THE HIGH COURT

[2023] IEHC 172

Record No. [2022] 1436 P

SOLAS ÉIREANN DEVELOPMENT LTD

Plaintiff

-V-

PHILIP CLEARY

Defendant

Judgment of Mr Justice Dignam delivered on the 28th day of March 2023.

INTRODUCTION

1. In these proceedings the plaintiff seeks various reliefs essentially directed towards the enforcement of an agreement that was entered into by the parties in March 2017. I deal with the specific reliefs towards the end of this judgment.

2. In brief summary, the parties entered an agreement pursuant to which the defendant granted the plaintiff an option to enter a 30 year lease of lands owned by the defendant on which the plaintiff planned (and plans) to build a solar park. The period within which the plaintiff could exercise the option was 36 months, extendable for two periods of 6 months. Towards the end of the life of the agreement the parties entered a further agreement which varied the option period to five years. The defendant challenges the validity of this second agreement and maintains that as the period provided for under the first agreement has expired, the option and the parties' obligations under that agreement are at an end.

FACTS

3. There is really only one significant material conflict of fact between the parties but it is necessary to set out the relevant background facts.

4. The plaintiff is a company which was established in 2016 for the purpose of developing renewable energy projects.

5. During the course of 2016, the Plaintiff was involved in identifying suitable lands for the construction of solar projects and a portion of the defendant's lands in County Wexford, together with adjacent lands owned by his neighbour, were identified. I do not propose to identify the lands with any greater precision as it is not necessary to do so. The Court heard evidence as to why these lands were particularly suitable but it is not necessary to deal with this.

6. The plaintiff's representative, Mr. Simon Maguire, one of the directors of the plaintiff company, approached the defendant and met him in October 2016. The defendant expressed an interest in reaching an agreement. On the 11th November 2016 the defendant provided a planning consent letter and confirmed to the Planning Department of Wexford County Council that he was the legal owner of the lands and gave his consent to the plaintiff applying for planning permission for a commercial solar PV development on the lands. On the 19th November 2016 the plaintiff and the defendant entered an Exclusivity Agreement which established an *"exclusive negotiation period of 12 months to allow the Parties to finalise the feasibility study, obtain the relevant permissions and conclude the legal documents including an option for lease over the Option Land and an energy supply agreement".* The defendant engaged solicitors (the same solicitors as were acting for his neighbour, the owner of the adjacent lands) and after some negotiations, the plaintiff and the defendant entered the agreement, the subject of these proceedings, on the 29th March 2017. Under this agreement ("*the Option Agreement*"), in return for the payment of an option fee, the defendant granted the plaintiff the option to enter in a 30 year lease of 10.63 acres of the defendant's lands ("*the Option Lands*") within a certain defined period ("*the Option Period*").

7. It is worth setting out some of the clauses of this Option Agreement which are particularly relevant to the issues between the parties.

8. Clause 1 defines the Option Period as:

"The period of 36 months starting on the date of this Option Agreement (subject to extension pursuant to clause 3) provided that (if earlier) the Option Period shall expire upon the completion of the Lease."

9. Clause 2 provides for the option itself and states, inter alia:

"2.1 In consideration of the Option Fee payable by the Company to the Landlord (receipt of which the Landlord hereby acknowledges) the Landlord and the Company agree that if following the grant of Planning Permission the Option Notice is served during the Option Period the Landlord will grant and the Company will take the Lease of the Option Property on the terms of this Agreement. The parties agree that the Option Fee will be deducted from the first rental payment."

10. Clause 3 provides for the extension of the Option Period. It provides, inter alia:

"If on the date falling 40 days prior to the third anniversary of the date of this Agreement:

…

3.5 The Company has accepted and paid for a connection offer from the DSO [ESB Networks] *but is waiting an agreed energisation date from the DSO to be able to export power from the Development;*

then the Company may by written notice to the Landlord not less than 30 days prior to the third anniversary of the date of this Agreement extend the Option Period for a further period of 6 months and may (in any of the same circumstances) extend the Option Period once more by written notice to the Landlord not less than 30 days prior to the expiry of the extended Option Period such that the total Option Period shall be no more than 48 months.

