THE HIGH COURT

[2023] IEHC 52

Record No. [2014/3786 P]

BETWEEN

MICROCLEAN ENVIRONMENTAL LIMITED

PLAINTIFF

AND

JOHN BRADLEY AND CARMEL BRADLEY

DEFENDANTS

JUDGMENT of Mr. Justice Cian Ferriter delivered on the 2nd day of February 2023

Introduction

1. These proceedings involve a claim for some €80,000 (plus interest) for fees relating to work done on a "no foal, no fee" basis in connection with litigation brought by the defendants arising from contamination of their home by oil pollution from a neighbouring filling station. The plaintiff company (which specialises in the investigation and remediation of oil contamination) did a large amount of investigative work on the cause of the contamination. This work led to the defendants receiving a very substantial settlement of €500,000 which enabled them buy a new home and still be left with some €250,000. That settlement occurred almost 15 years ago, in April 2008. The no foal, no fee basis of the agreement in relation to the plaintiff's fees was embodied in a written contract entered into between the plaintiff and the defendants some time in 1997 and the work done by the plaintiff, which was critical to the settlement, was done in the period 1995 to 2007 i.e. between 16 and 28 years ago. It was conceded on behalf of the defendants at the trial before me that the work in question was done. Notwithstanding that the plaintiff's work resulted in the delivery of a healthy foal, in the form of a €500,000 settlement, not a cent has been paid to the plaintiff in the 15 years since the settlement. The foal is now an old horse.

2. While there were some challenges during cross examination of the plaintiff's witness as to the quantum of the amounts claimed, these challenges had never been the subject of pre-trial queries or correspondence. The central defence run at the hearing was to the effect that the plaintiff was not a party to the 1997 agreement at all; that defence had never been adverted to as a defence until the hearing. As will become clear, I have concluded that the plaintiff is entitled to the vast amount of the sums it sought. It is most regrettable that the plaintiff had to bring these proceedings to hearing in order to obtain a judgment. While I should stress that the trial was run responsibly by the defendants' legal team (instructed by the Legal Aid Board), considerable time and costs (including Court time) could have been avoided if a sensible approach had been taken many years ago by those representing the interests of the defendants (Mr. Bradley died in 2010 and was survived by his wife Mrs. Bradley, and their adult children; Mrs. Bradley has suffered from dementia for many years and was represented in this action by her adult daughter, Kieva Bradley, as guardian *ad litem*). In the circumstances, I have taken the view that it is appropriate that the plaintiff be awarded interest on the sum awarded, to compensate for the fact that it had to wait so unfairly long for payment for the work done.

Background

3. The background to this matter is as follows. The defendants (who I shall refer to as *"the Bradleys"* or *"the defendants"*, as appropriate) formerly resided in a property at 5 Maxwell Terrace, Newry Road, Dundalk, County Louth ("the Terrace"). The property was adjacent to a Texaco petrol filling station operated by Eamon Bishop & Sons Ltd.

4. By the mid-1990s, the Bradleys were experiencing the effects of oil contamination (including heavy fumes) in their home which they suspected was being caused by contamination from the filling station. The Bradleys engaged a solicitor in Dundalk who instituted proceedings in the District Court on their behalf.

5. The plaintiff company is wholly owned by Gerry McDonnell. Mr. McDonnell has specialised for many years in the investigation and remediation of hydrocarbon contamination such as from oil or diesel. He incorporated the plaintiff company in 1993 to advance this business. The plaintiff was engaged to assist the defendants with their case. It appears that Mr. McDonnell advised the defendants to change their solicitors to Myles & Co., a solicitor firm

based in Monaghan and run by its principal, Tommy Myles, as Mr. McDonnell had worked with Mr. Myles on various previous cases relating to claims for oil contamination.

6. The Bradleys' property was one of five properties on the Terrace. All of the owners of the properties on the Terrace claimed to have been affected by the contamination and issued proceedings. In addition, the owner of a field behind the Terrace also claimed his property was contaminated and he too issued proceedings. While that individual had his own separate legal representation, Myles & Co., together with the plaintiff ultimately acted on behalf of all of the homeowners on the Terrace, including the Bradleys.

7. Mr. McDonnell explained in his evidence to the Court that, as a result of an experience in an earlier unrelated oil contamination case where his company's fees had been recovered but had not been paid over, Mr. Myles suggested to him that it would be sensible to enter into a formal agreement with the Bradleys (and the other Terrace homeowners) to reflect the no foal, no fee basis of the engagement of his company. While the agreement was entered by the Bradleys with the plaintiff in 1997 ("the 1997 agreement"), it covered work that the company had been doing since mid-1995. It appears that materially equivalent agreements were also entered between the plaintiff and the other litigating property-owners on the Terrace. Fees were ultimately paid over by the other Terrace litigants pursuant to those agreements.

