THE HIGH COURT

[2022] IEHC 697

2021 No. 6283P

BETWEEN

SIOBHAN O'DWYER

PLAINTIFF

AND

DESMOND GROGAN and MARY GROGAN

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 8 December 2022

Introduction

1. On 12 January 2016 the plaintiff was appointed by AIB Mortgage Bank (the '**Bank'**) as receiver over five residential investment properties (the '**Properties'**) owned by the defendants, who had, between 2004 and 2006, borrowed in excess of €2.2 million from the Bank's predecessor entity, Allied Irish Banks plc ('**AIB'**), to fund the purchase of the Properties which were secured in favour of AIB.

2. There is no dispute that the defendants borrowed these monies and entered into mortgages in respect of these borrowings which were secured on the Properties. There is also no dispute that the defendants ceased making repayments to the Bank in or around March 2014 and that they have made no repayments on their mortgages since that date.

3. In the circumstances set out hereunder, there was a delay in advancing the receivership.

4. Plenary proceedings issued by the plaintiff on 12 November 2021. A notice of motion issued that same day seeking interlocutory orders against the defendants, their servants or agents, or any other person having notice of the order, in the following general terms: –

(1) restraining the defendants from preventing, impeding and/or obstructing the plaintiff from taking possession of the Properties;

(2) restraining the defendants from preventing, impeding and/or obstructing the plaintiff, from collecting the rent or other income of the Properties;

(3) restraining the defendants from preventing, impeding and/or obstructing the plaintiff from securing the Properties;

(4) restraining the defendants from trespassing upon, entering upon or otherwise attending the Properties;

(5) directing the defendants to deliver up to the plaintiff forthwith any keys, alarm codes, locks and any other security and access devices and equipment in respect of the Properties; and

(6) directing the defendants to deliver up to the plaintiff all title documents, books and/or records in relation to the Properties.

5. Counsel for the plaintiff accepted that the relief sought at paragraph 1 of the notice of motion is effectively an order seeking possession of the Properties and is therefore in the nature of a mandatory rather than a prohibitory injunction. In order to secure that particular relief, it is accepted by the plaintiff that she would have to satisfy this court that she had a strong case likely to succeed at trial.

6. The relief sought at paragraph 2 concerns the collection of rents from tenants in the Properties and is a prohibitory injunction requiring the plaintiff to meet the lower threshold of a fair issue to be tried. Counsel for the plaintiff submitted that the reliefs sought at paragraphs 4 and 5 of the notice of motion are ancillary to the relief claimed at paragraph 2 and are covered by the same lower threshold. It appears to this court that this may not be the case in relation to paragraph 4 which seeks to prevent the defendants from entering the Properties. Paragraph 3 might correctly be described as an order ancillary to the relief sought at paragraph 1 of the notice of motion if it interpreted as permitting the plaintiff to secure the Properties for the purposes of taking possession of them (but not for a more limited purpose such as to collect rents).

7. The defendants dispute the plaintiff's entitlement to any of the orders sought. In summary, the defendants argue that their loans were not in arrears when the receiver was appointed in January 2016 and that the appointment of the receiver is therefore invalid. They say that they were overcharged interest and that this has been admitted by the Bank and that there is also a serious issue regarding the relevant interest rate to be charged in circumstances where the rate specified in the loan agreements ceased to exist in December 2008. They complain about the plaintiff's delay in advancing the receivership and these proceedings. They complain about the general behaviour of the Bank and say it must come to this court with clean hands if it is to request equitable relief. They say that the Properties in Drumcondra are not currently rented out and it would be incorrect for this court to assume that there is a significant rental income being derived from the Properties.

The Loan Agreements and the Bank's entitlement to appoint a receiver under the mortgage documentation.

There are three separate mortgage loans at issue in these proceedings dated 4 August 2004, 7 March 2006 and 22 June 2006 respectively.

8. The loan offer dated 4 August 2004 is in respect of a mortgage loan amount of €1,420,000. It refers to the property to be mortgaged as 53, 55 and 57 Drumcondra Rd, Dublin 9. The special conditions confirm that the Bank "*will rely on the following as additional security for this borrowing: All sums charge over 5 & 7 Enniskerry Road, Phibsboro, Dublin 7 and 26 Lower Beechwood Avenue, Ranelagh Dublin 6*". The applicable interest rate is described in the following terms: – "*3.40% varying-includes margin of 1.50% over Tracker Rate (currently 2.00%). APR 3.444%*". The special conditions of this loan confirm that the Tracker Rate "*will equal the European Central Bank's main refinancing operations Minimum Bid Rate."*. This offer was accepted in writing by the defendants on 13 March 2006.

