APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2024/79

Neutral Citation Number [2024] IECA 270

Binchy J.

Allen J.

Butler J.

BETWEEN/

FRESH OPPORTUNITIES STEPASIDE LIMITED

PLAINTIFF/RESPONDENT

- AND –

PETER WOODS AND ALAN WOODS

DEFENDANTS/APPELLANTS

JUDGMENT of Mr. Justice Allen delivered on the 12th day of November , 2024

Introduction

1. This is an appeal against a discovery order. The order made by the High Court judge was not the order which the appellants sought but the appellants do not contend that the judge should have made the order sought. Nor do the appellants ask this Court to make the order sought in the High Court. Instead, the appellants make the case that the judge *"erred in law and in fact in the formulation of [the particular category]"* and *"in refusing to properly*

consider the wording of [the category]". In effect, the argument is that the judge erred in failing to divine what the appellants would later decide that they needed or wanted or, perhaps, erred in failing to optimally advise the appellants' proofs.

2. The appellants in their written submissions suggested that the High Court judge was *"somewhat exasperated"*. That observation, I think it is fair to say, is justified by the transcript. But the appellants do not contemplate whether the judge was justified in her exasperation; or who was responsible for it.

The issue

3. The respondent is – or was – the tenant of a supermarket premises at Belarmine Plaza, Stepaside, County Dublin. The appellants are – or were – the landlord. The premises was demised to the respondent by the appellants' predecessor in title by lease made the 4th May, 2016 for a term of 20 years subject to an initial rent of €95,000 plus value added tax, subject to increase and review as therein provided, and to the usual covenants on the part of the tenant and conditions therein contained.

4. The premises is one of 18 commercial units, 16 of which, including the supermarket, were acquired by the appellants in or about October, 2018.

5. Prior to the appellants' acquisition of the units there had been engagement between their agents and agents for a company called Insomnia Limited trading as Insomnia *("Insomnia Limited")* in relation to a proposed lease of one of the vacant units to Insomnia Limited for use as a coffee shop. Insomnia is a well-known brand which has a distinctive logo. There are a number of Insomnia coffee shops throughout the State which carry on business under that name and brand, and which have a similar or identical offering. By late 2018 the engagement between the appellants and Insomnia Limited had progressed to – as the appellants put it – sustained and advanced negotiations for a 20 year lease. However, in

January 2019 the cup was dashed from the appellants' lips when Insomnia Limited pulled out of the negotiations.

6. On 30th June, 2020, the appellants discovered that there was an Insomnia coffee shop operating in the respondent's premises. The permitted user under the lease included a coffee shop or café with seating for no more than 19 customers as ancillary to the use as a good quality supermarket/convenience store but by clause 4.28.1 of the lease, the respondent had covenanted that it would:-

> *"Not assign, transfer, underlet, charge, mortgage, encumber, hold on trust for another or part with possession or occupation of the premises or any part thereof or suffer any person to occupy the premises or any part thereof as a licensee, franchisee or as a concessionaire …"*

7. The appellants took the view that the operation of the Insomnia coffee shop was a breach of the covenant against alienation. The respondent countered that it was carrying on the coffee shop business on its own account.

8. There followed a protracted correspondence in which the appellants maintained that the installation and operation of the coffee shop was a breach of covenant. There were also complaints of alterations to the demised premises without consent, breach of fire safety requirements, a failure to produce evidence of insurance, failure to repair, failure to comply with waste management obligations, obstruction of the common areas, and more besides. For present purposes, however, the issue is whether the operation of the coffee shop as an Insomnia coffee shop was a breach by the respondent of the covenant against alienation.

The action

9. The lease, in the ordinary way, included a proviso for forfeiture in the event of a breach of covenant. On 12th May, 2021, the appellants served a formal forfeiture notice and

overnight on 25th/26th May, 2021, the appellants – to use an entirely neutral expression – went into the premises.

10. By plenary summons issued on the following morning the respondent commenced proceedings claiming an injunction restraining the appellants from re-entering the premises or from interfering with its quiet enjoyment of the premises. In due course, the appellants delivered a defence asserting their entitlement to have forfeited the lease and the effective forfeiture of the lease, and a counterclaim for a variety of declarations accordingly. In the meantime, by interim and interlocutory High Court orders, the respondent was restored to possession *pendente lite.*

11. It is common case that the coffee shop area of the supermarket is got-up as an Insomnia coffee shop with Insomnia signage, logos, menu cards, branded coffee cups and the like. The issue – for present purposes – is whether the installation and operation of the coffee shop was a breach of clause 4.28.1 of the lease.