8. Ultimately, High Court litigation taken on behalf of the Bradleys and the other residents on the Terrace ("the oil contamination litigation") resulted in a global settlement with Texaco Ireland, which was reached in April 2008. This settlement resulted in a payment of €500,000 to Mr. and Mrs. Bradley, and a separate sum of €45,000 to Kieva Bradley, their daughter who lived with them in the property and who is guardian *ad litem* for Mrs. Bradley in the proceedings before me.

The defendants

9. Mr. Bradley unfortunately passed away in September 2010. I accept the point made at the hearing that, given that the proceedings were instituted on 9 April 2014, some three and a half years after Mr. Bradley's death, he should not have been sued as the plaintiff was clearly out of time under the two year Statute of Limitation period applicable to proceedings against the estate of a deceased person. In reality, the matter proceeded as a claim against Mrs. Bradley. It is clear from the terms of the 1997 agreement (at condition 14) that Mr. and Mrs. Bradley

were jointly and severally liable under the agreement in any event so this made no difference to the running of the action.

10. It appears that Mrs. Bradley's health deteriorated subsequent to the commencement of these proceedings and that, at the time of the hearing, she was resident in a nursing home and suffering from dementia. It is clear from affidavit evidence filed in the context of interlocutory applications in the proceedings (including an affidavit sworn in June 2016 in support of an application to appoint another daughter of the Bradleys, Ericka Watters, as guardian *ad litem* for Mrs. Bradley in the proceedings) that Mrs. Bradley had been in very poor health since the death of her husband. Ms. Watters was made a guardian *ad litem* for Mrs. Bradley on 13 June 2016. Ms. Watters was replaced as guardian *ad litem* for Mrs. Bradley by order of the court of 30 April 2019, when her sister, Kieva Bradley, was appointed guardian *ad litem* for Mrs. Bradley in her stead.

11. Insofar as reference is made to the defendants or to Mr. Bradley in this judgment, those references should of course be taken as involving references to the late Mr. Bradley, deceased.

The 1997 agreement

12. It is not disputed, at least in broad terms, that the 1997 agreement sought to embody a "no foal, no fee approach" to the fees claimed against the Bradleys in respect of work done by the plaintiff in the oil contamination litigation. I will come to the material terms of the 1997 agreement when dealing with the various arguments advanced at the hearing on the part of the defendants.

The defendants' case

13. Mrs. Bradley advanced three broad lines of defence to the plaintiff's claim: firstly, that the 1997 agreement properly construed was between the Bradleys and Mr. McDonnell personally, and not with the plaintiff company, such that the plaintiff was not entitled to any sums on foot of the agreement; secondly, that if that contention was unsuccessful, the plaintiff's claim was statute barred as relating to services rendered well outside the 6 year limitation period for contract claims; and that, as a further fall back, the sums claimed were in any event not properly substantiated and were excessive.

14. I will deal with each of these defences in turn.

The proper parties to the 1997 agreement

15. The 1997 agreement is not dated but it is common case that it was entered in 1997. The agreement is headed:

> *"This agreement made the day of One Thousand Nine Hundred and Ninety Seven of JOHN BRADLEY AND CARMEL BRADLEY (hereinafter called 'the Employer') of the one part and of GERRY MCDONNELL OF MICROCLEAN ENVIRONMENTAL (hereinafter called 'the Contractor') on the other part of the agreement"*.

16. The agreement is signed by Mr. and Mrs. Bradley. In the section of the signature page where it is stated *"SIGNED by/on behalf of the Contractor in the presence of:…"*, the agreement is signed by Mr. McDonnell.

17. In a defence which only emerged during the course of the hearing, the defendants sought to run the case that the plaintiff, Microclean Environmental Limited (*"the company"*) was not the correct plaintiff to sue in respect of any sums said to be due under the 1997 agreement as the plaintiff was not in fact a party to the agreement. The defendants relied in this regard on the fact that the company is not in fact specified by name anywhere in the agreement and the contractor is identified as "Gerry McDonnell of Microclean Environmental" which was said to be a contract with Mr. McDonnell personally. It was pointed out that Mr. McDonnell did not specify in signing the agreement that he was signing it as director or on behalf of the company.