9. The second loan offer is dated 7 March 2006 for the sum of €450,000. The applicable interest rate is specified as "*3.65% varying-(includes margin of 1.4% over tracker rate). APR 3.702%"*. It refers to the Properties in Drumcondra and also confirms that the Bank will rely on the Properties in Ranelagh and in Phibsboro (as described above) for additional security as well as identified policies with Irish life and Ark Life Assurance. The Tacker Rate is defined in the special conditions in the same terms as in the earlier loan offer namely that it "*will equal the European Central Bank's main refinancing operations Minimum Bid Rate*." This loan was accepted in writing by the defendants on 15 March 2006.

10. The third loan offer is dated 22 June 2006. The mortgage loan amount is €332,000. The applicable interest rate is specified as being "*4.15% varying-(includes margin of 1.40% over tracker rate). APR 4.232%"*. It refers to the Properties at 53,55 and 57 Drumcondra

Road as the mortgaged property and confirms that the Bank will rely on the Ranelagh and Phibsboro Properties as additional security. The Tracker Rate is defined in this loan offer in the same terms as the other loan offers. This loan offer was accepted by the defendants in writing on 10 July 2006.

11. The first named defendant executed a mortgage dated 18 November 1996 in favour of AIB over the Ranelagh property. The defendants executed a mortgage dated 22 August 2005 in favour of AIB over the three Drumcondra properties and the two Phibsboro properties. The obligations of the defendants to AIB pursuant to the 2004 letter of mortgage loan offer and pursuant to the mortgages were transferred to the Bank pursuant to a transfer agreement dated 8 February 2006 and the suite of documentation exhibited at exhibit "SOD4" to the plaintiff's affidavit sworn on 11 November 2021. The defendants have not disputed that transfer in these proceedings.

12. The deed of mortgage dated 18 November 1996 in relation to the Ranelagh property confirms AIB's powers as mortgagee and provides at clause 6.02 that AIB shall have the statutory powers conferred on mortgagees by the Conveyancing Acts as varied and extended by the mortgage. It is accepted by the plaintiff that she does not have a power of sale *qua* receiver and that she is a rent receiver. Similar provisions apply under the mortgage dated 22 August 2005 at clause 8 thereof. The Bank therefore could, under the mortgage documentation, appoint a receiver for the purposes of collecting rents and income from the secured properties, but not to sell them, if the borrowers defaulted on their repayment obligations.

13. So far as the strength of the plaintiff's case is concerned, it is necessary to consider the potential defences which might be open to the defendants. The defendants originally represented themselves with the assistance of a party who was not a qualified lawyer.

However, by the time this matter came on for hearing the defendants were represented by solicitors and counsel who confirmed to the court that they were relying on the affidavit sworn by the first named defendant on 6 May 2022 with the benefit of independent legal advice. I now move to consider those potential defences raised at the hearing of this action and in that affidavit.

Was there a valid demand and were the defendants in default prior to the appointment of the receiver?

14. The first argument raised by the defendants is that their loans were not in default when the plaintiff was appointed receiver and they have also raised an argument regarding the demands made by the Bank in 2014.

15. The evidence in this case is that separate demand letters in identical terms were served on the first and second named defendants on 29 April 2014. The demand letters refer to a breach by the defendants of the facility letters dated 4 August 2004, 22 June 2006 and 7 March 2006 (details of which are set out earlier in this judgment). Payment was demanded by the Bank in respect of each of the three loan accounts. A payment of €1,041,480.01 was demanded in respect of the first loan account, €398,962.52 was demanded in respect of the second account and €302,134.57 was demanded in respect of the third loan account. Interest was stated to be accruing on all facilities until payment.

16. The letters of demand gave notice to the defendants that failing immediate payment and discharge of the sums demanded within seven days, the Bank reserved the right without further notice to exercise the power of sale and all of the powers conferred on them by law or by the mortgages dated 18 November 1996 and 22 August 2005 in respect of the Properties.

