Neutral Citation Number: [2009] IEHC 468

THE HIGH COURT

2008 3676 P

BETWEEN

LIBERTY ASSET MANAGEMENT LIMITED

PLAINTIFF

AND

GERARD GANNON

DEFENDANT

Judgment of Miss Justice Laffoy delivered on the 14th day of October, 2009

Background

At the commencement of 2006, the plaintiff and the defendant were neighbours, in the sense that the plaintiff carried on its business from the premises No. 54, Northumberland Road, Dublin, 4 (No. 54) and the defendant carried on his business from the adjoining premises, No. 52, Northumberland Road. The business of each of the parties was expanding, and each needed larger premises from which to carry on the business.

At the time, the plaintiff was actively seeking alternative premises and had made contact with a number of estate agents to see what was available. One of the agents contacted was Mr. Iain Finnegan of the firm of Finnegan Menton. Mr. Finnegan was a brother-in-law of Mr. Kevin O'Shaughnessy, who was a director of the plaintiff at the time. The defendant was also a client of Mr. Finnegan. It is common case that in the negotiations which ensued between the parties, Mr. Finnegan acted as agent for the defendant.

The defendant was the owner of an office development in Clonskeagh, known as 8, Richview Office Park, Clonskeagh, Dublin, 14 (8, Richview), which was unoccupied and which he was anxious to let. For some time, the defendant had been interested in acquiring No. 54, but his evidence was that it was the freehold interest he was interested in. His evidence was that he made a substantial offer at some time (the evidence is confusing as to precisely when) to the freehold owner for the freehold, but the offer was rejected.

The plaintiff is, and was, at the material time, a member of the Friends First group of companies. The evidence was that the plaintiff's parent company stipulated that it was a condition of the plaintiff moving to larger accommodation that its leasehold interest in No. 54 be disposed of.

Against that background, a proposal emerged from the plaintiff to the defendant based on negotiations between Mr. O'Shaughnessy and his colleague, Mr. Gerard Mullen, who was the Finance Director of the plaintiff at the time, on behalf of the plaintiff, and Mr. Finnegan, on behalf of the defendant.

The proposal

By a letter dated 11th May, 2006, from Mr. O'Shaughnessy, on behalf of the plaintiff, to Mr. Finnegan, Mr. O'Shaughnessy made a proposal in relation to 8 Richview, which set out the main terms of a proposed lease to be taken by the plaintiff from the defendant: the area of the take and the rent per square foot; the number of car spaces involved and the rent per space; that the lease would be a new twenty-five year lease, with five yearly rent reviews, on a full repairing and insuring basis; that the tenant would have a break at year fifteen; that there would be a rent-free period of nine months; and that the defendant would underwrite one floor's rent for a period of twenty-four months. There was an additional term which was put as follows:

> "Understanding Gannons take over the lease of 54, Northumberland Road."

Mr. Finnegan wrote to the defendant's solicitors, Smith Foy & Partners, on 18th May, 2006, indicating that he had agreed to the terms proposed and that the property (meaning 8 Richview) had been measured and the floor area agreed. Mr. Finnegan also stated in the letter:

> "Also, we have made contact with [the plaintiff's] Landlord's Agent to pursue the assignment of the Leasehold interest in No. 54 Northumberland Road and negotiate the acquisition of the building on behalf of Gerry Gannon."

On 31st May, 2006, Smith Foy & Partners sent a draft lease, together with evidence of title and planning documentation in relation to 8 Richview to the plaintiff's solicitors, O'Rourke Reid. There were some variations of the terms set out in Mr. Finnegan's letter in relation to 8 Richview, the detail of which is not material, incorporated in the draft. In relation to No. 54, it was stated as follows:

> "We have also been instructed that our client has agreed to take an Assignment (subject to Landlord's consent) of your client's existing lease at 54, Northumberland Road, Dublin, 4. Perhaps you would let us have the usual Contracts for Sale in respect of this aspect of the transaction."

That letter was not expressed to be "subject to contract". Of particular significance, in my view, is how the defendant's solicitors then perceived the position in relation to No. 54 to be – as an aspect of the transaction. As I will outline later,

that perception is in accordance with the evidence, in that the understanding of the principals at all times from 11th May, 2006, until the lease of 8 Richview was taken by the plaintiff some fourteen months later, was that it was a condition of the plaintiff taking the lease that the defendant would take over the plaintiff's existing interest in No. 54.

The response from O'Rourke Reid, which was dated 9th June, 2006, was headed "Subject to Lease & Agreement/Lease & Agreement Denied". In that letter, O'Rourke Reid stated that they would submit their "pre-lease inquiries" within a few days, but they made some comments on the content of the lease, the detail of which is not material. In relation to No. 54 they stated as follows:

> "We note that your client is to take an assignment of our client's existing lease on 54, Northumberland Road, and we are arranging for the title documents to be taken up in that regard. We would therefore expect to have contracts for sale to you next week."

O'Rourke Reid concluded the letter as follows:

> "… please note that we have no authority to bind our client to any lease, either oral or in writing, until such time as lease documentation has been executed by the parties, exchanged, and all rent payable thereunder paid and cashed."

Smith Foy and Partners replied on 14th June, 2006, and this time, their letter was headed "Subject to Lease/Lease Denied". They dealt with, or sought clarification on, the matters which had been raised in relation to 8 Richview. In relation to No. 54, they sought further details without delay and also confirmation that the plaintiff would be vacating No. 54.

It is unquestionably the case that at that point, there was no agreement between the plaintiff and the defendant as to the terms of the lease of 8 Richview, and, accordingly, no conclusive agreement in relation to the overall transaction. The commencement date of the term had not even been agreed. Over the next thirteen months, there was a constant flow of correspondence between O'Rourke Reid and Smith Foy & Partners, dealing with the terms of the lease of 8 Richview, which were eventually finally agreed on 6th July, 2007. The aspect of transaction which related to 8 Richview was effectively completed on 6th July, 2007, although the correspondence between the solicitors in relation to it continued for another three months because of a change in the name of the guarantor and a problem in relation to the guarantor's seal. The lease of 8 Richview bears the date 6th July, 2007, and it is made by the defendant in favour of Liberty Mortgage Corporation Limited and the guarantor is Friends First Life Assurance Company Limited. The plaintiff has been in occupation of 8 Richview under the terms of the lease since 6th July, 2007.