18. An order was made by the Court on 3 April 2017, ordering Ms. Watters (as guardian *ad litem* on behalf of Mrs. Bradley) to answer under oath a series of interrogatories including an interrogatory which asked whether *"the agreement between Microclean Environmental Ltd* [i.e. the company] *of the one part and John Bradley and Carmel Bradley of the other, dated 1997, signed by John Bradley on page 3 thereof"* was signed by each of Mr. and Mrs. Bradley.

Ultimately, those interrogatories were answered by Kieva Bradley on behalf of her mother, on 1 February 2019, in which it was answered *"Yes"* to the foregoing interrogatory.

19. The point is made on behalf of the plaintiff that no suggestion was made in those answers to interrogatories (or, indeed, in any other document at any time prior to the hearing before me) to the effect that the company was not a party to the 1997 agreement.

20. Mr. McDonnell, in direct evidence and in cross-examination, gave firm evidence that he signed the 1997 agreement on behalf of the company and not in a personal capacity. He also said in his evidence that he was effectively synonymous with the company and that it was clear in the context of correspondence sent out by Mr. Myles on behalf of the Bradleys, including to the Bradleys, that when reference was made to *"Gerry McDonnell"* or to *"Gerry McDonnell of Microclean Environmental"* that such was always a reference to the company. The Court was taken to various items of correspondence sent by Myles & Co. on behalf of the Bradleys which referenced "Microclean Environmental Ltd." (i.e. the company) as a party to the 1997 agreement and which made clear that it was the company which was conducting the various investigations and site work pursuant to the terms of the 1997 agreement and not Mr. McDonnell personally. It seems clear from the correspondence before the court that Myles & Co. were not always consistent in referring to the plaintiff as *"Microclean Environmental Ltd"* and at times referred to the company as *"Microclean Environmental"* or *"Gerry McDonnell of Microclean Environmental"*. Mr. McDonnell pointed out in his evidence that the invoice raised on 27 September 2007 in which the sums now the subject of these proceedings were set out (which invoice was replicated in the same terms in an invoice of 12 September 2012) was issued by *"Microsoft Environmental Ltd"*, i.e. the company.

21. The plaintiff complained that the case sought to be made to the effect that the company was not in fact a party to the 1997 agreement and therefore had no standing to sue in the proceedings (and, in consequence, Mr. McDonnell, as the proper party to the agreement was now out of time to sue) was an opportunistic one, raised for the first time at trial. It was pointed out that there was never any pleading (other than a general traverse) to the effect that the company was not a party to the 1997 agreement. This contention was never articulated in correspondence and, indeed, there was correspondence in the proceedings which suggested, at one point, that Myles & Co. was a party to the contract with the plaintiff company and not the Bradleys. This was stated in a *"Replies to voluntary discovery"* document delivered on 23 June

2015, in which it was stated *"The plaintiff's contract is with Myles & Co. solicitors and not the defendants"*, the plaintiff in the heading to that document being the company Microclean Environmental Ltd. Insofar as any question of appropriate parties was raised in correspondence, in a letter of 15 April 2019, the defendants' solicitors stated that *"A difficulty has been encountered by the defence in obtaining relevant information in relation to the process of taxation of costs* [in relation to the pursuit of costs against Texaco Ireland on foot of the 2008 settlement between the Bradleys and Texaco] *and depending upon the information received it may be necessary to join certain Third Parties to the proceedings"* i.e. there was no suggestion made that the plaintiff was an improper party to the proceedings.

22. The centrepiece of the defendants' case that the 1997 agreement was between the Bradleys and Mr. McDonnell personally, and not with the company, was the contents of a letter written by Mr. McDonnell to the Legal Aid Board, in the context of a Freedom of Information Act request seeking to establish the basis on which the Board had decided to grant legal aid to Mrs. Bradley in defence of these proceedings. That letter ("the FOI request letter") was dated 9 March 2020 and was addressed to the Freedom of Information Officer in the Legal Aid Board in Cahersiveen, County Kerry.

23. The FOI request letter commenced with Mr. McDonnell stating that:

> *"I have been affected by an act of the Legal Aid Board in Dundalk in its decision to provide legal aid to Carmel Bradley in defence of a civil debt claim.*
>
> *As a result of this decision I have been deprived of the benefit of monies which are owed to me by Ms. Bradley, the collection of which has been pursued by agreement with a third party company, Microclean Environmental Ltd, which had the entitlement to pursue the debt the defendant had accrued to me by virtue of the said pre-existing agreement."*

24. The letter went on to summarise the facts as being that the Bradleys had received a substantial sum to settle proceedings against Texaco Ireland *"for personal injuries and damage caused to their property at Maxwell Terrace, Dundalk for which I provided services to them for which I now seek payment – I worked for nearly 13 years (for a substantial period at that time I took weekly readings at their premises of the volatile gases that emanated from the*

contaminated property) before that case was settled and it is 12 years since it has settled and not one penny have I received from the Bradleys".