The discovery request

12. By letter dated 11th January, 2022, the appellants' solicitors wrote to the respondent's solicitors seeking voluntary discovery of ten categories of documents said to be relevant and necessary for the fair disposal of the proceedings and for saving costs. At category 7(a) the respondent was asked to make discovery of:-

> *"All documents, however described, referring to, evidencing or recording;*
>
> *(a) Any franchise, licence, concession or any trading or business arrangements and communications, request for payments, payments or set-off between [the respondent] and its related legal entities, affiliates and/or undertakings and any Insomnia related entity, affiliate and/or undertaking and any BWG Foods related legal entities or affiliates and/or undertakings."*

13. I pause here to note that BWG Foods was party to the lease and guaranteed the payment of the rent and the due observance and performance by the respondent of the tenant's obligations but the precise relationship between BWG Foods and the respondent is not clear. The Fresh supermarket in Belarmine is one of a number of supermarkets operated under the Fresh name but it is not clear what the relationship – if any – is between the respondent and the operators of the other Fresh shops.

14. The appellants' request for voluntary discovery ran to eight pages and the reasons given in respect of each category were expressed to be in addition to the reasons given for each preceding category. The letter is wordy and draws heavily on the assertions in pleadings. As to category 7 it was said that:-

> *"... It is alleged that the [respondent] in concert with Insomnia and/or BWG Foods, orchestrated the installation without consent of an Insomnia Café at Unit 18, the premises occupied by the [respondent]. The operation of a franchise, licence or concession at the premises is expressly prohibited. The [respondent] and Insomnia have installed significant and permanent signage, logos, menu cards, fixed displays, branded coffee cups, loyalty cards, advertisements and imaging of the Insomnia brand. ... The [respondent] has asserted that this is not in breach of its obligations under the lease, and that this is nothing more than a 'trading arrangement'. ... This position is denied in full by the [appellants], who assert that what has been installed and operated is in truth a franchise, concession or licence. ..."*

15. It is clear that the appellants feel betrayed by the establishment of the Insomnia coffee shop in the supermarket so soon after Insomnia Limited withdrew from the sustained and advanced negotiations for the establishment of a coffee shop next door. The legal rights and wrongs of that are another day's work but the perception appears to have coloured the

formulation of the request for documents relevant to the alleged breach of the covenant against alienation and the reasons advanced in support of it.

16. As to the installation of the Insomnia coffee shop, it is common case that the appellants' consent was not sought. It is not precisely – or even generally – clear what involvement BWG Foods is alleged to have had in the installation of the coffee shop, but it is clear that there must be some agreement or arrangement between the respondent and Insomnia Limited and so – although the appellants' language may be a bit loaded – that its installation was orchestrated by the respondent in concert with, at least, Insomnia. Similarly, there is no issue but that the coffee shop has in fact been got-up as an *Insomnia* branded café so that it can at least loosely be said that that has been done by the respondent and Insomnia.

17. It is useful to recall that on an interlocutory application, not least on a motion for discovery, the High Court (and of this Court on appeal) cannot decide any contested issue of law of fact. Accordingly, I express no view as to the plea at para. 32 of the appellants' counterclaim – reflected in the reason given in support of their request for discovery – that the installation and operation of a franchise and/or concession at the premises is expressly prohibited by clause 4.28.1. That is a matter of construction of the lease. The factual issue, however, is not whether the coffee shop was installed and is being operated as a franchise or concession, but by whom it was installed and is being operated. By reference to the wording of clause 4.28.1, the issue is whether the respondent has suffered any person to occupy the coffee shop part of the premises as a licensee, franchisee or concessionaire.

18. If, as the appellants appear to contend, the effect of clause 4.28.1 is to prohibit the operation by anyone – specifically, including the respondent – of any franchise, licence or concession, that will be the end of that. If, as the respondent contends, its effect is limited to the granting by it to someone else, and the operation by someone else, of a franchise, licence or concession, the core factual issue will be whether – as appears to be the thrust of the

appellants' case – the coffee shop was installed and is being operated by Insomnia Limited and not – as the respondent insists – by the respondent.