The focus from here on will be on what transpired between the plaintiff's solicitors and the defendant's solicitors in relation to the aspect of the transaction relating to No. 54, having first considered the plaintiff's title to No. 54.

The plaintiff's title to No. 54

The plaintiff's title to No. 54 was derived from a lease dated 12th June, 2003 (the 2003 lease), made between Evelyn Margaret Fasenfeld, as landlord, the plaintiff, as tenant, and Friends First Holdings Limited, as guarantor. It created a demise of No. 54 for the term of nine years and eleven months from 11th June, 2003. It reserved an initial yearly rent of €120,000, the rent to be subject to review from the first day of the sixth year of the term.

The 2003 lease contained a clause which, although not alluded to in any of the correspondence that passed between the solicitors, assumed considerable significance during the hearing. The clause in question, clause 7.8, was what is commonly called a "break" clause, in that it enabled the tenant to terminate the 2003 lease during its term. It provided that the tenant might terminate as of the expiration of the fifth year of the term, subject to the tenant serving on the landlord a notice in writing exercising the right to terminate at least twelve months prior to that date. It was provided that, in relation to the notice, time would be of the essence. The position, accordingly, was that, in order to exercise the break provision, the plaintiff was required to serve notice exercising the right, on 10th June, 2007, at the latest. A feature of clause 7.8, which also assumed considerable significance at the hearing was paragraph (e) thereof, which provided that, in the event of the plaintiff assigning the 2003 lease with the landlord's consent to a third party, the provisions of clause 7.8 should not apply to the third party or any subsequent successors entitled thereto. In other words, the break clause was personal to the plaintiff.

A further feature of the plaintiff's leasehold title to No. 54, which assumed some significance during the hearing, was the fact that the plaintiff had executed a Deed of Renunciation dated 9th June, 2003. As I understand the evidence, it constituted a waiver by the plaintiff of its statutory right to renew the 2003 lease on its expiry. This feature of the plaintiff's leasehold title was first raised in the re-examination of the defendant on the second day of the hearing. Up to that point in time, counsel for the defendant was unaware of it.

I now return to considering what transpired between the parties' solicitors in relation to No. 54.

Dealings between the solicitors in relation to No. 54

The plaintiff's solicitors had to obtain the title documents to No. 54 from the plaintiff's former solicitors. When this was done, on 30th June, 2006, O'Rourke Reid furnished to Smith Foy & Partners what was described as a draft contract for sale in duplicate and a copy of the 2003 lease, in relation to "the related" lease assignment of No. 54. O'Rourke Reid stated that they were then liaising with the landlord to obtain the requisite consent to the assignment. On the same day, they wrote to the solicitors for the landlord, Mrs. Fasenfeld, namely, Arthur Cox, requesting a licence to assign. On 5th July, 2006, O'Rourke Reid furnished evidence of the title of Mrs. Fasenfeld to make the 2003 lease and also a copy of the Deed of Renunciation to Smith Foy & Partners. Both letters from O'Rourke Reid were headed "Subject to Lease & Agreement/Lease & Agreement/Denied". In the latter, it was stated that O'Rourke Reid looked forward to receiving the contracts for sale in duplicate, duly executed by the defendant, which they assumed would coincide with final agreement being reached between the parties in relation to the proposed lease of 8 Richview by the defendant to the plaintiff. The latter letter also contained a statement that O'Rourke Reid had no authority to bind the plaintiff in terms similar to that quoted earlier, with the substitution of "deposit" for "all rent payable thereunder".

Title and planning matters in relation to No. 54 had been raised in a letter dated 6th July, 2006, which was headed "Subject to Contract/Contract Denied", which obviously crossed the letter of 5th July, 2006, in transmission, in which Smith Foy & Partners had sought additional title and planning documentation including a coloured version of the map on the 2003 lease. This was furnished by O'Rourke Reid with a letter of 18th July, 2006, in which it was reiterated that the plaintiff would not be in a position to complete the assignment of No. 54 until such time as 8 Richview was available for occupation. It was suggested that the contracts for sale might be amended accordingly. By a letter of the same date, relating to 8 Richview, O'Rourke Reid conveyed the same message – that the plaintiff would not be moving out of No. 54 until it was ready to move into 8 Richview, and that the completion of No. 54 would be delayed accordingly. A similar message was conveyed in a letter of 25th July, 2006, from O'Rourke Reid in which it was stated that the defendant would be required to execute contracts for sale in relation to No. 54, "once final terms of the lease of 8 Richview had been agreed". A letter dated 28th July, 2006, from Arthur Cox to O'Rourke Reid sought details of the defendant's address, together with "bank and character reference and some information in relation to" him. By letter dated 3rd August, 2006, to Smith Foy and Partners, O'Rourke Reid sought that information.

The next communication from Smith Foy & Partners in relation to No. 54 was a letter dated 7th September, 2006, which was again headed "Subject to Contract/Contract Denied", which returned the contracts for sale executed by the defendant. Requisitions on title were also furnished. It was suggested that the parties agree a closing date for the assignment of No. 54, and it was pointed out that the contract had been amended in that regard. By letter dated 13th September, 2006, which, again, was headed "Subject to Contract/Contract Denied", from O'Rourke Reid to Smith Foy & Partners, it was stated that the plaintiff wished to hold off executing the contracts for sale until such time as the final version of the lease was agreed in relation to 8 Richview. The request for the information sought by Arthur Cox was repeated. In response to the repeated request, by letter of 18th September, 2006, Smith Foy & Partners informed O'Rourke Reid that they had been in contact with the solicitor in Arthur Cox who was dealing with the matter, and had advised him as to the identity of the defendant. Smith Foy & Partners had been told that, in the circumstances, the information which had been sought in relation to the defendant was not required.

In an e-mail of 6th October, 2006, O'Rourke Reid raised certain issues in relation to the 8 Richview aspect of the transaction and stated that, on final confirmation of the issues, the plaintiff would be in a position to execute the lease of 8 Richview immediately. The e-mail continued:

> "Execution of the lease will be dependent on the assignment of the existing leasehold interest at no. 54 Northumberland Road to your client – I note that your client has executed Contracts in this regard. I will follow up with [Arthur Cox] as I have not yet received the draft licence to assign – I note that they are satisfied with your client from a financial and reference point of view."