25. The FOI request letter then stated that:

> *"There was in place a legal agreement for me to carry out works for her (and her husband) and part of my agreement was to ensure my fees would be paid for works that I carried out. I actually only pursued them for the work that was actually done and not for breach of contract (some of the agreed contract was not carried out) which would have increased the amount due to me."*

26. Mr. McDonnell noted later in the letter that no indication had been given by the Legal Aid Board that the Board would pay his costs in the event that they were unsuccessful in defending the action and that there was no clear explanation given as to how Mrs. Bradley would be able to pay any sums, whether the sums due or the costs, if he succeeded against her. He concluded by asserting that, as he was a person who had been affected by the loss of a benefit, he was entitled to be provided with reasons why the act of providing legal aid to Mrs. Bradley had occurred.

27. In answer to a question from the court, Mr. McDonnell said that he understood the reference in the FOI request letter to *"a legal agreement for me to carry out works for* [the Bradleys]*"* was a reference to the 1997 agreement. It was said on behalf of the Bradleys that this letter contained an unguarded, and, therefore, truthful, account of the view of Mr. McDonnell as the real party to the 1997 agreement, in circumstances where he did not expect that this letter would appear or be relied upon at the hearing of this action.

28. Mr. McDonnell in re-examination explained that the contents of the FOI request letter were not inconsistent with his evidence that the company was a party to the 1997 agreement. He said the position was that, in respect of the contract embodied in the 1997 agreement, as had happened in other cases, he had personally put up the monies in respect of the works and that he was a creditor of the company for those monies so that it was perfectly correct for the letter to say that he would get the benefit of monies recovered by the company in the proceedings as the company was obliged to refund him out of the proceeds of the litigation for monies which he had effectively loaned to the company. He accepted that he was inclined to make reference to himself and the company as interchangeable at times. He said that he thought

that the company was not entitled to make an FOI request which is why he had made the request in his own name. In answer to a suggestion in cross-examination that he had put the company up to sue under the agreement because he could charge VAT (as the company was VAT registered) and therefore receive a greater sum whereas he could not charge VAT where he was not registered for VAT himself, Mr. McDonnell said that any VAT received by the company would have to be paid over to the Revenue so that, in fact, nothing could be gained by him going through the company in this way.

29. No evidence was led on behalf of the Bradleys on the question of whether their agreement was with Mr. McDonald personally or with the company.

30. In my view, the question of the parties to the agreement is fundamentally a question of fact. I accept Mr. McDonnell's evidence that he signed the agreement, as a matter of fact, on behalf of the company and that the company was a relevant party to the agreement. I accept his explanation as to the contents of the FOI request letter.

31. While one can legitimately question the wisdom (if not the propriety) of sending an FOI request relating to the decision to grant legal aid to an opponent in litigation, I can quite understand Mr. McDonnell's frustration in circumstances where, at the time he sent the letter, almost twelve years had passed since the settlement agreement which resulted in €500,000 being paid to the Bradleys and not a single cent of that had been paid to the plaintiff despite all the work done on their case which had undoubtedly led to a position where they were able to achieve such a handsome settlement. I do not believe that there was anything underhand in the contents of the letter. Indeed, the contents of the second paragraph of the FOI request letter (which makes reference to Microclean Environmental Ltd. having the entitlement to pursue the debt) accords with the correct legal position, namely that the company was a party to the agreement and, therefore, it was the party with right to pursue the monies owed.

32. I accept as *bona fide* Mr. McDonnell's explanation of the benefit which would accrue to him in the event that the company was successful in the action, given that he would then be reimbursed by the company for monies which he had personally advanced to the company to get the work done. His reference in the letter to there being in place a legal agreement for him to carry out the work for the Bradleys, in my view, was a product of Mr. McDonnell identifying himself with the company in the context of the work done.