19. By letter dated 22nd February, 2022 the respondent's solicitors took issue with the extent of the discovery sought and offered that the respondent would make discovery of:-

> *"All documents, however described, referring to, evidencing or recording;*
>
> *(a) Any documents recording a franchise or licence or concession or trading or business arrangement between [the respondent] and Insomnia that related to the premises from 29 March 2016 [which was the date of the demise] up to date of commencement of the proceedings."*

20. That formulation would have captured the business arrangement between the respondent and Insomnia – whatever it is – and any franchise, licence or concession by either to the other but it was not acceptable to the appellants.

The discovery application

21. By notice of motion issued on 15th February, 2022 and originally returnable for 21st March, 2022 the appellants applied for an order for discovery in the terms originally sought. The appellants' discovery motion and a separate motion for an order for an inspection of the premises came before the High Court (Stack J.) on 27th June, 2023 when it appears to have been part heard and adjourned until 28th July, 2023 in the hope that the terms of the discovery order might be agreed.

22. The issue went back and forth between the solicitors with the customary flourish of activity at the last minute. One significant difference between the parties appears to have been whether the discovery to be made by the respondent ought to extend to the terms on which Insomnia coffee was being sold in other Fresh supermarkets.

23. By letter dated 26th July, 2023 – sent at 16:56 – the respondent's solicitors proposed a revised category 7(a) which was:-

"Any contracts or agreements, whether draft or executed, and correspondence containing negotiations regarding the terms under which Insomnia was permitted to enter occupation of a Fresh Outlet or Insomnia was permitted to sell its products at a Fresh outlet."

24. In circumstances in which there was an issue on the pleadings as to whether Insomnia had been permitted to enter occupation of, or to sell its products from, the Fresh outlet at Belarmine, this formula may not have been all that it might have been but it was directed to the appellants' determination to interrogate the trading arrangements in all Fresh outlets.

25. By letter dated 27th July, 2023 – sent at 17:18 – the appellants' solicitors countered with a proposal that the respondent would make discovery of:-

"Any contracts, agreements and side letters whether executed or in draft form and any correspondence (including electronic correspondence and messaging) documenting the negotiation of those contracts or arrangements or side letters relating to any franchise, licence, concession and/or any trading and/or business arrangements between the [respondent], its related legal entities, affiliates and/or undertakings and any Insomnia related entities, affiliates and/or undertakings and any BWG Foods related legal entities, affiliates and/or undertakings."

Which, apart from being a bit of a mouthful was less than entirely clear.

26. The parties were back before Stack J. on 28th July, 2023. Counsel for the appellants reported that the parties had *"come a long way without striking a full agreement"* and handed in a copy of the respondent's solicitors' letter of 26th and the appellants' solicitor' reply of 27th July, to which – understandably – no formal response had been received. Counsel for the appellants identified the respondent's concern as the volume of documents that might be captured. Counsel read out the respondent's revised proposal and the appellants' counterproposal.

26. There was an exchange between counsel and the judge in which the judge asked first, what was the difference between the two proposals; to which the answer was that the appellants' had pleaded that there was a franchise, concession or licence but the respondent had pleaded that there was no more than a business relationship. The judge recalled that she had previously exhorted the parties to define the documents by reference to the type of documents which were relevant and not by reference to what they thought the documents would prove. The object of discovery, the judge said, was to ensure that the relevant documents would be discovered and then interpreted by the court.

27. The transcript then shows that counsel for the appellants submitted that:-

> *"... the appropriate category might be: 'Contracts, agreements, side letters, executed or in draft form, documenting the negotiation of those contracts or side letters.'"*

28. This, the judge suggested, was that the respondent had offered and asked what was wrong with what had been proposed:-

> *"COUNSEL: Well, judge, we were of the view that it wasn't appropriately narrow, but I note that the court is saying.*
>
> *JUDGE: But what's wrong with it? I am asking you why is it appropriate – why was it inappropriately narrow?*
>
> *COUNSEL: We felt it wasn't appropriately broad.*
>
> *JUDGE: Forget about feelings. What is missing out of it that you want that you won't get if you agreed to that?*
>
> *COUNSEL: I suppose a concern must be in respect of any Fresh outlet. It does say 'a Fresh outlet.' So, if that means any Fresh outlet, well then, we have to be happy with that. 'By which Insomnia was permitted to sell its products." They've said, 'We*

don't sell Insomnia products; we sell branded coffee.' To sell Insomnia products or Insomnia-branded products."