By a further letter of 9th October, 2006, O'Rourke Reid furnished the draft Licence to assign, which Arthur Cox had furnished to them, to Smith Foy & Partners for approval. The only comment that elicited from Smith Foy & Partners was that there was an error in one paragraph in the draft Licence, as was pointed out in their letter of 12th October, 2006. That was the last item of correspondence between the solicitors in relation to No. 54 prior to the final agreement on the terms of the lease of 8 Richview on 6th July, 2007. However, in the interim, there was a very considerable body of correspondence relating to the terms of that lease and the aspect of the transaction which related to 8 Richview.

The contracts in relation to No. 54

It is necessary now to consider the draft contracts as furnished by O'Rourke Reid and as returned executed by the defendant by Smith Foy & Partners. The contracts were in the standard form '*General Conditions of Sale (2001 Revised Edition)*' published by the Law Society. On the evidence, I am satisfied that when they were dispatched by O'Rourke Reid to Smith Foy & Partners, the date was blank, other than that it indicated the year 2006. The purchase price was also left blank. The closing date referred to the special conditions.

The only provisions in the special conditions which are of significance are special condition 4, which made the transaction subject to the plaintiff obtaining the consent of the landlord to the assignment, and special condition 5, which dealt with the closing date. As drafted by O'Rourke Reid, special condition 5 read:

> "The closing date for this sale is to coincide with the grant of a Lease of premises at Block 8 Richview Office Park, Clonskeagh, Dublin, 14 to be granted by the purchaser to the vendor."

That special condition was amended by Smith Foy & Partners to read:

> "The closing date for this sale shall be the …. day of ….. 2006 or 14 days after the vendors obtain the consent of the landlord to the assignment of the Lease whichever is the later."

Smith Foy & Partners made some other amendments to the contracts. In the Memorandum of Agreement, the date of the contract was inserted as 6th September, 2006. The purchase price was inserted as €1, as was the balance of the purchase money. The contracts were executed by the defendant and his signature was witnessed by James Foy of Smith Foy and Partners.

The contracts were never executed by the plaintiff. They were retained by O'Rourke Reid while the correspondence continued between the two firms of solicitors in relation to 8 Richview.

Dealings in relation to No. 54 post 6th July, 2007

After 6th July, 2007, correspondence continued between O'Rourke Reid and Smith Foy & Partners in relation to 8 Richview, which was being still headed by both sides "Subject to Lease/Lease Denied", although the terms of the lease had been finalised and the plaintiff was in possession of 8 Richview. As I have recorded, there wa, at that time, and there continued to be for some time, an issue about the identity of the guarantor and the proper execution of the lease of 8

Richview by the guarantor. It would appear from the correspondence put in evidence, that the plaintiff's solicitors did not furnish final documentation properly executed until some time towards the end of December 2007. The annoyance of the defendant and his solicitors about that delay is wholly understandable.

However, the delay in furnishing the final properly executed leases in relation to 8 Richview had nothing to do with what happened in relation to No. 54 after 6th July, 2007. What happened was that "out of the blue" Smith Foy & Partners sent a letter dated 21st August, 2007, to O'Rourke Reid stating that the defendant was thereby terminating "all negotiations regarding the proposed acquisition of the leasehold interest" in No. 54. The documentation in relation to No. 54 which had been furnished to Smith Foy & Partners was returned. There was no response to that letter by O'Rourke Reid until 23rd October, 2007. The position adopted on behalf of the plaintiff in that letter was that the arrangement between the plaintiff and the defendant involved two deals: one being the taking by the plaintiff of the lease of 8 Richview, and the other being the defendant's agreed acquisition of No. 54. It was stated that if the defendant did not honour his obligations regarding No. 54, the matter would be taken further. At that stage, O'Rourke Reid renewed correspondence with Arthur Cox, seeking the final version of the licence to assign. By letter dated 14th December, 2007, Arthur Cox confirmed, on behalf of Mrs. Fasenfeld, that, "subject to completion of a Licence to Assign by all parties in substantially the form previously sent", she consented to the assignment by the plaintiff to the defendant. By letter dated 17th December, 2007, O'Rourke Reid furnished a copy of the letter from Arthur Cox to Smith Foy & Partners, and referred to special condition 5 in the contract and called on the defendant to complete the transaction within fourteen days. The response of Smith Foy & Partners was terse: the defendant did not accept that there was, or ever was, a contract.

On 11th January, 2008, O'Rourke Reid, on behalf of the plaintiff, served a notice to complete in accordance with clause 40 of the 'General Conditions of Sale' in what was described as a contract dated 6th September, 2006, made between the plaintiff and the defendant. The response from Smith Foy & Partners reiterated their position and stated that the issue of a completion notice did not arise. There was subsequent correspondence in the same vein.

Eventually, these proceedings were initiated by the issuing of a plenary summons on 7th May, 2008.

I think it is appropriate, at this juncture, to consider the oral evidence and to make the necessary findings of fact.

Findings of fact

The correspondence between the solicitors records of what transpired between the parties in relation to No. 54 between 31st May, 2006, when Smith Foy & Partners first wrote to O'Rourke Reid, and 6th July, 2007, when the taking of the lease of 8 Richview was effectively completed. The aspects of the dealings of the parties in relation to which one has to principally resort to the oral evidence is what transpired before 31st May, 2006, and after 6th July, 2007, and, in particular, why Smith Foy & Partners wrote the letter of 21st August, 2007, in which, effectively, the defendant purported to pull out of the acquisition of No. 54.

The defendant's understanding of the position of the parties before the involvement of their respective solicitors emerged in cross-examination. When asked what deal had been done in relation to No. 54 and in relation to 8 Richview, the defendant's answer was that the plaintiff was to take a 25-year lease from him, with 5- yearly rent reviews, and he was then to take the building (meaning No. 54) off the plaintiff, but he added the qualification that taking the lease of No. 54 from the plaintiff was "subject to the break clause". He stated that he signed the lease (meaning, I think, the contract dated 6th September, 2006), so that, obviously, he was taking it (meaning, I understand, No. 54). He confirmed that that was "the package" and he confirmed that it was never the case in the negotiations that he would lease 8 Richview but not get No. 54. He specifically stated that if the plaintiff carried out its part of the agreement (meaning, I understand, the exercise of the break option), he would have obviously gone ahead with the deal. When the terms of the letter of 31st May, 2006, were put to the defendant and when it was put to him that those terms represented the agreement which had been made, his response was: "In principle, yes" (Transcript, Day 2, p.72).