17. It is accepted that no other demand letters issued at any time.

18. The defendants say that the amounts claimed by the Bank were significantly overstated in relation to each of the loans. The evidence of this is that the Bank was, as a consequence of the tracker mortgage examination ('**TME')**, obliged to refund overcharged interest to the defendants in the amount of €202,427.01 on 7 March 2017.

19. There is a dispute between the parties as to whether interest was also overcharged on the second and third loan accounts, and whether further refunds are due to the defendants in that regard. There was a tracker interest refund credited to the defendants' account on 13 November 2020 in the sum of €36,409.97. It was not clear to this court or to counsel what that figure related to although it may perhaps have been a compensation figure rather than a refund per se. It is also the case that in March 2012 the Bank made refunds in the amounts of €6449.75 and €3489.33 to two of the defendants' accounts. This is not an issue this court can determine at this interlocutory stage, but it highlights the dispute as to how much exactly was due by the defendants to the Bank at any given point in time.

20. What is clear is that there was significant overcharging of interest by the Bank and that this overcharging had not come to light by the time the demands for repayment issued to the defendants on 29 April 2014. It is accepted by the plaintiff that the amounts identified in the letters of demand were overstated, at least in relation to the first loan account.

21. Counsel for the plaintiff argues that this overstatement does not however invalidate the letters of demand and that an overstated demand is still a valid demand. Reliance in that regard was placed on the decision of the High Court in *Flynn v. National Asset Loan Management Ltd* [2014] IEHC 408 (Cregan J) as approved in the High Court decision in *Vivier Mortgages Ltd v. Lehane* [2017] IEHC 605 where, at paragraph 16, Baker J referred to *Flynn* as having "*conclusively determined*" that a letter of demand, even if it

overstated the amount due, was still a valid letter of demand. Baker J stated that *"[t]he notice therefore, in accordance with that authority does not require to be exact, provided it is clear what is to be done by the borrower*".

22. The decision in *Flynn* was followed more recently by Sanfey J in *Fennell v. Slevin* [2020] IEHC 677. I accept as a matter of settled law that a letter of demand which overstates the amount due is still a valid demand. However, it is also the case that there must be a default before a demand can validly issue. In this case the demand was issued in April 2014. The evidence is that the defendants had been making at least some repayments up until March 2014. If the defendants had been overpaying interest up to March 2014 it is possible that they were not in fact in arrears when the demands issued in April 2014 – although I make no finding on that point at this stage and it will no doubt be fully argued at the trial.

23. The further question arises as to whether, at the date of the receiver's appointment, the defendants were in arrears under their facilities. If they were not, then the Bank would have had no entitlement to appoint a receiver at that time.

24. The plaintiff was appointed receiver by various deeds of appointments dated 12 January 2016. No payments had been made by the defendants in respect of either capital or interest on their facilities since March 2014. However, up until that date the defendants had overpaid interest and so, at least in theory, there would have been a credit on their account to the extent of that overpayment. When that "credit" would have been exhausted is not clear and there was no evidence before the court to confirm the position such as a calculation backdated to reflect the correct interest chargeable against the amounts actually discharged by the defendants. The plaintiff says that it does not have to establish the exact level of arrears at the date of the receiver's appointment. While I

accept this is correct, the plaintiff nevertheless has to establish that there was *some* indebtedness due by the defendants as at that date.

25. Given that a period of some 22 months had passed with no payments at all being made by the defendants, the plaintiff says it is clear that there were arrears due by the defendants at the date of the appointment of the receiver. As the loans were not interest only loans but also required the repayment of capital, it appears likely that there were arrears due at that date, irrespective of the overcharging of interest. However, there is some doubt about this matter and certainly it is an issue on which in the ordinary course the defendants would be entitled to give evidence at trial.

The European Central Bank's main refinancing operations Minimum Bid Rate

26. The second argument raised by the defendants relates to the interest rate that the Bank is entitled to charge under the relevant loan facilities and how that impacts on the validity of the plaintiff's appointment as receiver.

27. The defendants' loan facilities confirmed that the Tracker Rate "*will equal the European Central Bank's main refinancing operations Minimum Bid Rate*". The defendants say that this Minimum Bid Rate has not existed since October 2008. They say that it was a term of their loans that the Minimum Bid Rate was to be the base rate for their loans. They say that their loans have no fall-back interest rate and that no new rate was ever agreed by them with the Bank. They dispute the Bank's entitlement in those circumstances to continue to charge interest at all or in any event the same rate of interest as it did previously.