29. This, it seems to me, was very confused and confusing. There was – and is – no issue as to what products are being sold in the coffee shop. Rather the issue is who is doing the selling. The judge, however, was prepared to take out the word *"its"* in the hope of forestalling another debate. At the suggestion of counsel for the appellants the judge also added to the respondent's proposed formulation the words *"or side letters"* and made an order for discovery of:-

"Any contracts or agreements or side letters, whether draft or executed, and correspondence containing negotiations regarding the terms under which Insomnia was permitted to enter occupation of a Fresh outlet or Insomnia was permitted to sell products at a Fresh outlet."

The reformulated request for discovery

30. Soon after the High Court hearing, the appellants' reflected on the order pronounced on 28th July, 2023 and came to the view that it was:-

"... problematic in that the category has now been crafted in such a way that it does not reflect what was requested by the [appellants] in their voluntary discovery request and is actually the inverse of the trading arrangements that the [respondent] asserts is in place between the [respondent] and Insomnia where Insomnia branded products are purchased through BWG central billing and then sold under the Insomnia brand."

31. In a letter of 11th August, 2023 the appellants' solicitors set out their stall as to why they thought that the order which had been made was problematic and proposed an amended category 7(a) which was:-

"Any and all contracts and/or agreements and/or side letters, whether draft or executed, and correspondence containing negotiations regarding the presence of any Insomnia branded café and/or Insomnia branded area in any Fresh supermarket and/or the sale of any Insomnia branded products in any Fresh supermarket."

32. In support of the proposed amended category the appellants' solicitors attached a selection of correspondence and a copy of a published case study. By the way, the copy correspondence all significantly pre-dated the discovery application and although the case study is undated it is evidently based on interviews carried out in 2007 and 2008 and statistics published in 2010, so it, too, likely pre-dated the discovery application. More to the point, however, it is trite that the relevance and necessity of discovery is to be demonstrated by reference to the pleadings and not correspondence or case studies.

33. The respondent was invited to agree to the proposed wording, failing which an application would be made to Stack J. and/or the Court of Appeal. The respondent's solicitors did not agree to the proposal and the appellants' solicitors arranged for the matter to be listed before Stack J. for mention on 6th December, 2023. In the meantime, the appellants' solicitors had declined to agree the order could be drawn in the terms of the order as pronounced on 28th July, 2023. The judge declined to revisit the decision she had already made. The order records that the court did not deem the listing of the matter to be necessary.

34. The order made on 28th July, 2023 was eventually perfected on 5th March, 2024.

The appeal

35. By notice of appeal filed on 21st March, 2024 the appellants appealed against the judgment and order of the High Court of 28th July, 2023.

36. There is no appeal against the refusal of the judge on 6th December, 2023 to re-open her earlier decision. At the oral hearing of the appeal, counsel for the appellants insisted that as the order had not been drawn, he was entitled to ask the judge to revisit her earlier

decision. That may have been so but there are rules governing such applications and I find it entirely unsurprising that the judge refused to entertain it on the hoof.

37. As I said at the outset, the grounds of appeal are that the judge erred in law and in fact in the formulation of category 7(a) and in refusing to properly consider the wording of category 7(a). The notice of appeal also refers to two paragraphs from the respondent's defence to counterclaim. These pleas were not expressly identified in the reasons offered in support of the appellants' request for voluntary discovery and were not part of the case argued before the High Court but were first referred to in the appellants' solicitors' letter of 11th August, 2023.

38. The notice of appeal asks that this Court should vary the order made by the High Court by substituting the wording proposed by the appellants' solicitors in their letter of 11th August, 2023.

39. The appropriate standard of review on an appeal from a decision of the High Court relating to discovery was considered by this Court in *Ryan v. Dengrove DAC* [2022] IECA 155. Collins J. (in a judgment in which Edwards and Noonan JJ. concurred) – citing the judgments of the Supreme Court in *Tobin v. Minister for Defence* [2020] 1 I.R. 211 and *Waterford Credit Union v. J & E Davy* [2020] 2 I.L.R.M. 344 – said that such decisions ought not be disturbed on appeal unless they fall outside the range of decisions reasonably open to the High Court.