Although, aside from his asserted grievance about the failure to exercise the break option, two other sources of annoyance to the defendant in his dealings with the plaintiff emerged in his evidence, one being his assertion that the plaintiff moved into 8 Richview without his permission, and the other being his assertion that No. 54 was left vacant and there was no maintenance being kept on it after 6th July, 2006, the main reason he advanced for pulling out of the acquisition of No. 54 was that he had ascertained that the plaintiff had not exercised the break in the lease.

The defendant's evidence was that, in his original negotiations with Mr. O'Shaughnessy, Mr. O'Shaughnessy told him that there was a break clause in the lease of No. 54. At that stage, he did not know the duration of the term of the lease. The defendant's evidence was that his interest in the break option being exercised was that he believed that in a situation where it had been exercised, he would have had greater leverage in negotiating the acquisition of the freehold from Mrs. Fasenfeld. He described the exercise of the break option as always his "first priority". Yet, amazingly, he acknowledged that he did not instruct his agent, Mr. Finnegan, or his solicitor, James Foy of Smith Foy & Partners, to ensure that the plaintiff was contractually bound to exercise the break option. Equally amazingly, he testified to his belief that the plaintiff was not under "any illusion" that the break option had to be exercised, although he acknowledged that Mr. Foy probably did not know that the defendant wanted the break option exercised, suggesting that Mr. Finnegan probably knew more about it than Mr. Foy.

Mr. Finnegan's evidence was that he and Mr. O'Shaughnessy had agreed the "bones of a deal" before the solicitors became involved. In relation to the break clause in the lease of No. 54, his evidence as to what was discussed with Mr. O'Shaughnessy and Mr. Mullen was vague and imprecise. Nonetheless, he testified that it was "the elephant in the room", in that everybody knew it was there and everyone knew it had to be used. However, he candidly admitted that he could not recollect knowing specifically that it was exclusive to the plaintiff. He acknowledged that it was probably his fault that Mr. Foy had not been told of the significance of exercising the break option. When specifically questioned in cross-examination as to why, if the exercise of the break option was fundamental to the whole arrangement, he had not instructed Mr. Foy of this in his letter of 18th May, 2006, his response was that he did not realise that it would have to be put into the contract. Mr. Finnegan could not recall any specific request from the defendant prior to July 2007, to the plaintiff's representatives to exercise the break option, nor could he recall asking them to do so himself.

Mr. Foy's evidence was clear and precise on whether he had received instructions from his client, the defendant, or the defendant's agent, Mr. Finnegan, as to the significance of the exercise of the break option. He furnished the contracts which were subsequently dated 6th September, 2006, to the defendant, together with a letter in which he advised the

defendant, *inter alia*, of the existence of the break clause in the 2003 lease, and of the fact that it was personal to the plaintiff. He also raised in that letter the issue whether the defendant was prepared to go ahead with the acquisition of No. 54, regardless of whether or not the plaintiff went ahead with the lease of 8 Richview. He received no reply to that letter; the defendant simply signed the contracts and returned them to him. Mr. Foy was never given any instructions about the exercise of the break option.

Turning to the period after 6th July, 2007, on the evidence, I am satisfied that it was Mr. Foy on the defendant's side who first raised the issue of No. 54 after the lease of 8 Richview was put in place and the plaintiff had gone into possession of those premises. Mr. Foy's evidence was that he rang a member of the defendant's staff, with whom he had been dealing in relation to the transaction, to ascertain what was happening to No. 54. It would seem that it was that telephone call which triggered an inquiry from the defendant to Mr. Finnegan in relation to whether the break option had been exercised, which, in turn, led to a telephone call from Mr. Finnegan to Mr. Mullen. Mr. Mullen's version and Mr. Finnegan's version of the telephone conversation do not quite tally. However, what is clear is that both sides were aware that the break option had not been exercised and that the time for so doing had expired. Subsequently, Mr. Foy received instructions to inform the plaintiff's solicitors that the defendant was not going ahead with the acquisition of No. 54. That led to his letter of 21st August, 2007.

The aspects of the evidence which I have highlighted are pertinent to the findings of fact which I consider to be crucial to the determination of the issues in the case. The findings which follow are based not only on that oral evidence, but on the totality of the evidence, including the correspondence which passed between the solicitors.

First, I am satisfied that prior to 31st May, 2006, there was agreement in principle between the plaintiff and the defendant that the plaintiff would take, and that the defendant would grant, a lease of 8 Richview and that, additionally, in consideration of the plaintiff taking the lease, the defendant would take over the plaintiff's existing leasehold interest in No. 54. Various terminology was used by counsel and by the witnesses to describe what took place between the parties before 31st May, 2006: "headings" of agreement; "headlines" of agreement; "bones of agreement"; and "agreement to agree". However, in my view, the terminology used by the defendant, agreement in principle, best describes the relationship between the parties. As regards the lease of 8 Richview, which was going to be a complex document, at that time, some of the essential terms were agreed but the detail remained to be agreed. There was mutuality between the parties as regards the aspect of the agreement in principle which is at the core of these proceedings, in that it was expressly agreed that the defendant's obligation to take over the plaintiff's existing leasehold interest in No. 54 was contingent on the plaintiff taking the lease of 8 Richview on agreed terms, and that the plaintiff's obligation to take the lease of 8 Richview was contingent upon the defendant fulfilling his obligation to take over the plaintiff's existing leasehold interest in No. 54, which the defendant acknowledged in his evidence. Further, subject to the plaintiff taking the lease of 8 Richview, each contracting party committed to what was necessary to give effect to what was agreed in principle in relation to No. 54 – that the plaintiff would assign its existing leasehold interest and give vacant possession to the defendant and that the defendant would take an assignment of the leasehold interest.

Secondly, the nature of the plaintiff's existing interest in No. 54, which was the leasehold interest created by the 2003 lease, was known to, and accepted by, the defendant long before the terms of the lease of 8 Richview would be finally agreed. This occurred before 6th September, 2006, when the contracts which had been furnished by O'Rourke Reid in relation to No. 54 were executed by the defendant and returned next day to O'Rourke Reid. In particular, it is clear that the defendant was on notice of the following matters:

(a) the existence of the break clause in the lease and the fact that it was personal to the plaintiff; and

(b) the existence of the Deed of Renunciation.