28. Reliance is placed by the defendants on the decision of the High Court in *Governor and Company of the Bank of Ireland v. Matthew Wales* [2022] IEHC 433. This was a case in which the plaintiff sought summary judgment. One of the arguments raised by the

defendant in that case related to the proper calculation of interest. Expert evidence was produced on behalf of both parties in those proceedings and it was conflicting. As in the present case, the interest rate was to be calculated at a percentage above the European Central Bank Main Refinancing Operations Minimum Bid Rate. At paragraph 124, Phelan J cited with approval the comments of MacGrath J in *Bank of Ireland v. Phelan* [2020] IEHC 484 at paragraph 66 in the following terms:

> "*While there may be strong grounds for arguing that the expression "minimum bid rate" is referable to the tender process rather than being a reference to a specific and separate interest rate, I do not believe that the issues raised by the defendant may safely be described as unarguable. I am satisfied that the conflicting views expressed are such that it would be inappropriate to determine this issue without further hearing*."

29. The plaintiff relies on the decision of the High Court *in Governor and Company of the Bank of Ireland v. Blanc* [2020] IEHC 18 in which O' Regan J stated at paragraph 31 that there was "*no great substance*" to the argument that the minimum bid rate was abandoned in favour of a fixed rate. She held that the real issue was whether there had been a default. The plaintiff also referred to the decision of the High Court in *O'Reilly v. Promontoria (Finn) Ltd* [2022] IEHC 218 where Egan J in the context of an interlocutory application had to consider arguments regarding the ECB rate. Promontoria's expert evidence in that case was that in October 2008 the ECB altered the method by which the main refinancing operations rate ('**MRO'**) was calculated from the minimum bid rate to a fixed rate. Promontoria submitted that this was merely an alteration in the manner in which the MRO was calculated and did not have the effect of abolishing the MRO in its entirety. Egan J stated at paragraph 69 of her judgment,

> "*Needless to say, this court cannot enter upon an adjudication of the competing arguments of the parties' respective accountancy experts. However, it is clear that the loan facility does not support the proposition that the minimum bid rate was the only applicable rate. Further, whilst the expert report exhibited by the plaintiffs states that "it is the client's instructions that the ECB rate was to be used for the purpose of interest calculating is the main refinancing operations minimum bid rate which ceased to exist from 9 October 2008" this understanding does not appear to be averred to in any of the plaintiffs' affidavits and is therefore evidence of little weight*".

In the circumstances she found that the plaintiffs in that case had not raised any fair issue to be tried in respect of that issue.

30. While the parties in this case have argued that there are different consequences to be ascribed to cessation of the minimum bid rate and how it should correctly apply post October 2008, there was no expert testimony introduced at this interlocutory hearing. That is entirely appropriate in circumstances where no findings of a factual nature can be determined at this stage. This court is clear however that there is certainly the possibility of different views and conflicting expert testimony being available to the trial judge on this point.

31. In my view the defendants' arguments regarding the interest calculations on its indebtedness, whether that be in relation to the overcharging of interest or the operation of the Minimum Bid Rate, are issues that will need to be determined at trial following oral evidence. These are issues potentially relevant to the validity of the receiver's appointment insofar as they may impact on whether there was a default at the date of the receiver's appointment and whether any necessary pre-conditions, for example the

service of a valid demand, were complied with. Given the defendants' arguments on these issues it is not certain that the plaintiff necessarily has a strong case that is likely to succeed at trial on all these points, and thus an entitlement at this stage to seek possession of the Properties. However, I believe the plaintiff has established a fair issue to be tried on its entitlement to seek prohibitory injunctive relief against the defendants at this time.

Delay by the plaintiff

32. The defendants argue that the plaintiffs have delayed to such an extent in this case that they ought to be denied any equitable relief from this court.

33. While it is clear that a significant period of time has elapsed since the appointment of the plaintiff as receiver in April 2016, I am satisfied that the plaintiff has been able to explain that delay.