40. Some years earlier, in *Lawless v. Aer Lingus Group plc.* [2016] IECA 235, Irvine J. (as she then was) in a judgment in which Hogan and Keane JJ. concurred, put it thus:-

> *"22. The first matter to be briefly addressed in the course of this ruling is the Court's jurisdiction on this appeal. This is an appeal against an order made by the High Court judge in the exercise of her discretion in relation to an interlocutory matter. This is not a rehearing of that application and that being so this Court*

should afford significant deference to the decision in the High Court. It is nonetheless clear that if an appellate court can detect a clear error in the manner of the approach of the High Court judge it is of course free to interfere with that decision. Further, even if the appellant cannot identify such an error the appellate court may nonetheless allow an appeal if satisfied that the justice of the case can only be met by such an approach. The Court is able to do this because it has available to it all of the affidavit evidence that was before the High Court at the time the original interlocutory decision was made. The role of the appellate court in this regard is set out in the decision of this Court in Collins v. Minister for Justice, Equality and Law Reform [2015] IECA 27 and by MacMenamin J. in Lismore Homes Ltd. v. Bank of Ireland Finance Ltd. [2013] IESC 6.

23. However, it seems to me that all too often parties who are somewhat dissatisfied by interlocutory orders made in the High Court seek to use this Court as a venue to re-argue their application de novo in the hope of persuading this Court to exercise its discretion in a somewhat different fashion from that which was adopted by the High Court judge at the original hearing. That is a practice which I believe is not to be encouraged. In order for this Court to displace the order of the High Court in a discovery matter the appellant should be in a position to establish that a real injustice will be done unless the High Court order is set aside. It should not be sufficient for an appellant simply to establish that there was a better or more suitable order that might have been made by the trial judge in the exercise of their discretion."

41. The problem with this appeal, in my view, and in my view, it is a fundamental problem, is that the appellants do not engage with the issue which the High Court was asked to decide or the arguments which were made on their behalf in the High Court.

42. Category 7(a) as originally formulated and as it was re-formulated in the High Court was directed primarily to the franchising, licensing or concession of the coffee shop and secondarily to the trading and business arrangements between Insomnia Limited in all of the Fresh supermarkets. I am bound to say that I do not immediately see how the trading or business arrangements on which Insomnia branded coffee is sold in any other Fresh outlet is material to the basis on which it is sold in Belarmine but that was what was sought and the respondent eventually acquiesced in it.

43. In the High Court, the issue identified by the appellants was whether – as the appellants insisted it was – the coffee shop in Belarmine had been installed and was being operated by Insomnia Limited on foot of a franchise, licence or concession granted by the respondent, or not. The appellants now focus on the pleas in para. 16 of the reply and defence to counterclaim that the respondent purchases and sells products in its own right and with its own staff; and on the acknowledgement in para. 18 that the respondent sells Insomnia products but the denial *"that same is done in a manner of franchise or licence or alienation as alleged by the [appellants]."* But it was common case from the start – as well as blindingly obvious – that Insomnia branded products were being sold from an Insomnia branded coffee shop or coffee area in the supermarket. No less, even if for the sake of argument there was any ambiguity in the pleading, the respondent has consistently maintained that Insomnia branded products are purchased through BWG Foods central billing and sold under the Insomnia brand within a number of Fresh supermarket chain outlets.

44. According to the appellants' written submissions, it is the appellants' case that the respondent has operated a franchise or concession under the style and livery of Insomnia and has done so on a sustained basis and in contravention of its covenants under the lease. If that is part of the appellants' case, it is not the thrust of their case. Rather, as I understand it, the appellants' case is that the coffee shop was installed and is being operated by Insomnia

Limited on foot of a franchise, licence or concession which is prohibited by the lease. But if I am wrong in that, on the respondent's own case, it is operating a franchise or concession under the style and livery of Insomnia – which is a franchise or concession granted by Insomnia to the respondent and not the other way around. Absent any issue as to whether the respondent is operating the café, the question of discovery in relation to the operation of the café by the respondent does not arise.