Thirdly, the agreement in principle as regards the defendant's obligation to take over the plaintiff's interest in No. 54 was not subject to a term or condition that the plaintiff would exercise the break option in accordance with the terms of the 2003 lease. While the existence of the break clause was ascertained during the initial discussions between the defendant and Mr. Finnegan, on the one hand, and Mr. O'Shaughnessy, on the other hand, I do not think that the exercise of the break option had the significance for the defendant at that time which he subsequently ascribed to it. The true position seems to be that the defendant was anxious to procure the plaintiff as a tenant of 8 Richview on terms that were suitable to him, and it was made clear to him that to achieve that objective he was going to have to take over the plaintiff's existing interest in No. 54. Even if it had been proposed to the plaintiff's representatives that the plaintiff should exercise the break option, it is difficult to see how the plaintiff could have acceded to that proposal prior to the terms of the lease of 8 Richview being finally agreed, because the plaintiff would be giving up No. 54 while not having any guarantee that it would be in a position to move to 8 Richview. In any event, I am satisfied that there was no such proposal put to the plaintiff and there was no commitment from the plaintiff to exercise the break option.

Fourthly, the terms and conditions of the lease of 8 Richview were the subject of further negotiation between the parties and, indeed, of variation over a protracted period of approximately thirteen months. However, the terms were eventually agreed and the lease was put in place on 6th July, 2006. During that period, the formalities in relation to the assignment of No. 54 to the defendant were on hold. It was expressly stated in the letter of 6th October, 2006, from O'Rourke Reid to Smith Foy & Partners, that the execution of the lease of 8 Richview would be dependent on the assignment of the leasehold interest in No. 54 to the defendant. Smith Foy & Partners did not, at any time, demur from that position. In explaining why he varied the special condition in relation to the closing date, Mr. Foy explained that he was not clear at the time that the transactions in relation to 8 Richview and No. 54 were "intrinsically linked". There is no doubt but that they were intrinsically linked from the time the proposal was first put on behalf of the plaintiff in the letter of 11th May, 2006. The letter of 6th October, 2006, made it clear that they were. That was the basis on which the parties continued their detailed and protracted negotiation of the terms of the lease of 8 Richview, which ultimately resulted in a concluded agreement.

Fifthly, the plaintiff fulfilled its part of the bargain that was agreed in principle when it took the lease of 8 Richview on 6th July, 2007, and subsequently indicated its readiness to assign No. 54 to the defendant. The defendant partially fulfilled his part of the bargain in granting the lease. However, after 6th July, 2007, he remained obligated to take the assignment of the plaintiff's interest in No. 54. I say that because, when all of the terms of the lease of 8 Richview were agreed so that the lease could be, and was, put in place, the agreement in principle crystallised into a completed contractual

arrangement which included a contractual obligation on the part of the defendant to take No. 54.

Sixthly, although it has to be recognised that the plaintiff's solicitors were very remiss in June and July 2007 in not addressing the outstanding title issues in relation to the transfer of the leasehold interest created by the 2003 lease in No. 54 to the defendant, namely, replying to the requisitions on title which had been furnished to them in September 2006, and finalising obtaining the landlord's formal consent to assignment, and in not ensuring that the completion of the assignment of No. 54 to the defendant was effected simultaneously with the completion of the lease of 8 Richview, in my view, nothing occurred at that time which released the defendant from his contractual obligation to take the leasehold interest created by the 2003 lease in No. 54. When testifying, the defendant took umbrage at the suggestion that he did not carry out the deal, asserting that he carries out any deal he does. The fact is that, in instructing his solicitors to write the letter of 21st August, 2007, purporting to withdraw from the acquisition of No. 54, the defendant reneged on part of his agreement in principle with the plaintiff, which had become a concluded agreement on 6th July, 2007.

Finally, no explanation was offered as to why it took two months for the plaintiff's solicitors to respond to the letter of 21st August, 2007. Moreover, I consider that the analysis of the arrangement between the parties in the ultimate response, the letter of 23rd October, 2007, from O'Rourke Reid, which suggested that it had involved "two deals" was incorrect. In any event, I am satisfied that the defendant's contractual liability to take No. 54 remained in existence, but completion of that aspect of the transaction was conditional upon the plaintiff procuring, in accordance with the terms agreed and contained in the contract dated 6th September, 2006, signed by the defendant, the consent of the landlord, Mrs. Fasenfeld. The letter of 14th December, 2007, from Arthur Cox, which was furnished to Smith Foy & Partners on 17th December, 2007, brought matters to a point at which, for practical purposes, the condition was fulfilled, because there was no basis thereafter for fearing that Mrs. Fasenfeld's consent would not be forthcoming.

The case as pleaded

In its statement of claim delivered on 22nd May, 2008, the plaintiff pleaded that, by an agreement made in or about May 2006 between the parties, in consideration of the defendant agreeing to purchase by way of assignment the plaintiff's leasehold interest in No. 54, the plaintiff agreed to enter into a lease of the defendant's premises, 8 Richview. That plea, it seems to me, distorts somewhat the reality of the situation, in that it is absolutely clear on the evidence that the crucial aspect of the transaction was the plaintiff taking the lease of 8 Richview and the defendant's agreement to take No. 54, was contingent on that lease being put in place. In replies dated 16th October, 2008, to particulars sought on behalf of the defendant, the plaintiff identified the agreement as being based on discussions which took place between the parties and their agents on various dates in May 2006, resulting in agreement, which Smith Foy & Partners "acknowledged" by the letter dated 31st May, 2006, and was "further reduced to writing" in the contract for sale dated 6th September, 2006.

In the statement of claim, it was further pleaded that pursuant to the agreement previously pleaded, the defendant executed the contract dated 6th September, 2006. It was then pleaded that, "in further pursuance of the said agreement", the plaintiff had entered into the lease of 8 Richview. The nub of the plaintiff's case, as pleaded, is that, while it was ready, willing and able to complete the assignment of the leasehold interest in No. 54 to the defendant at all material times, the defendant failed, refused or neglected to complete the acquisition despite the service of notice to complete on 11th January, 2008.

The reliefs sought by the plaintiff are, first, specific performance of the agreement in writing dated 6th September, 2006, "whereby the defendant agreed to purchase the Plaintiff's title and interest in the premises at" No. 54 and, secondly, damages for the losses and expenses incurred by the plaintiff by reason of the failure of the defendant to honour "the terms of the said Agreement".

The defendant's defence was delivered on 21st July, 2008. In it, the defendant denies the existence of the alleged agreement, or any agreement. Further, the defendant pleads that if there was such agreement, it was not enforceable because there was no completed memorandum for the purposes of the Statute of Frauds. Additionally, the defendant specifically denies that the agreement of 6th September, 2006, was a binding agreement and denies that the plaintiff entered into the lease of 8 Richview in pursuance of the alleged agreement. Everything else pleaded in the statement of claim is traversed. Finally, as the relief sought by the plaintiff is equitable, the defendant pleads that the plaintiff is disentitled to such relief by virtue of unreasonable and unconscionable delay amounting to l*aches*.