3.6 If the Company has not served the option notice by the end of the Option Period or any agreed extension thereof, this Option Agreement shall immediately terminate without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent breach of any of the covenants and conditions contained in this Option Agreement…".

11. Clause 6 provides for a licence to enter the lands:

> *"The Landlord grants to the Company (and anyone authorised by the Company) during the Option Period a licence to enter such parts of the Landlord's Property (as may be reasonably necessary to exercise the rights permitted by this clause) at all reasonable times with or without vehicles, machinery, equipment and materials for all purposes reasonably required.*
>
> *6.1 to assess the feasibility of the Development; or*
>
> *6.2 for any application for the Necessary Consents."*

12. Clause 8 provides, inter alia, that:

> *"8.1 The Landlord agrees with the Company that during the Option Period the Landlord will not (and will use reasonable endeavours to procure that those under its control do not):*
>
> *…*
>
> *8.1.7 object to, or support any objection, to an Appeal or any application for Necessary Consents made by or on behalf of the Company in relation to the Option Property…"*

13. Clause 8.2 provides that the *"Landlord shall (at the request and expense of the Company) take all reasonable steps to assist the Company to obtain all Necessary Consents."*

14. "*Necessary Consents*" includes planning permission.

15. On the 12th February 2020, the plaintiff exercised its option to extend the Option Period for a period of six months. This was served under cover of a letter from the plaintiff's solicitor which stated that the Notice was being served under Clause 3.5 and that the plaintiff "*accepted and paid for a connection offer from the DSO on 3rd August 2017 and is waiting on an agreed energisation date from the DSO to be able to export power under from the Development*." Evidence of the service of this notice and letter was given by the solicitor who was then acting for the plaintiff but, in any event, the defendant did not dispute the service of this Notice or the fact that the plaintiff had accepted and paid for a connection offer and was waiting for an energisation date,

though he says in paragraph 2 of his Amended Defence that the plaintiff extended the Option Period on the 20th February 2020. No evidence of this was given at the hearing and I am satisfied that the notice was served on the 12th February. In any event nothing turns on this because it was still 30 days prior to the expiry of the Option Period on the 26th March.

16. On the 10th July 2020 Mr. Maguire of the plaintiff company telephoned the defendant to inform him that the plaintiff had qualified to participate in a renewable energy auction operation by Eirgrid. The Court heard evidence of how the renewables market and in particular the energy supply market worked but it is not necessary to consider same in order to determine the issues other than to note that it meant that there was a period of apparent inactivity after the parties entered the Option Agreement and this caused frustration for the defendant. The news that the plaintiff had qualified to participate in this auction meant that the plaintiff would be moving ahead with the project. Mr. Maguire also explained that they would need to extend the Option Period provided for under the Agreement. In essence this was because even though they could still extend the original Option Period for one further 6 months, that would not be sufficient. This discussion and the conflict between the parties as to what was said is really what is at the heart of the dispute between the parties and I return to it at the conclusion of this narrative.

17. Following this conversation, the plaintiff's solicitors sent an "*Option Addendum*" to the defendant under cover of a letter dated the 15th July 2020. The effect of this Option Addendum was to replace the original Option Period of 36 months with one of 60 months. The Option Addendum stated, inter alia, that it was "*supplemental to the Option Agreement*" and replaced the definition of Option Period with:

> *"The period of 60 months starting on the date of this Agreement (subject to extension pursuant to clause 3) provided that (if earlier) the Option Period shall expire upon the completion of the Lease."*

18. It also replaced clause 3 with one that provided that the total Option Period shall be not more than 72 months (rather than 48 months) (i.e. 60 months plus two extensions of 6 months). It also removed clause 3.5 and 3.6.

19. The letter of the 15th July stated, inter alia:

"We refer to the above matter and to previous correspondence. Further to the agreement reached with our client to extend the Option Period from 36 months to 60 months, we enclose herewith Option Agreement in duplicate, can you please sign as Landlord."