45. The now proposed amended category 7(a) is, in my view, materially different to the category ordered. The premise of the category ordered is that Insomnia may have been permitted to enter occupation of a Fresh outlet or may have been permitted to sell products at Fresh outlet. Peculiarly, this might conceivably give rise to the potentially unsatisfactory situation portended by the judge that the respondent might say that Insomnia has not been permitted to enter into occupation or to sell products in any Fresh outlet; and so that there is nothing to discover. But the judge plainly heard the appellants as to adequacy of the respondent's proposal and the differences between the respondent's proposal and their proposal and made the adjustments suggested by counsel. The proposed amended category does precisely what the judge exhorted the parties to do, which is to focus on the issues rather than on the what the parties hoped to prove. But I do not believe that the judge is properly to be criticised for failing to do something which it was the obligation of the appellants to have done.

46. I can see that the application might have been approached differently by the parties, in particular the appellants, but I do not see any error in the approach of the High Court judge. Contrary to the appellants' submission, this Court is not asked to reconsider the question argued in the High Court but to consider category 7(a) more or less from scratch.

47. In the course of oral argument it was submitted by counsel for the appellants that to refuse the proposed amended category 7(a) would be to expose the appellants to a risk of

grave injustice. Of that, I am wholly unconvinced. At the oral hearing of the appeal, the Court was informed that the respondent's affidavit of discovery was sworn before the formal order was drawn and includes; *"Category 4. All documents, howsoever described, referring to, evidencing or recording the removal or addition of Insomnia franchise, branding, livery and marketing materials."* This, it seems to me, must capture what the parties have referred to as the installation of the coffee shop.

48. As I have said, the respondent has complied with the order for discovery made by the High Court and, while the Court has not seen the affidavit of discovery, it is not suggested that the respondent has said that there is nothing to discover within category 7(a). As far as the risk of injustice goes, it seems to me that the appellants' arguments as to the formulation of the category may have been overtaken to a greater or lesser extent by the discovery actually made. If it can be safely assumed from the respondent's objection to the now proposed reformulation that the discovery made is not all that the appellants now want, it does not, to my mind, follow that there is a deficit in the discovery such as will give rise to a real risk of injustice.

49. At the trial of the action, the respondent – which is the plaintiff – will go first. The respondent's witnesses will, of course, be subject to cross examination as to whether and if so the terms on which Insomnia Limited was permitted to enter occupation of the respondent's supermarket at Belarmine or otherwise was permitted to sell products there. They will no less be subject to cross examination as to the acknowledged presence of the Insomnia branded café and Insomnia branded products in the supermarket and it is clear that the appellants' have a certain amount of material in the way of correspondence and the published case study to which they have referred to start with. I think it highly likely that the respondent's witnesses will vouch – or seek to vouch – what they will say by reference to documents *"regarding the presence"* of the café and branded products.

50. The factual dispute is simple: who installed and who is operating the Insomnia branded café? If, going into the trial, the appellants have less in the way of discovery than they otherwise might have had, I do not see how the judge can properly be blamed. If, arguably, it is less than ideal that the appellants will not have in advance the documents which establish or vouch the business relationship between the respondent and Insomnia Limited, I am not persuaded that they will be exposed to a risk of injustice. If, at trial, the appellants are confronted with a large volume of documentation which they have not previously seen, the trial judge in his or her discretion may rise or adjourn the hearing to allow the appellants to consider whatever is produced. Any additional costs thereby occasioned will be in the discretion of the trial judge.

Conclusion

51. I am not persuaded that the order for discovery made by the High Court judge was not within the range of decisions reasonably open to her on the case as presented and argued. I am not persuaded that the judge erred in principle. I am not persuaded that the justice of the case requires the intervention of this Court.

52. I would dismiss the appeal and affirm the order of the High Court.

53. As to the costs of the appeal, it seems to me that the respondent had succeeded entirely and is entitled to an order for its costs. Provisionally, I would be disposed to putting a stay on the execution of the order for costs pending the final determination of the action. If either party wishes to contend for any other costs order, I would in the first instance allow the appellants fourteen days within which to file and serve a short written submission – not to exceed 1,000 words – as to why the costs should not follow the event, and thereafter allow the respondent fourteen days within which either to reply or to make any submission it would make as to why execution of the costs order should not be postponed – any such submission not to exceed 1,000 words – in which event the appellants will have fourteen days to reply.

54. As this judgment is being delivered electronically Binchy and Butler JJ. have authorised me to say that they agree with it and with the orders proposed.