In its reply, delivered on 23rd March, 2009, in addition to joining issue with the pleas in the defendant's defence, the plaintiff pleaded that defendant is estopped by virtue of its conduct and actions from denying the existence of an enforceable contract.

Issues raised in relation to the pleadings

Counsel for the plaintiff submitted that there is no mention whatsoever in the defence to the defendant's contention that the acquisition of No. 54 by the defendant was conditional on the break option in the 2003 lease being exercised. The submission of counsel for the plaintiff that the issue of the break clause was an "afterthought" on the part of the defendant for the purposes of justifying his reneging on the aspect of the deal in relation to No. 54, is, in my view, correct. The pleading point merely confirms what I have found on the evidence and is of no further relevance.

Of more relevance are two further issues raised on the pleadings which I mention now for completeness and will address later.

First, counsel for the defendant emphasised that what the plaintiff is seeking is specific performance of an agreement dated 6th September, 2006, and that the claim for damages is linked to that agreement. It was submitted by counsel for the defendant that this is not an action for specific performance of an agreement alleged to exist and alleged to be evidenced by the letter dated 31st May, 2006. For what it is worth, I do not agree with that interpretation of the pleadings because the statement of claim read in conjunction with the particulars given on 16th October, 2008, clearly point to a pre-31st May, 2006, agreement, as acknowledged by the letter of that date.

Secondly, although in the plaintiff's written submissions it was argued that even if there is not a sufficient note or memorandum for the purposes of the Statue of Frauds of the agreement of which the plaintiff is seeking specific performance, by virtue of its part-performance of its contractual obligation by taking the lease of 8 Richview, the plaintiff

is entitled to the reliefs it seeks. Reliance on the equitable doctrine of part-performance was not pleaded by the plaintiff in its pleadings.

The issues

The issues which remain to be determined on the pleadings and on the facts proven, in my view, are the following:

> (1) Was there a concluded agreement under which the defendant agreed to acquire the plaintiff's interest in No. 54?
>
> (2) If there was a concluded agreement, is there in being a sufficient note or memorandum for the purposes of the Statute of Frauds (Ireland) 1695, to render it enforceable?
>
> (3) If there is a concluded agreement, but there is not a sufficient note or memorandum for the purposes of the Statute of Frauds, is the plaintiff entitled to the equitable relief sought on the basis that the agreement has been part performed?
>
> (4) Is the plaintiff disentitled to claim equitable relief on the grounds of unreasonable and unconscionable delay amounting to laches?
>
> (5) Is the doctrine of estoppel of any relevance in assessing whether the plaintiff is entitled to the relief claimed?

Submissions

The Court has had the benefit of comprehensive written submissions from counsel for the plaintiff and counsel for the defendant and has also had the benefit of oral submissions. I do not consider it necessary to outline the submissions in this judgment and I will refer thereto only to the extent necessary when dealing with the issues I have identified.

Concluded agreement?

As I have found on the evidence, the parties had reached agreement in principle prior to 31st May, 2006 that the defendant would grant, and the plaintiff would take, a lease of 8 Richview and that, as part of the consideration for the plaintiff taking the lease, the defendant would take over the plaintiff's existing interest in No. 54. There was no concluded agreement at that stage because it is quite clear from the evidence and from the correspondence that the terms and conditions of the lease of 8 Richview were not finalised until 6th July, 2007. At that stage, the lease on the agreed terms was entered into by the parties. I consider that, at that point, there came into being a concluded agreement, under which, in addition to granting the lease of 8 Richview, the defendant was contractually bound to take the plaintiff's interest in No. 54. The obligation under that concluded agreement which has not been fulfilled is the defendant's obligation to take the plaintiff's existing leasehold interest in No. 54.

In the same way as the terms and conditions of the lease of 8 Richview were the subject of negotiation and variation prior to being finally agreed, during the period between the agreement in principle having been reached in May 2006 and the concluded agreement coming into being in July 2007, the title requirements and the practicalities of completion of the aspect of the agreement in principle in relation to No. 54 were agreed between the solicitors, subject, however, to a concluded agreement coming into existence in due course. This is evidenced, inter alia, by the contracts which bear the date of 6th September, 2006, and which were signed by the defendant. It is also clear, on the correspondence which passed between the solicitors subsequently in September and October 2006, from which it is clear that as regards No. 54, all title issues had been agreed, the only issue of any significance being the purchaser's obligation to obtain the licence of Mrs. Fasenfeld to the assignment to the defendant, which the plaintiff agreed to furnish.

I am of the view that the pleading of its case by the plaintiff in this matter is sufficient to allow the plaintiff to seek the relief which it claims. In essence, what it is seeking is an order for specific performance of an agreement by the defendant to acquire the plaintiff's title and interest in No. 54. That, in reality, is a claim for specific performance of the "aspect of the transaction", to use the terminology used in the first letter from Smith Foy & Partners dated 31st March, 2006, agreed in principle, under which the defendant agreed to take the plaintiff's leasehold interest in No. 54, provided that the terms of the lease of 8 Richview were agreed and the lease was put in place. When the lease of 8 Richview was in fact put in place, the defendant became contractually bound to acquire the plaintiff's leasehold interest in No. 54, as he had agreed in principle to do. It is of this contractual obligation that the plaintiff seeks specific performance. In my view, the fact that, in the prayer in the statement of claim, the agreement is represented as having been dated 6th September, 2006, does not preclude the plaintiff from pursuing the relief the essence of which is there in the prayer.

Sufficient note or memorandum?