20. The defendant signed the Addendum and returned it to the plaintiff's solicitor on the 5th August 2020. There is some uncertainty on the defendant's part about the precise date on which he signed the Addendum. This is a point that was raised in the defendant's Defence and I return to it below but, given that he returned it to the plaintiff's solicitor on the 5th August, he must have signed it before that date. Mr. Maguire then signed it on behalf of the plaintiff on the 12th August. A copy of the executed Option Addendum was sent to the defendant on the 14th August 2020.

21. On the 9th March 2021 a company called Neoen Renewables Ireland ("*Neoen*") became the owner of the plaintiff company by way of a share purchase.

22. Shortly after that a letter was sent to the defendant informing him of the acquisition and that a Ms. Clíona Gormley would be the development manager for the project and the direct contact with the plaintiff. Unfortunately, this and some other correspondence gave the impression that Neoen had acquired the project rather than the shares in the plaintiff company but, while this undoubtedly had an impact on how the defendant viewed things and reacted, it does not go to the legal issues. The defendant did not reply to this letter and Mr Gormley telephoned him in April in an attempt to make contact. This led to contacts from the defendant's brother-in-law between April and May 2021 and a remote meeting with Ms. Gormley, the defendant and his brother-in-law. The detail of these contacts is not relevant other than to note that it was made clear during the course of the interactions that the defendant did not wish to proceed with the Agreement and seemed to be challenging the validity of the Addendum and therefore the revised Option Agreement.

23. During these contacts the plaintiff requested access to the Option Lands for their staff and a consultant acting on their behalf and this request was denied. The plaintiff also made a request for access for the purpose of carrying out a topography survey on the 9th July 2021 but this was also denied. The plaintiff claims that these refusals were in breach of clause 6 of the Option Agreement and by letter dated the 6th September 2021 the plaintiff requested the Defendant to acknowledge and undertake to abide by the Revised Option Agreement within 14 days. This was not forthcoming and instead

solicitors acting on behalf of the defendant wrote to the plaintiff on the 28th September 2021 seeking time to take instructions.

24. On the 4th October 2021 the plaintiff requested that the defendant permit its surveyors to access the Option Lands on the 12th October 2021 for the purpose of carrying out a Geotech survey but this access was not granted.

25. By a letter dated the 6th October solicitors acting on behalf of the defendant raised a number of objections to the validity and effect of the Revised Option Agreement and the extension thereof. Because of the contents of the defendant's Defence and Counterclaim and the manner in which the defendant dealt with the case it is not necessary to set out this letter or to consider all of the points made in it but it made clear that the defendant believed the Addendum was invalid and the Option had expired. The letter also declined to grant access to the plaintiff and requested the plaintiff to accept that there is no binding option agreement between the parties.

26. The parties unsuccessfully sought to mediate their dispute in December 2021.

27. On the 25th February 2022 the plaintiff exercised its option to extend the Revised Option Agreement for a further period of 6 months by service of a Notice to Extend Option Period signed by Mr. Cyril Perrin, director of the plaintiff company. The defendant pleaded in his Defence and Counterclaim that he did not receive this but withdrew this at the hearing and therefore it is not disputed that this notice was sent and received. In any event, I am satisfied, on the basis of Ms. Gormley's evidence (in which she adduced the An Post retail receipt and Proof of Delivery docket signed by the defendant) that this Notice was served.

28. On the 10th August 2022, a further Notice to Extend Option Period was served under cover of a letter of the 10th August 2022. No issue was taken about this by the defendant. Ms. Gormley also adduced the An Post Retail Receipt and Proof of Delivery docket in respect of this Notice. Delivery was accepted by a person who the defendant confirmed at the hearing is his sister and resides next door.

29. In both of these letters (25th February 2022 and 10th August 2022) Mr. Perrin stated that the plaintiff has "*accepted and paid for a connection offer from ESB Networks, the Distribution System Operator (DSO"), and is waiting on an agreed energisation date from the DSO, to be able to export power from the development."*

30. Planning permission had previously been provided for the development (in 2017) and on the 1st September 2022 the plaintiff applied for further permission. By letter of the 3rd October 2022 the defendant objected to permission on a number of grounds, many of which are reflected in the Defence filed by him in these proceedings. The plaintiff claims that this objection is in breach of Clause 6 of the Option Agreement. Notwithstanding this, planning permission was granted on the 16th December 2022.