33. I do not accept the thesis advanced by the defendants to the effect that Mr. McDonnell, at all times, believed and knew that he was the other party to the 1997 agreement but that he had sought to advance the company as the plaintiff in the proceedings for some improper ends. It is quite clear from an objective assessment of the evidence before the court that the company was the entity which entered the agreement and which carried out the work. It was the entity which billed for all the work. It was regularly referenced by correspondence from the defendants' solicitors as being the entity undertaking the investigation work. The reports of the investigative work carried out were issued in the company's name. In my view, it is telling that no evidence was called on behalf of Mrs. Bradley to properly dispute Mr. McDonnell's evidence. While I, of course, understand why Mrs. Bradley was not in a position to give such evidence, there was no evidence called, for example, from Mr. Myles on behalf of the defendants to support the contention that the company was not a party to the agreement bearing in mind that Mr. Myles had drafted the agreement. While the Court was told that Mr. Myles had been struck off a number of years ago, there no suggestion that he would not have been available to give evidence in this case if required.

34. I am fortified by my conclusion, as a matter of fact, as to the identity of the parties to the agreement by the fact that at no point was it ever suggested (whether in pleading, correspondence or otherwise in the material before the court) that the company was not a party to the 1997 agreement. This was a contention made for the first time at the hearing before me. Ultimately, I am quite satisfied on the balance of probabilities that the company, and not Mr. McDonnell personally, was the "contractor" party to the 1997 agreement.

35. While I have accepted the submission of counsel for the plaintiff that the question of the identity of the parties to a contractual agreement is ultimately one of fact, I should say that I would have arrived at the same conclusion as a matter of contractual interpretation.

36. The question of the proper approach to interpretation of contracts has been extensively addressed by the Supreme Court in cases such as *Analog Devices v Zurich* [2005] 1 I.R. 274, *ICDL v ECDL* [2012] 3 I.R. 327 and, most recently, in *The Law Society v Motor Insurers' Bureau of Ireland* [2017] IESC 31 ("*Law Society v MIBI*").

37. Clarke J. (as he then was) noted in *Law Society v MIBI* (at para 10.2) that "This Court has, in *Analog Devices BV v. Zurich Insurance Company* [2005] 1 I.R. 274, confirmed that the

modern approach to the construction of contracts in this jurisdiction is similar to that applied by the courts of the United Kingdom as developed in cases such as *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 W.L.R. 896." In attempting to identify the underlying principle behind the proper approach to the interpretation of documents (including contracts) which are designed to affect legal rights and obligations, Clarke J. then said as follows:

> *"[10.4] The modern approach has sometimes been described as the 'text in context' method of interpretation. It might be said that the older approach in the common law world placed a very high emphasis indeed on textual analysis without sometimes paying sufficient regard to the context or circumstances in which the document in question came into existence., [...] , However, an over dependence on purely textual analysis runs the risk of ignoring the fact that almost all text requires some degree of context for its proper interpretation… rather the understanding which reasonable and informed persons would give to any text will be informed by the context in which the document concerned has come into existence.*
>
> *[10.5] Perhaps it is fair to say that the main underlying principle is that a document governing legal rights and obligations should be interpreted by the courts in the same way that it would be interpreted by a reasonable and informed member of the public who understands the context of the document in question. Such a person would, necessarily, pay a lot of attention to the text but would also interpret that text in its proper context."*

38. In a similar approach to that of Clarke J., O'Donnell J. (as then was) stated in his judgment in *Law Society v MIBI* as follows (at para. 12):

> *"... It is not merely therefore a question of analysing the words used, but rather it is the function of the court to try and understand from all the available information, including the words used, what it is that the parties agreed, or what it is a reasonable person would consider they had agreed., In that regard, the Court must consider not just the words used, but also the specific context, the broader context, the background law, any prior agreements, the other terms of this Agreement, other provisions drafted at the same time and forming part of the same transaction, and what might be described as the logic, commercial or otherwise, of the agreement...."*

39. There is no doubt that the agreement was sloppily drafted by Mr. Myles in referring to the company, in the title to the agreement, as "*Gerry McDonnell of Microclean Environmental*" and not specifying in clear terms that this party was Microclean Environmental Ltd. However, an application of the principles in the cases cited above would lead me to the same conclusion as I have arrived at, on the evidence, as to the parties to the agreement in fact, namely, that a consideration of the description of the parties to the agreement in context makes clear that the Bradleys entered the agreement with the plaintiff company and not with Mr. McDonnell personally.