Insofar as is relevant for present purposes, s. 2 of the Statute of Frauds (Ireland) 1695, provides as follows:

> "No action shall be brought whereby to charge … any person … upon any contract of sale of lands, tenements or hereditaments, or any interest in or concerning them … unless the agreement upon which such action shall be brought, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

In *Boyle v. Lee* [1992] 1 I.R. 555, the Supreme Court, after a period of uncertainty, with a view to the avoidance of doubt and the avoidance of litigation, sought to bring certainty to the question of what is or is not a sufficient note or memorandum for the purposes of the Statute of Frauds. With that objective, Finlay C.J. stated as follows (at p. 574):

> "In my view, the very definite statement that a note or memorandum of a contract made orally is not sufficient to

> satisfy the Statue of Frauds unless it directly, or by very necessary implication recognises not only the terms to be enforced, but also the existence of a concluded contract between the parties, and the corresponding principle that no such note or memorandum which contains any term or expression such as 'subject to contract' can be sufficient, even if it can be established by oral evidence that such a term or expression did not form part of the originally orally concluded agreement, achieves that certainty. The existence of such a rule or provision would not, in my view, allow for the 'exceptional cases' mentioned by Keane J. in the decision in *Mulhall v. Haren* [1981] I.R. 364."

In this case, the party whom it is sought to charge with contractual liability is the defendant. Accordingly, the pertinent question which arises from the application of the Statute of Frauds to determining whether there is a contract by the defendant to acquire the plaintiff's interest in No. 54 which can be enforced by action against the defendant is whether there is in existence an agreement in writing or, alternatively, a memorandum or note of a concluded agreement signed by the defendant or his agent. Applying the principle stated by Finlay C. J. in Boyle v. Lee, the question which arises is whether there is a document signed by the defendant or his agent which recognises the existence of a concluded agreement between the parties which includes the term which the plaintiff seeks to enforce, namely, that the defendant agreed to take an assignment of No. 54. A document which was headed with, or contains, the expression "subject to contract" or a like expression cannot suffice for that purpose.

In their submissions, counsel for the plaintiff sought to rely on either the letter of 31st May, 2006 from Smith Foy & Partners, as agents for the defendant, or, alternatively, the contract which bears the date 6th September, 2006, which was signed by the defendant. Neither document is sufficient, because, on the finding I have made, there was no concluded agreement in existence at the time either document came into being. There was no concluded agreement between the parties until 6th July, 2007.

While the letter of 31st May, 2006, was not headed or expressed to be "subject to contract", and recognised that the defendant had agreed to take an assignment of the plaintiff's existing leasehold interest in No. 54, on the evidence, as I have found, that was not a stand alone transaction, but rather, was merely an aspect of the defendant's contractual liability in return for the plaintiff taking the lease of 8 Richview, if its terms were to be agreed and the lease was to be granted.

As regards the signed contract which is dated 6th September, 2006, the letter dated 7th September, 2006, was headed "Subject to Contract/Contract Denied". The response from the plaintiff's solicitors of 13th September, 2006, which was also headed "Subject to Contract/Contract Denied", made it absolutely clear what the then current status of the dealings between the parties was in stating that the contract would not be executed by the plaintiff until such time as the final version of the lease in relation to 8 Richview had been agreed.

Following the coming into existence of a concluded agreement on 6th July, 2007, no document signed by the defendant, or by an agent of the defendant, came into existence which would fulfil the requirements set out by Finlay C.J. in *Boyle v. Lee*.

Accordingly, in my view, there exists no note or memorandum of the concluded agreement to satisfy the Statute of Frauds and, accordingly, the concluded agreement is unenforceable unless the plaintiff can rely on the equitable doctrine of part performance or some other equitable principle.

Part Performance

The rationale of the equitable doctrine of part performance was explained by Simon L.J. in *Steadman v. Steadman* [1976] A.C. 536, in the following passage (at p. 558), which was cited with approval by the Supreme Court in *Mackie v. Wilde* (No. 2) [1998] 2 I.R. 578:

> "…almost from the moment of passing of the Statute of Frauds, it was appreciated that it was being used for a variant of unconscionable dealing, which the statute itself was designed to remedy. A party to an oral contract for the disposition of an interest in land could, despite performance of the reciprocal terms by the other party, by virtue of the statute disclaim liability for his own performance on the ground that the contract had not been in writing. Common law was helpless. But equity, with its purpose of vindicating good faith and with its remedies of injunction and specific performance, could deal with the situation. The Statute of Frauds did not make such contracts void, but merely unenforceable, and, if the statute was to be relied on as a defence, it had to be specifically pleaded. Where, therefore, a party to a contract unenforceable under the Statute of Frauds stood by while the other party acted to his detriment in performance of his own contractual obligations, the first party would be precluded by the Court of Chancery from claiming exoneration, on the ground that the contract was unenforceable, from performance of his reciprocal obligations; and the court would, if required, decree specific performance of the contract. Equity would not, as it was put, allow the Statute of Frauds 'to be used as an engine of fraud'. This became known as the doctrine of part performance – the 'part' performance being that of that party who had, to the knowledge of the other party, acted to his detriment in carrying out irremediably his own obligations (or some significant part of them) under the otherwise unenforceable contract."

In his judgment in *Mackie v. Wilde*, Barron J. stated (at p. 586):

> "It must not be forgotten that ultimately the court is seeking to ensure that a defendant is not, in relying upon the Statute, breaking faith with the plaintiff, not solely by refusing to perform the oral contract, but in the manner contemplated from the passage from the judgment of Simon L.J. to which I have referred.

The doctrine is based upon principles of equity. There are three things to be considered:-

> (1) the acts on the part of the plaintiff said to have been in part performance or of concluded agreement;
>
> (2) the involvement of the defendant with respect to such acts;
>
> (3) the oral agreement itself.

It is obvious that these considerations only relate to a contract of a type which the courts will decree ought to be specifically performed. Each of the three elements is essential. In my view, it does not matter in which order they are considered. Ultimately, what is essential is that:-

> (1) there was a concluded oral contract;
>
> (2) that the plaintiff acted in such a way that showed an intention to perform that contract;
>
> (3) that the defendant induced such acts or stood by while they were being performed; and
>
> (4) it would be unconscionable and a breach of good faith to allow the defendant to rely upon the terms of the Statute of Frauds to prevent performance of the contract."

As to whether the essential requirements identified by Barron J. are present in this case, I would observe as follows:

> (a) As I have already found, a concluded contract came into existence on 6th July, 2007, when all of the terms of the lease of 8 Richview were finally agreed and the plaintiff entered into the lease of those premises with the defendant.
>
> (b) The plaintiff not only acted in a way that showed an intention to perform his contractual liability, that is to say, to enter into the lease of 8 Richview, but it actually did so. Moreover, it vacated No. 54 and indicated its willingness to assign its existing leasehold interest to the defendant.
>
> (c) In this case, the defendant not merely induced and acquiesced in, but actively participated in the performance of the aspect of the contract by the plaintiff which the plaintiff performed, in that it was the defendant who granted the lease of 8 Richview to the plaintiff.
>
> (d) In my view, it would undoubtedly be unconscionable and a breach of good faith to allow the defendant to rely upon the terms of the Statute of Frauds to avoid having to fulfil what remains of his contractual liability to the plaintiff, namely, the acquisition of the plaintiff's interest in No. 54.