31. The plaintiff had instituted proceedings by Plenary Summons on the 11th April 2022 and delivered a Statement of Claim on the 29th April 2022. An Amended Statement of Claim was delivered on the 21st June 2022 and the defendant delivered an Amended Defence (and Counterclaim) on the 30th June 2022 (having previously delivered a Defence (and Counterclaim) on the 9th June 2022).

PLEADINGS

32. In the Amended Statement of Claim of the 21st June 2022 the plaintiff essentially pleads that the parties entered the Option Agreement, the plaintiff exercised its option to extend the Period for a period of six months on the 12th February 2020, that the parties entered into an Addendum to the Option Agreement which amended the Option Period from the initial 36 months to 60 months together with provision for two six month extensions of that 60 month period, that they have exercised the option to extend the Period, that the defendant is bound by the Revised Option Agreement and that he has acted in breach of it in denying access and in objecting to planning permission.

33. The plaintiff seeks, inter alia:

> *"1. An order for specific performance of the Revised Option Agreement.*
>
> *2. An order, by way of injunction, restraining the Defendant from interfering with the exercise of the right of access granted to the Plaintiff, its servants or agents, to the Option Lands pursuant to Clause 6 of the Revised Option Agreement.*
>
> *3. In the alternative, an order by way of injunction, compelling the Defendant to facilitate the exercise of the right of access granted to the Plaintiff, its servants or agents, to the Option Lands pursuant to Clause 6 of the Revised Option Agreement.*

4. If necessary, an order compelling the Defendant to execute such documents, and take such further action, as may be required by the Plaintiff pursuant to the Revised Option Agreement.

5. In the alternative, such further order as this Honourable Court may deem appropriate pursuant to section 25 and/or section 26 of the Trustee Act 1893.

6. If necessary, a declaration that the Revised Option Agreement remains valid and binding.

7. Damages for breach of contract.

8. Damages in lieu of specific performance."

34. The defendant was not represented in these proceedings and prepared his own Defence. He raised a number of points: (i) that the plaintiff breached the contract by not sending the defendant written notice 30 days prior to the expiry of the extended Option Period and that under clause 3.6 of the Option Agreement "*if the Company has not served the Option notice by the end of the Option period and any agreed extension thereof, the Option Agreement shall immediately terminate without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent breach of any of the covenants and conditions contained in this Option Agreement…";* (ii) the Addendum was void because it was not signed by him in a solicitor's office and was not witnessed by a solicitor and the date under his signature was incorrect; (iii) he had not been paid any rent; (iv) he did not receive any notice to extend the Option Period on the 25th February 2022 as claimed in paragraph 29 of the Amended Statement of Claim; and (v) the Plenary Summons that was sent to him is not a valid legal instrument as it was not stamped by the Central Office and the proceedings should therefore be dismissed.

35. By way of Counterclaim, he seeks:

"1. A declaration that the Revised Option Agreement is invalid, as it was not executed in the proper manner.

2. An order compelling Solas Éireann to pay the outstanding rent arrears, starting from the 29th March 2017, to the present date.

3. An order for my costs in relation to the Court proceedings.

4. An Order for Estoppel in relation to the above Proceedings.

5 A declaration from the Honourable Court that notice to extend the Option Period dated the 25th February 2022 is invalid.

6. Damages for breach of contract."

36. The defendant expressly withdrew the complaints numbered (iv) and (v), i.e. that he had not received the Notice to Extend the Option Agreement of the 25th February 2022 and that the Plenary Summons was invalid. In fact, the only point that was actively pursued by the defendant at the trial was that the Addendum was invalid and the Option Agreement has therefore expired. The basis upon which he claims this was clearly stated as being that Mr. Maguire told him there was no need to use a solicitor. That this is the one point that he was maintaining was confirmed by him when I suggested to him towards the conclusion of the case that his one point seemed to be that the option had expired because the Addendum that he signed is legally invalid because Mr. Maguire did not tell him to get legal advice or told him not to get legal advice or that it was not necessary to get legal advice. It will be noted that this was not a point that was pleaded in the Defence and Counterclaim but, given that the defendant was representing himself, and that the plaintiff was able to deal with this point I think it is appropriate that I consider and determine it. Notwithstanding that he did not actively pursue numbers (i), (ii) and (iii), he did give some evidence and put some questions to the witnesses which were somewhat relevant to these points so I have thought it appropriate to consider these points. He also put some questions to Mr. Maguire to the effect that he had a conflict of interest. This was not pleaded; nonetheless I have considered it insofar as I was able.