40. In truth, the defendants seek, from the description of the parties in the agreement, to conjure an ambiguity as to the parties to the agreement that is not supported by any extraneous evidence that there was doubt about who the contracting parties in fact were or any relevant context supporting the proposition that the agreement was with Mr. McDonnell personally and not the company. The relevant context all points to the contrary conclusion, that the plaintiff and not Mr. McDonnell personally was the contracting party. The solicitor who drafted the contract regularly addressed correspondence relating to work done under the agreement to "Mr. Gerry McDonnell, Microclean Environmental Limited", occasionally short-handing that to "Mr. Gerry McDonnell, Microclean Environmental". Invoices for the work done under the agreement were issued by the company and not Mr. McDonnell. The special damages claim made by the Bradleys against Texaco Ireland was for sums incurred for work by the company, not Mr. McDonnell personally. The various site investigation reports for the work done pursuant to the agreement were issued by the company.

41. The circumstances surrounding the contract are such that it is clear that Mr. McDonnell was, at all times, acting as principal of the company and not in a personal capacity. The reference to *"Gerry McDonnell of Microclean Environmental"* in the parties section of the agreement is, in my view, as a matter of contractual interpretation, a reference to the company and not Mr. McDonnell personally.

42. Counsel for Mrs. Bradley sought to submit that in the event of any ambiguity, the description of the parties should be read *contra proferentem* against the plaintiff as the plaintiff had procured the drafting of the agreement.

43. There was a dispute as to who had in fact procured the drafting of the agreement. In a letter of 20 August 1997 addressed to *"Mr. Gerry McDonnell, Microclean Environmental"*, Myles & Co. stated:-

> *"Please find enclosed contracts in relation to the necessary site investigations and subsequent remedial works and associated necessities. The enclosed contracts, requested by our clients* [i.e. the Bradleys] *have been duly signed and witnessed by our clients and now require your witness signature. Please ensure that you seek independent legal advice in relation to the enclosed contracts."* (emphasis supplied)

44. The plaintiff relied on this letter, to contend that it was the Bradleys who requested the agreement such that they could not seek to rely on the *contra proferentem* rule in the event of ambiguity as who the Bradleys were contracting with.

45. Counsel on behalf of Mrs. Bradley submitted that Mr. McDonnell's own evidence undermined that position as his evidence was that the agreement was, in essence, drafted by Mr. Myles to protect the interest of Mr. McDonnell/Microclean Environmental in light of their prior experience with unpaid fees, adverted to earlier. The defendants also relied in this regard on the fact that, in a document supporting an invoice issued by the company in September 2007 (repeated in identical terms in an invoice of September 2012), which sought to substantiate a sum of €12,000 claimed for *"meetings for Maxwell Terrace High Court action"*, there was an entry dated 10 July 1997 with a sum claimed for a *"meeting with Tommy Myles and Trevor Duffy of Myles and Co., solicitors to discuss the Maxwell Terrace case and to draft contracts to protect the interests of Microclean Environmental"*. It was submitted that this showed that Mr. McDonnell procured the agreement to protect his interests and not the interests of the Bradleys and it was therefore not open to the plaintiff to rely on the *contra proferentem* rule in the event of any ambiguity in the interpretation of the parties section of the 1997 agreement. It is not without irony that the document pointed to on behalf of Mrs. Bradley in this regard is in fact a document issued by the company in support of an invoice in the company name, with the reference to "Microclean Environmental" in that context clearly being a reference to the company.

46. Quite apart from the question of whether the *contra proferentem* rule could have any role in the context of the court establishing the parties to an agreement, I do not believe that

the dispute as to who procured the drafting of the agreement, such as it is, is relevant to any contractual interpretation issue on the facts here as I am quite satisfied, on the application of the principles set out in *Law Society v MIBI*, that the 1997 agreement interpreted objectively in context makes clear that the agreement was between the Bradleys and the company.

Was the 1997 agreement breached by a failure to pay the plaintiff's fees following settlement of the oil contamination litigation?

47. Having concluded that the plaintiff was a party the 1997 agreement, it is next necessary to consider whether there has been a breach of the 1997 agreement and/or whether the Bradleys (which, in practical terms, means Mrs. Bradley) owe monies to the plaintiff on foot of the 1997 agreement.

48. Under the terms of the 1997 agreement, the Bradleys covenanted to expedite their High Court action against Eamon Bishop & Sons Ltd and Texaco (Ireland) Ltd and *"to include in such action a claim for the Contract Price"*. The *"Contract Price"* was defined in the agreement to mean the cost of the *"works"* as defined in the agreement. The agreement defined *"works"* to include, *inter alia*, the tests, investigation and reinstatement of the Bradleys' house to habitable standard.