34. The main explanation for the delay has been in relation to the TME and the Central Bank's direction that all enforcement action should pause in relation to any account which was within the scope of the TME, pursuant to the "stop the harm" directive. Paragraph 18 of the plaintiff's affidavit sworn on 11 November 2021 confirms as follows:

> "*On 12 February 2016, I was advised by the Bank that the Defendants' loan facilities were the subject of the Tracker Mortgage Examination-being an industry-wide review of tracker mortgage accounts mandated by the Central Bank of Ireland-and that no further enforcement steps could be taken in respect of their security until that tracker mortgage review was completed. On 3 December 2020, I was advised that the tracker mortgage review had completed and that the hold that had been placed on enforcement steps over the relevant security was at an end. Accordingly, I*

resumed my efforts to exercise my powers as receiver to take possession of the Properties and to realise the income flowing therefrom."

35. The defendants have also themselves contributed to the delay in bringing this application before the court. It was, for example, necessary for the plaintiff to obtain an order for substituted service from the High Court on 13 December 2021 to deal with the difficulties the plaintiff encountered in serving proceedings and papers on the defendants.

36. I do not believe that the delays have caused any prejudice to the defendants in circumstances where they continued to remain in control of the Properties and appear to have continued to derive rental income from the Properties during that period. While the defendants have not provided details in their affidavits as to the amount of rent they collected over the period since the appointment of the plaintiff as receiver, nevertheless they have acknowledged that the Properties were rented to various tenants and they have also confirmed that no part of that rental income has been paid by them to the plaintiff. This is a point I return to later in this judgment in relation to a consideration of the balance of convenience.

37. Accordingly, I do not find any real substance to the defendants' argument regarding delay in the circumstances outlined above and therefore this issue should not prevent the plaintiff seeking interlocutory relief. This court believes it is imperative however that the underlying proceedings should be expedited and both parties have indicated their willingness to cooperate to achieve an early trial date.

Clean hands

38. The final argument advanced by the defendants relates to the question as to whether the plaintiff has come to court seeking equitable relief with "clean hands". The defendants state that they had for many years been advised by the plaintiff that there was no

overcharging issue and that this has proven to be entirely false. They say that the Bank had a major issue with its treatment of tracker mortgage customers and overcharging. They point to the report of the Central Bank on the TME and the substantial fine levied on the Bank reflecting the Bank's treatment of its customers and it's handling of the TME.

39. The plaintiff says that it cannot be the position that overcharging by a bank or its involvement in the TME means that a receiver appointed by that bank is unable to seek interlocutory relief. Counsel for the plaintiff points to the decision in *Slevin* which involved tracker mortgage issues in which this was not an impediment.

40. I believe that the plaintiff is correct in this argument. While the TME uncovered some poor behaviours by the banks who were involved in it, those banks have been required to make amends to impacted customers and have been sanctioned by the Central Bank. Their involvement in the TME would not in itself categorise those banks, or receivers appointed by them, as having unclean hands for the purposes of seeking equitable relief from the courts.

41. On the basis of my analysis of the arguments advanced by the defendants, there is some argument and a fair issue to be tried as to whether the plaintiff was properly appointed. Having regard to that fact it is necessary to consider the balance of convenience before determining whether injunctive relief should be granted to the plaintiff and, if so, in what terms.

The balance of convenience and damages – submissions of the parties

42. The plaintiff's primary submission on the balance of convenience is the injustice they say is perpetuated where the defendants are heavily indebted to the Bank and have

continued to earn what is believed to be substantial rental income on the secured Properties but have paid nothing by way of mortgage repayments since March 2014.

43. In relation to the adequacy of damages, the plaintiff says that the defendants may not be a mark for any award made against them and that there has already been a large amount of income lost to the Bank which it had properly secured as part of its loans to the defendants.

44. The defendants say that a mortgagee in possession can sell a property and that a rent receiver can allow that to happen if the receiver is granted possession of the property. They say there is a dispute regarding the arrears and that the least risk of injustice is to permit the status quo to remain in place pending the trial of the action. The defendants say it will be hard for tenants to find alternative accommodation if they are required to vacate the Properties and that the defendants fear the plaintiff will not protect the tenants' rights if an order is made. They say there is nothing which justifies the urgency of an injunction now and they point to the lack of progress by the plaintiff in these plenary proceedings and in separate summary proceedings issued by the Bank in 2020.

45. In relation to the adequacy of damages, the defendants' counsel says that some family members reside in one of the Drumcondra properties which is being renovated. However there was no evidence on affidavit from the defendants regarding this. The defendants say this rental income is their livelihood. They say the plaintiff's claim can be fully and adequately addressed in damages and that the Properties are secured in favour of the Bank if it succeeds at trial.