37. Evidence was given by Ms. Clíona Gormley and Ms. Cyril Perrin of the plaintiff, Mr. Simon Maguire, Ms. Noelle McDonald, a solicitor who acted for the plaintiff, and the defendant.

CONCLUSION

Validity Of the Addendum

38. As noted above, the defendant's case in reality boiled down to a claim that the Addendum Agreement is invalid and, as the option was not exercised within the original Option Period, the option and the parties' obligations under the Option Agreement have expired.

39. The basis upon which he claims that the Addendum Agreement is invalid is that in the telephone conversation of the 10th July 2020 in which Mr. Maguire raised the need for a longer Option Period, Mr. Maguire told the defendant that he did not need a solicitor.

40. There is a direct conflict between the parties as to what Mr. Maguire said. I should flag at this stage that for the reasons set out below I do not believe that this is in fact determinative.

41. Mr. Maguire's evidence in relation to this aspect of the conversation on the 10th July was that when he told the defendant that the project was going to move ahead because they had been successful in the auction process but that the plaintiff needed "*more room"* or "*more run time",* i.e. more time for the Option, the defendant asked whether he had to use a solicitor and indicated that he did not want to go back to a solicitor. Mr. Maguire's evidence was that he was in contact with about 400 farms during the course of 2014 and 2015 (while trying to identify suitable lands) and that he had a practice that whenever he was asked a legal question, he would tell them that it was incumbent on them to seek legal advice. He said *"So I made parrot-fashion whenever this question came up – it is incumbent on you to seek legal advice…So if somebody started asking me a legal question, that is what by parrot-fashion I would say*" and that when the defendant asked him that question "*I said okay, it is incumbent on you to get your own legal advice but I have a number of sites in the same situation, the North Dublin landowner used his solicitor, my two landowners in Kildare, the back of Intel, they both used solicitors, and my landowner in Wicklow did not use a solicitor. So it is your choice. And Philip said, okay, just send it to me*." Mr. Maguire also said that he told all the landlords that the "*addendum is replacing a paragraph in the option, that's it, really it is just replacing the number 36 with the number 60. So it is just moving it out and giving us two years more time" and "it was at that point…that he had said, do I really need a solicitor for this? And I had parroted my thing off."*

42. The defendant's evidence is that when Mr. Maguire phoned him and told him that he wanted to extend the Option Agreement he asked Mr. Maguire "*did I want to see a solicitor*". The defendant explained that the reasons he asked did he need to "*see*" a solicitor was because it was still during the Covid pandemic. He said that Mr. Maguire answered "*Ah, I can't see why."* He went on in his evidence to explain how Mr. Maguire was enthused and was not really listening and just kept talking and when he asked him *"do I want to see a solicitor? He just said "no*". The defendant later said in cross-examination that Mr. Maguire said "*I can't see why*" and that it "*kind of like fobbed off*".

The defendant said that Mr. Maguire did not say to him that it "*was incumbent on any landowner…to get their own legal advice".* The defendant also said that Mr. Maguire was "*under pressure, that they had paid so much money up and now the time was running out and he needed a signature, and when I asked him about a solicitor, he wasn't, ehm. Very forthcoming now. I'll put it that way."*

43. It seems to me that Mr. Maguire's account of the actual terms of the conversation is more likely to be correct. It seems likely that, where he had developed a habit or practice of saying to landowners who asked legal questions that they should get their own legal advice, then he is very likely to have said the same thing to the defendant when the defendant asked whether he should get a solicitor. However, it must also be borne in mind that on his account, having said that, he then went on to tell the defendant how some landowners used solicitors and others did not. I have no doubt that by following the statement that the defendant should get legal advice with the reference to a landowner who did not use a solicitor and by saying that the Addendum was "*really…just replacing the number 36 with the number 60…it is just moving it out and giving us two years more time*" he conveyed the impression that he considered it a minor matter and that he did not believe that it was necessary for the defendant to use a solicitor. One can readily see how the defendant could have interpreted what Mr. Maguire was saying as being that he did not really need to see a solicitor.