49. Under the heading *"Method of payment"*, the 1997 agreement provided:

> *"5. The Employer at the conclusion of the said High Court action against Eamon Bishop & Sons Ltd and Texaco (Ireland) shall pay to the Contractor all funds received in respect of the Employer's claim for the Contract Price. No settlement for less than ninety percent of the Contract Price submitted by the Contractor can be accepted without the Contractor's prior written authorisation.*
>
> *6. The Employer will in no way be liable for the Contract Price of the Works to the Contractor should the Employer fail in his/her High Court action against Eamon Bishop & Sons Ltd and Texaco (Ireland) Ltd.*
>
> *7. The Contractor will commence the Works on the understanding that should payment of the Contract Price not be forthcoming due to the failure of the*

aforesaid High Court action, the Contractor will not seek payment for the Works from the Employer."

50. It was not disputed on behalf of Mrs. Bradley at the trial that works within the meaning of the agreement had been done, in particular extensive testing and investigative work in relation to oil contamination of their home in Maxwell Terrace.

51. It appears that in anticipation of settlement discussions involving the claims of the Bradleys (and the other residents of the Terrace) against Texaco Ireland, the plaintiff issued a detailed invoice on 27 September 1997 setting out the fees due to it in respect of the work done pursuant to the 1997 agreement. This invoice sought the total sum of €80,494 inclusive of VAT and forms the basis of the plaintiff's claim in these proceedings.

52. Ultimately, while the 1997 agreement envisaged that the plaintiff would be involved in remediation of the properties to a habitable level, it appears that the cases were settled on the basis that Texaco Ireland would buy out the properties on the Terrace (including that of the Bradleys) such that remediation was not going to be carried out by them (in essence, Texaco took over any remediation problem).

53. From an attendance memo in evidence before the Court, it appears that a settlement meeting took place on 25 February 2008. It is clear from this attendance note that the Bradleys were advised by their then Senior Counsel that "Microclean" (i.e. the plaintiff) was entitled to be paid for the testing work it had carried out.

54. Mr. McDonnell gave evidence that he was not invited to the settlement meeting in April 2008 at which the global settlement was reached with Texaco Ireland. However, the evidence before the Court made clear that a global settlement was reached on 21 April 2018 with all of the Terrace claimants including the Bradleys. The attendance note of the settlement meeting recorded that *"Plaintiffs agreed to settle their claim with Texaco Ireland for the sum of €2.48 million in total, to be distributed between them"*. The settlement note contained a breakdown of the monies paid out which included a sum of €500,000 paid to (and accepted by) Ericka Watters, the daughter of the Bradleys then acting on a power of attorney for Mr. and Mrs. Bradley (as earlier noted, another daughter, Kieva Bradley, the guardian *ad litem* for Mrs. Bradley in the proceedings received a sum of €45,000 in respect of a separate claim maintained by her against Texaco Ireland; it appears that Kieva Bradley had lived with her parents in the

house in Maxwell Terrace during the period of contamination). It appears from this attendance note that the Bradleys were advised that they could be sued by Microclean. It also noted that *"Microclean's costs will be included in the special damages, and will therefore go to taxation"*. The terms of the settlement agreement with Texaco Ireland also involved the payment of costs to the Bradleys, those costs to be taxed in default of agreement.

55. Correspondence thereafter ensued between solicitors on behalf of Microclean Environmental Ltd and Myles & Co. for the Bradleys. By letter of 28 May 2008, Myles & Co. wrote to the company's solicitors saying that the matter had been settled and that *"We can confirm that your clients have not been paid any money for the clean-up or works carried out"*. The letter requested costings from the company as regards the preparation for the oil contamination case which would be *"included in the bill of costs to be formulated in due course"*.

56. The company's solicitors wrote to Myles & Co. on 26 September 2008 stating they were:-

> *"at a complete loss as to why you have decided to include Microclean's costs as elements of disbursement as opposed to Special Damages. In any event and as per previous correspondence our client has instructed us to initiate proceedings against your firm."*

57. It appears that proceedings were issued by the plaintiff against Myles & Co. but were not pursued. Ultimately, those proceedings were overtaken by these proceedings against the Bradleys.

58. It appears that Mr. Myles was struck off and was subsequently made a bankrupt. The Official Assignee in Bankruptcy then took carriage of the process of taxation/adjudication of the various Maxwell Terrace costs' files as against Texaco Ireland. In a letter of 22 November 2022 that was before the Court, the solicitors for the Official Assignee wrote to the plaintiff's solicitors stating that the Official Assignee had, on advice, taken the decision not to run the taxation of the Maxwell Terrace files to a full hearing. It noted:

"In relation to the invoices issued by Microclean to the individual property owners/plaintiffs the difficulty which emerged from the process in the context of the Microclean invoices and other witness expenses was that no documentation could be located which confirmed that the settlement terms meant that Microclean's costs were to be dealt with in any way other than special damages."