This Court's analysis and Order

46. In this case the available evidence indicates that the Properties are residential investment properties which are occupied by various tenants. The first named defendant's affidavit

(at paragraph 11) confirms that originally the defendants ran a bed and breakfast business in the Drumcondra property and also managed the other properties "*which are divided into flats and homes for our tenants*". By August 2010 the defendants say that both businesses were loss-making. It appears that at some point the bed and breakfast business was discontinued and that the Drumcondra properties are now each divided into six units/studios occupied by tenants who are paying monthly rents directly to the defendants' son who calls to collect it (paragraph 22 of the plaintiff's affidavit sworn 11 November 2021).

47. There is no affidavit evidence from the defendants about the level of rents being paid. I accept however that there are likely to be substantial rents being generated by the Properties and that the plaintiff has received no part of those rents since March 2014.

48. The defendants reside in their family home which is not involved in these proceedings. The defendants do not appear to have any particular emotional connection to the Properties which are now income generating investment properties. They may have some connection to their tenants but there was no evidence provided of that.

49. In the Supreme Court decision in *Charlton v. Scriven* [2019] IESC 28, Clarke CJ at paragraph 6.10 stated that he would

> "*distinguish between the reliefs sought which simply seek to retain the position that the Receivers are entitled to collect the rent, on the one hand, from any relief which might be designed to allow the Receivers to move on to selling the property on the other*".

50. He continued at paragraph 6.11 to state as follows:

> "*So far as the balance of convenience is concerned, it seems to me that where all that is involved is the collection of rent, the balance favours those sums being paid*

to the Receivers and retained by them, pending the resolution of the proceedings. In those circumstances, Mr Scriven is protected in the event that the Receivers ultimately lose the case because the monies can then be paid over to him. I would, in those circumstances, hold that an interlocutory injunction was appropriate, but only one which was sufficient to ensure that the monies were paid over to and retained by the Receivers pending the trial of the action."

51. Clarke CJ at paragraph 6.12 noted the importance of attempting to fashion an order in cases of applications for interlocutory relief which runs the least risk of injustice. In that regard he noted that

"*there may very well be an important distinction to be made in receivership cases between situations where the receivers concerned simply intend to maintain the situation pending a trial and ones where the substance of the interlocutory order sought is one designed to, in practice, bring the proceedings to an end*."

He went on to state at paragraph 6.13 that

"*these observations only arise in circumstances where there is an issue of any substance concerning the validity of the appointment and powers of receivers*."

52. In the present case I am satisfied that the defendants have raised some arguments which have the potential to call into question the validity of the appointment of the plaintiff as receiver. I am not therefore prepared to grant an injunction which would or could have the effect of permitting the Properties to be sold without a full trial on these issues.

53. On the other hand, there is no doubt that the Properties are secured in favour of the Bank and that the defendants are in default of their repayment obligations to the Bank, having made no payments whatsoever since March 2014. It does not appear to be equitable to allow the defendants in those circumstances to continue to receive substantial rental

income while at the same time failing to make any efforts to address their indebtedness to the Bank.

54. I will therefore make the following Orders by reference to the plaintiff's notice of motion dated 12 November 2021:

(1) An order in terms of paragraph 2 which will permit the plaintiff to collect the rent or other income of the Properties pending the trial of these proceedings.

(2) An order in the terms of paragraphs 3 and 5 of the plaintiff's notice of motion but only insofar as same is necessary and/or ancillary to the collection of rents at the Properties.

(3) An order in the terms of paragraph 6 of the notice of motion insofar as same relates to records regarding any lease, tenancy agreement or other documentation relating to the occupation of the Properties by any third party.

(4) I will not make any order in the terms of paragraphs 1 or 4 of the notice of motion for the reasons already set out in this judgment.

55. I am conscious that the court has no information regarding the means of the defendants or their level of reliance on the rental income or the level of expenses the Properties require which might in the ordinary course be funded from that rental income. These issues are best dealt with in the first instance by engagement between the parties and I will hear the parties on the terms of any Order to be made to reflect that engagement.

56. In the circumstances I will list this matter for mention at 10.30am on 20 December to consider the terms of the Court Order to be made and to hear the parties regarding costs or any other issues that arise. I will at that time also receive agreed directions from the parties as to the timetable for the next steps in these proceedings or, failing agreement,

will make such further directions so as to ensure the parties will achieve as early a trial date as is reasonably possible.