44. However, as stated above, I do not believe that the conversation between Mr. Maguire and the defendant could be determinative of the legal issues, even if Mr. Maguire said what the defendant ascribes to him.

45. Firstly, there is no general requirement that parties to an agreement should obtain legal advice, or to put it another way, there is no general principle that a party to an agreement will only be bound by that agreement if they obtained legal advice before entering the agreement. I was directed to a number of authorities by Counsel for the plaintiff.

46. In *Ulster Bank Ireland Limited v Louis Roche & Anor [2012] IEHC 166*, Clarke J said:

> *"[I]n the ordinary way…a person who signs a document which may well have significant legal effect and does so, either without reading the document or without applying themselves to the content of the document…will prima facie, be bound by what they have signed."*

47. *In ACC v Kelly [2011] IEHC 7 Clarke J said:*

> *"If a person does not have an opportunity to properly read the document then they should insist on such an opportunity and should not sign the document until they have been given an adequate opportunity to read it. If they sign it without adequately reading it then they must accept the consequences."*

48. Clarke J also said:

> *"If having read it there are terms or provisions which they do not properly understand then again they should not sign it unless and until they have taken advice. If they do sign a document whose terms they do not fully understand without taking advice then again they must accept the consequences."*

49. I am not aware of any general principle that as a matter of law one party to a commercial contract must advise the other to obtain legal advice and that where the first party does not do so then the second party will not be bound by the contract.

50. That could conceivably arise where there is a very particular relationship between the two parties, including such as a fiduciary relationship.

51. Donnelly in The Law of Credit and Security, 3rd Ed. 2021 at 9.45 writes "*While there is no general positive duty to advise customers/borrowers, the courts have recognised a duty to advise in certain exceptional circumstances where the customer can establish that the relationship between the lender and the customer/borrower was unusually close, to such a degree as to create fiduciary obligations.*" Finlay Geoghegan J in *IBRC v Morrissey [2013] IEHC 208* said that the "*parties are in agreement that the Bank, as a lender, and Mr. Morrissey as a borrower, do not fall within one of the settled categories of fiduciary relationships. They are also in agreement that the settled classes are not closed and that the existence or not of a fiduciary relationship is primarily a question of fact to be determined by examining the specific facts and circumstances*."

52. However, there is no basis for suggesting that such a relationship existed between these parties or between Mr. Maguire and the defendant. The height of the evidence is that Mr. Maguire and the defendant initially met in October 2016 and then had intermittent telephone conversations over the four years subsequent to that. I could

not conclude that there was a close personal relationship or that Mr. Maguire was acting in a fiduciary capacity.

53. Thus, I see no basis for concluding that the plaintiff, through Mr. Maguire, was under an obligation to advise the defendant to get legal advice and therefore, even if he expressed the view to the defendant that he did not think there was any need to get a solicitor, I do not see how that could invalidate the Addendum Agreement. This **<u>may</u>** be different if the plaintiff explicitly told the defendant not to get legal advice and pressured him into signing the document without giving him an opportunity to consider matters. But that is not what occurred. Mr. Maguire spoke to the defendant on the 10th July and then the plaintiff's solicitor sent the draft Addendum to the defendant on 15th July. The defendant had it for a number of days before signing it and returning the signed copy. That was ample time to consider the document and to consider whether to get legal advice. Even if Mr. Maguire did say that there was no need to get legal advice, the defendant had ample time to reflect on this and to make his own decision. Indeed, the defendant acknowledged this when he said that he considered getting legal advice but that he didn't want to go to anyone due to Covid though he could have phoned someone and argued himself out of doing so due to Mr. Maguire saying that he did not need a solicitor. Thus, the defendant had time and space to consider whether or not to consult a solicitor.