In attempting to resist the application of the doctrine of part performance, counsel for the defendant relied on statements in Farrell on *'Irish Law of Specific Performance'* at para. 6.05, to the effect that, for a plaintiff to get as far as relying on part performance, there must be a concluded contract. For the reasons I have outlined earlier, I am satisfied that a concluded agreement did come into being on 6th July, 2007, under which the defendant became contractually liable to acquire the plaintiff's leasehold interest in No. 54.

On the issue as to whether it was necessary for the plaintiff to plead part performance in the statement of claim, the Court was referred to a decision of the Supreme Court in *Holohan & Anor. v. Ardmayle Estates* (Supreme Court, 1st May, 1967, Unreported) in which judgment was delivered by Walsh J. In that case, at first instance, Kenny J. had awarded the plaintiff purchasers damages in lieu of specific performance, but, in measuring the damages, he had not factored in a deposit paid by the plaintiff purchasers which had not been returned by the defendant vendor. In the Supreme Court, counsel on behalf of the defendant made the point that the statement of claim should have pleaded that some part of the purchase money had been paid. On that argument, Walsh J. stated as follows:

> "It is quite true that in former years, when pleadings gave considerably more information than they now give, it was customary to plead all the relevant facts, such as the making of the contract, the payment of the deposit, the ability and willingness of the plaintiff to complete and the refusal or failure of the defendant to complete. A great deal of information is now left to be sought by means of notice for particulars. In the present case, no notice for particulars was served by the defendants and, of course, the defendants were well aware that part of the purchase money had been paid as the defendants had received it. I do not think that the defendants' objection of the pleading point is well founded. A decree for specific performance naturally does not depend upon the fact of whether or not a deposit had been paid, and the payment of a deposit is merely an incident, but not a necessary incident, of a sale. In my view, the plaintiff's submission on this point is correct; the learned trial Judge erred in thinking it was necessary to expressly claim in the pleadings before it could be included as an ingredient of the damages."

In outlining the case made in the statement of claim, I have emphasised, as the counsel for the plaintiff did, the plea that in further pursuance of the alleged agreement, the plaintiff had entered into the lease of 8 Richview. In effect, what the plaintiff pleaded was that it had fully performed, not merely part performed, its contractual obligation under the agreement in relation to that aspect of the transaction. In addition, the plaintiff has pleaded that it was, at all material times, ready, willing and able to complete the assignment of No. 54 to the defendant, which I am satisfied was the case on the evidence. In my view, the plaintiff is not precluded from relying on the equitable doctrine of part performance merely because it has not spelt out in the statement of claim or the reply its reliance on it.

Laches?

The manner in which delay has been invoked by counsel for the defendant in the defendant's written submission is that, since the asset, the plaintiff's leasehold interest in No. 54, was a wasting asset, being a lease of nine years and nine months, with no statutory right of renewal and with a break clause, and since it was an express condition of the contract that the landlord's consent be obtained, it was an implied condition that it be obtained within a reasonable time and, indeed, before the break clause had to be exercised. The defendant asserted that it was not so obtained.

It was recognised by the parties from the outset that the consent of the landlord to the assignment of No. 54 was necessary and it was understood that it would have to be obtained. Steps were taken to obtain it and the matter had been well advanced before the concluded agreement came into existence on 6th July, 2007. It is unquestionably the case

that the plaintiff's solicitors should have moved immediately on receipt of the letter of 21st August, 2007, purporting to terminate the agreement to take No. 54, and that they should have finalised the issue of the landlord's consent more expeditiously than they did. However, as I have already found, when Arthur Cox issued the letter of 14th December, 2007, the plaintiff's solicitors had taken the matter of the consent to assignment as far as they could, pending the completion of the final formalities. The defendant should have completed within fourteen days. In my view, the delay by the plaintiff in getting its house in order for completion of the assignment of No. 54, by getting Mrs. Fasenfeld's commitment to execute the Licence to Assign, was not of an order which would preclude the plaintiff from entitlement to equitable relief.

Estoppel

The plaintiff's estoppel argument is based on the decision of the Supreme Court in *Courtney v. McCarthy* [2008] 2 I.R. 376. As I have found that the plaintiff is entitled to rely on the doctrine of part performance, it is not necessary for the plaintiff to resort to reliance on that decision. If it were, following the approach adopted by the Supreme Court, as set out in the judgment of Geoghegan J. at p. 391, the defendant would be estopped from refusing to fulfil the clear and unambiguous assurance he gave to the plaintiff, which was clearly intended to affect legal relations between them and to be so acted on, that he would acquire the plaintiff's existing leasehold interest in No. 54. That is because the plaintiff acted on the assurance in taking the lease of 8 Richview and vacating No. 54, thereby altering its position to its detriment. In such circumstances, if the plaintiff had no other remedy, equity would afford the plaintiff relief against the consequences of the defendant reneging on his assurance, as he did.

Primary relief

The plaintiff is entitled to the primary relief it seeks, namely, an order for specific performance of an agreement whereby the defendant agreed to acquire the plaintiff's existing title and interest in No. 54, that is to say, the leasehold interest created by the 2003 lease.

Damages

I am satisfied that the plaintiff has established an entitlement to damages in respect of the following outlay incurred by the plaintiff in respect of No. 54 since 1st January, 2008, which I am treating as the date on which the acquisition of No. 54 should have been completed by reference to the period of fourteen days after the letter of 17th December, 2007, calling on the defendant to complete:

(1) Rent under the 2003 lease which was at the rate of €30,000 per annum for the first two quarters, due on 1st January, 2008 and 1st April, 2008, and at the reviewed rate of €37,375 for subsequent quarters.

(2) Professional fees in the sum of €7,381 paid to Spain Courtney Doyle in connection with the rent review.

(3) Insurance on No. 54 in accordance with the terms of the 2003 lease.

(4) Rates and water rates paid to Dublin City Council.

(5) A sum of €4,494.60 incurred in respect of maintenance.

Before the order of the Court is drawn up, it will be necessary for the parties to agree the quantification of the rent, insurance and rates.

Order

The order will include the decree for specific performance and the award of damages which is to be quantified.