mr. Bergin lie in common law. They are not, as such, discretionary remedies. The statutory power given by s. 26 of the 2004 Act to strike out or dismiss claims in the light of fabricated evidence given by a plaintiff does not apply to the present case since the claim is not a claim for personal injuries. Much as I deplore the wrongful conduct of Mr. Bergin, he is nonetheless entitled to damages if a breach of contract has been established or an award based on *quantum meruit* is legally justified.

520. Sixth, the documentary evidence presented by Mr. Samuel Walsh and his solicitor, Mr. Anthony O'Gorman, clearly establishes that the money for the €46,000 deposit which was paid to Norths in October 2003 in respect of the Ballyvadden lands came from Mr. Samuel Walsh personally. I accordingly reject the plaintiff's claim in respect of this sum.

521. Seventh, I think that Mr. Bergin did reach an oral agreement or understanding with Mr. Mervyn Walsh to waive his fees in respect of the Ballyhogue project, even if those fees would have been far less than €500,000. To that extent, therefore, I think that there was an oral agreement that Mr. Bergin would receive 3% commission on the acquisition price in respect of any of the subsequent Irish projects, namely, The Moyne (Enniscorthy) and Kilminchy (Portlaoise). I will invite the parties to make submissions as to the quantification of that amount.

522. Eighth, I consider that Mr. Bergin did borrow €120,000 from Tramore Credit Union to facilitate the acquisition by Mr. Mervyn Walsh of the Ballyhogue property in the spring of 2004 and that only €40,000 of that sum has been repaid. In these circumstances, I will give judgment in favour of Mr. Bergin in the sum of €80,000 as against Mr. Mervyn Walsh.

523. Ninth, I find that Mr. Bergin has not discharged the onus of proof regarding the Westbury Woods property. Other than his own testimony, there was otherwise insufficient evidence to substantiate his claim that he had been obliged to transfer the property to Dr. Naser at the request of Mr. Mervyn Walsh.

524. Tenth, Mr. Bergin is not entitled to commission payment - whether based on contract or *quantum meruit* - in respect of the Wells Estate project. The understanding was that Mr. Bergin would be entitled to a 3% commission on the acquisition price of subsequently acquired properties, but since this acquisition ultimately fell through, he is not entitled to such payment.

525. Eleventh, the contract dated the 24th April 2007 in relation to the construction of the house at the Vee, Lismore, Co. Waterford is a forgery. The contract was filled out by Mr. Bergin, but no evidence was ever produced that the solicitor who is supposed to have witnessed the document ever existed. Mr. Bergin inveigled Mr. Mervyn Walsh into signing the contract while suggesting that it was something else and later applied the Event Horizon seal to the contract to give it the air of authenticity. It is nonetheless clear, however, that even on Mr. Mervyn Walsh's own case that Event Horizon did supply services for the construction of the house at the Vee even if the contract of April 2007 relied on by Mr. Bergin is not authentic

526. Twelfth, while Mr. Bergin received €175,000 in cheque payments from Largreen, the documentary evidence of the company are insufficient for the purposes of s. 202(1)(a) of the 1990 Act to demonstrate the nature of these transactions, Mr. Mervyn Walsh has failed to discharge the requisite onus of proof to demonstrate that these payments were by way of remuneration.

527. Thirteenth, even on Mr. Mervyn Walsh's own case, the 28 separate cheque payments for under €10,000 made to Mr. Bergin are for the purposes of reimbursement of legitimate expenses and not for remuneration. These particular payments can, accordingly, be discounted so far as the present proceedings are concerned.

528. Fourteenth, three separate payments of €100,000 made respectively on 18th October 2007, 27th October 2007 and 15th November 2007 by Event Horizon are in respect of the repayment of sums paid by Mr. Bergin to his brother, Vince Bergin and another Canadian based investor, Glenn Dawson. Mr. Paschal Bergin had persuaded them to act as mezzanine financiers and he felt obliged personally to repay them on behalf of Event Horizon.

529. Fifteenth, so far as the Event Horizon payments are concerned, there is insufficient evidence for the purposes of s. 202(1) of the 1990 Act to explain the nature of these transactions. It follows that Mr. Mervyn Walsh has failed to discharge the onus of proof which falls upon him to demonstrate that these payments are by way of remuneration.

530. Sixteenth, it is otherwise in the case of the €34,388 paid to O'Hare, O'Connor, Walshe in November 2006. Here the documentary evidence clearly establishes that this payment was made by Event Horizon in respect of legal proceedings taken by Mr. Bergin in his own right involving Bothwell Developments Ltd. Treating for this purpose Mr. Mervyn Walsh and Event Horizon as interchangeable, Mr. Walsh is entitled to off-set this payment against the other awards made against him in favour of Mr. Bergin elsewhere in this judgment.

531. Seventeenth, Mr. Bergin is not entitled to commission payment in respect of the work which he claims to have done in respect of the defendants' French tax affairs. While his account might well be true, it is counterbalanced by the fact that the defendants have, in an equally plausible fashion, denied that there were such tax arrears. Given that there is no objective evidence – particularly evidence of a documentary kind – I find myself obliged to hold that the plaintiff has simply failed to discharge the onus of proof which rests upon him.

532. Eighteenth, Mr. Bergin is not entitled to the sum of €12,000 by way of a "finder's fee" which he claimed in respect of the acquisition of the three French properties at Saint-Fargeau, Angers and Meillard since I do not believe that he had any active role in the finding of these properties.

533. Nineteenth, Mr. Bergin is not entitled to the 3% commission payment in respect of Saint-Fargeau since that development did not proceed and his involvement in it was, at best, peripheral. Nor is he entitled to such a payment in respect of Angers, since his role in respect of Angers was essentially to secure the re-financing of the property for which he was separately paid by Mr. George Walsh.

534. Twentieth, contrary to the submissions of the defendants, I do think that the evidence establishes that Mr. Bergin did have a significant input into the acquisition of the Chateau Meillard property. While he did not find the property, I do think that he is entitled to payment of commission in respect of his work. I will allow a figure of 2% of the acquisition price of €3.5m. on a *quantum meruit* basis as against George Walsh and Samuel Walsh, namely, a figure of €70,000.

535. Twenty-first, proceeding on a *quantum meruit* basis which seeks to ascribe some value to the services provided by Mr. Bergin in respect of the introduction of Mr. Samuel Walsh and Mr. Mervyn Walsh to the Monegasque banking and residency authorities, I will allow the plaintiff to recover the sum of €75,000 in respect of the acquisition of a bank account and residency status for Mr. Mervyn Walsh and €25,000 in respect of the acquisition of a bank account for Mr. Samuel Walsh.