54. It might also be different if the plaintiff, through Mr. Maguire, misrepresented the document but the defendant has not suggested that Mr. Maguire did so. Indeed, in his evidence the defendant was clear as to his understanding of what the Addendum did. It is also noteworthy that he did not raise any concerns about the terms or effect of the Addendum until long after signing it, even though he had time to consider it in advance and the plaintiff's solicitor sent a copy of the executed Addendum. In fact, the first time that he raised any issue about the Addendum or the manner of the execution was after he was informed of Neoen's acquisition of the plaintiff, and even then, he did not raise it when he first spoke to Ms. Gormley.

55. I therefore find that while Mr. Maguire told the defendant that it was incumbent on him to get his own legal advice, he also conveyed the impression that he did not consider same to be necessary. However, for the reasons set out above I do not believe that this or indeed even an express statement by Mr. Maguire that the defendant did not need to get advice has the effect of rendering the Addendum invalid.

56. The defendant also originally claimed that the Addendum was invalid because it was not witnessed by a solicitor or signed in a solicitor's office. His evidence was that he signed it in a car.

57. There is no general legal requirement that a document must be signed in a solicitor's office or must be witnessed by a solicitor. Crucially, the defendant does not dispute that he signed the Addendum so it seems to me that the question of witnessing and where the document was signed are entirely irrelevant (see *Fitzsimons v Value Homes Limited [2006] IEHC 144*). In truth I think the real point being made by the defendant is that he did not have the benefit of a solicitor but I have dealt with this already.

Service of the Option Notice

58. The defendant claims that the plaintiff did not serve a written notice 30 days prior to the expiry of the extended option period and therefore under clause 3.6 of the Option Agreement the Agreement was terminated.

59. Clause 3.6 of the Agreement provides:

> "*If the Company has not served the option notice by the end of the Option Period or any agreed extension thereof, this Option Agreement shall immediately terminate without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent breach of any of the covenants any conditions contained in this Option Agreement.*"

60. In this case, the Option Period had been extended for six months on the 12th February 2020 (i.e., six months from the 29th March 2020). Thus, the plaintiff had until the end of that period (the 28th September 2020) to serve an Option Notice or indeed had 30 days prior to that to extend the Option Period for one more period of six months. If they failed to exercise the option by that date or failed to extend the Option Period, the Agreement would have terminated. In fact, events superseded this and the parties agreed the Addendum which had the effect of revising the Option Period that was provided for in the Option Agreement. The Option Agreement was still live and it was still within the Option Period when this occurred so the Agreement had not terminated.

Incorrect Date on the Addendum

61. It is pleaded in the Defence that the date on the Addendum under the defendant's signature was incorrect and that this renders it void. This point is unclear. The date of the 28th August 2020 appears immediately below the defendant's signature on the Option Agreement but is crossed out and the date of the 28th July 2020 appears. Under cross-examination, the defendant, when asked whether the correct date was the 28th July said "*Okay, yes. Yeah. That's what's written there*." He also confirmed that he "*scribbled out*" the 28th August 2020 and "*corrected it*" to the 28th July 2020. Thus, it is not at all clear what is meant by the plea and I can not find that the Addendum bears an incorrect date other than the one that is struck out. On the balance of probabilities, it seems to me that defendant mistakenly dated his signature as being on the 28th August and then corrected it to the 28th July. This appears likely because he returned the document to the plaintiff's solicitors on the 5th August, long before the 28th August.

62. In any event, it seems to me that even if there is an incorrect date this does not invalidate the Addendum and would only do so if it had been signed by the defendant outside the life of the Option Agreement. The defendant returned the signed version on the 5th August 2020 so it was definitely signed before that date which means that it was signed within the life of the Option Agreement (it having been extended for 6 months from the 29th March 2020 on the 12th February 2020). Even if the 28th August 2020 was the date of signature, it was still within the life of the Option Agreement.

Claim for Rent

63. The defendant also claims for rent from the 29th March 2017 (i.e. the date of execution of the Option Agreement). This claim is misconceived. The rent referred to in the Option Agreement only becomes payable when the option is exercised and the plaintiff takes a lease. In fact the defendant in evidence-in-chief gave no evidence about this issue and when it was put to the him during cross-examination that the rent was not payable he explained that he thought he would be paid for the previous three years of rent when he signed the Addendum – that was his interpretation of what was in the Option Agreement – and when it was put to him that this is incorrect he accepted that.

Non-Receipt of the Notice of Extension of the 25th February 2022

64. The defendant also claimed that he did not receive a letter of the 25th February 2022 extending the Option Period for a further period but at the hearing this claim was withdrawn by the defendant. I also deal with it above.

Order for Estoppel

65. The defendant also seeks an "*Order for Estoppel*" in his Amended Defence (and Counterclaim) but this was not expanded on or developed at the hearing and there is therefore no basis upon which I could make such an Order, particularly in light my findings.

Conflict of Interest

66. The defendant put it to Mr. Maguire that he had a conflict of interest in respect of signing the Addendum (in part because he was not a solicitor). I see no basis in the facts for concluding that Mr. Maguire had a conflict of interest.

67. In the circumstances, I am satisfied that the Revised Option Agreement remains valid and binding and that the plaintiff is entitled to relief.

68. At the hearing, Counsel for the plaintiff suggested that the Court should determine the status of the Revised Option Agreement first and that, if necessary, it could consider any claims by the plaintiff for damages at a later stage because these may be impacted by the Court's determination on the status of the agreement. The defendant had no objection to this and it seemed sensible and an efficient use of Court time and the case therefore ran on that basis. In those circumstances, I am only considering the reliefs at paragraphs 1 to 6 of the prayer for relief in the Statement of Claim at this stage.

69. It seems to me that it is appropriate to grant a declaration that "*the Revised Option Agreement remains valid and binding"* and I will do so.

70. It also seems to me that it follows that I should make Orders in terms of paragraphs 2 and 3 of the reliefs in circumstances where I have found (and it is not disputed by the defendant) that the defendant has refused access to the plaintiff and its servants and agents notwithstanding the clear terms of the Option Agreement (which, of

course, the defendant says no longer applied). Clause 6 of the Option Agreement provides:

> *"The Landlord grants to the Company (and anyone authorised by the Company) during the Option Period a licence to enter such parts of the Landlord's Property (as may be reasonably necessary to exercise the rights permitted by this clause) at all reasonable times with or without vehicles, machinery, equipment and materials for all purposes reasonably required.*
>
> *6.1 to assess the feasibility of the Development; or*
>
> *6.2 for any application for the Necessary Consents."*

71. However, Counsel for the plaintiff indicated at the conclusion of the hearing that the plaintiff is very keen to work in partnership with the defendant and felt that it would be sufficient to obtain an Order in terms of paragraph 2 only. This is prohibitory rather than mandatory in nature and would be more consistent with a desire to work together. I told the parties at the conclusion of the hearing that it seemed to me that if I ultimately held in favour of the plaintiff the parties may be in an ongoing relationship for a long number of years and that "*they should focus their minds on how they can both get as much out of that relationship as possible."* Limiting the relief to a prohibitory injunction might go some way to encouraging an amicable and profitable ongoing relationship for both sides. So, I will therefore make an Order in terms of paragraph 2 *"restraining the Defendant from interfering with the exercise of the right of access granted to the Plaintiff, its servants or agents, to the Option Lands pursuant to Clause 6 of the Revised Option Agreement"* and I will not make an Order in terms of paragraph 3 at this stage. I will, however, give the parties liberty to apply in respect of paragraph 3, if necessary.

72. In circumstances where the option has not yet been exercised and where there is no evidence of any documents being required to be executed at this point, I will not make Orders in terms of paragraphs 4 and 5 at this stage. However, it does seem to me at the level of principle that it follows from my findings that if there were documents to be executed to give effect to the Revised Option Agreement then the plaintiff would be entitled to such Orders. I will therefore adjourn this relief generally with liberty to re-enter. I would hope that in light of the fact that I have held that the Revised Option Agreement is valid and binding that it will not be necessary for me to make such Orders.

73. It follows from these reliefs and the reasons for my decision that the defendant is not entitled to any relief under his Counterclaim.