59. Ultimately, the plaintiff's case as regards its claim for judgment or damages for breach of contract is a straightforward one. It maintains that, by the Bradleys reaching a settlement of their claims against Texaco Ireland (which included a pleaded claim for special damages for the costs of Microclean Environmental Limited), the *"mare had foaled"* such that the Bradleys became liable to pay for the work carried out by the company pursuant to the terms of the 1997 agreement i.e. this was not a case of no foal, and therefore no fee.

60. In my view, the plaintiff is correct in this contention. The terms of the 1997 agreement did not make the obligation on the Bradleys to pay for the work done by the plaintiff conditional on recovery of sums for that work by way of a costs recovery process within the oil contamination litigation. The terms of clause 5 of the 1997 agreement made clear that there could not a settlement for less than 90% of the contract price submitted by the company without the company's prior written authorisation. The 1997 agreement made clear that the only circumstances in which the Bradleys were not liable for the company's fees for the work done under the agreement was in the event that the Bradleys failed in their action against Eamon Bishop & Sons and Texaco Ireland. The action did not fail. While the terms of clause 5 were expressed to be in terms of payment to the company of *"all sums received in respect of the Employer's claim for the Contract Price"*, in my view, the proper interpretation of that clause in its context is that, in the event of a successful settlement of the High Court action, the Bradleys would be liable to pay the plaintiff for the work performed by it under the 1997 agreement. It is fair to say that no case to the contrary was pressed at the hearing. It is noteworthy, in that regard, that a claim for special damages for the cost of the work carried out by the plaintiff on their behalf was specifically made by the Bradleys in their claims against Eamon Bishop & Co. and Texaco Ireland in the oil contamination litigation such that, objectively, the settlement of the action also involved settlement of that claim. No consent was sought from the plaintiff by the Bradleys to settle for less than 90% of claim.

61. It follows, in my view, that the Bradleys were liable under the 1997 agreement to pay the plaintiff for the work done by the plaintiff pursuant to that agreement following the settlement with Texaco Ireland in April 2008.

Statute of Limitations

62. Given that I have concluded that the Bradleys were liable under the 1997 agreement to pay the plaintiff for the work done by it pursuant to that agreement, it is now necessary to consider whether that claim is statute barred. As earlier noted, it is not disputed that, in light of Mr. Bradley's death in September 2010, the plaintiff is out of time to pursue any claim against him given that the proceedings were instituted more than 2 years after the date of his death. However, Mrs. Bradley is liable to the plaintiff under the 1997 agreement and I turn now to consider the statute case made on her behalf.

63. Counsel on behalf of Mrs. Bradley sought to contend that the plaintiff's claim was statute barred as the plaintiff's invoice of 27 September 2007 sought payment within 30 days and that its claim was, in essence, based on failure to pay that invoice; as the proceedings were not issued within 6 years of 27 October 2007 (i.e. by 26 October 2013) it was submitted that the proceedings were statute-barred. In a related argument, it was submitted that all of the work done which was the subject of the claim was completed well before the 6 year period ending with the commencement of these proceedings in April 2018 such that the claim was also statute-barred on this basis.

64. In my view, these submissions are not well founded. The plaintiff was only entitled to claim under the contract when the foal was delivered, which was on the date of the settlement with Texaco Ireland on 21 April 2008. Mr. McDonnell's evidence was clear that the September 2007 invoice was prepared in anticipation of a settlement and for that purpose. It is quite clear from the terms of the 1997 agreement that the plaintiff had no entitlement to seek payment for work done before the oil contamination litigation were brought to a conclusion (whether by way of settlement or a positive finding in the Bradleys' favour from the court). As Canny notes in his book *Statute of Limitations* (3rd Ed.), at para. 10.07:

" There is no statutory definition for the expression "cause of action". The classic definition of a cause of action is that of Lord Esher M.R. in *Read v Brown* (1888) 22 Q.B.D. 128 at 131.

> *"every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved"*

65. Applying that *dictum t*o the facts here, the plaintiff could not succeed in any contract claim under the 1997 agreement until the oil contamination litigation had been brought to a successful conclusion (in this case by settlement). The fact of a successful conclusion of the oil contamination litigation was a *sine qua non* to being able to claim an entitlement to payment under the agreement. Therefore, the limitation period of six years in respect of a claim for breach of contract commenced on the completion of the cause of action on 21 April 2018 (when the oil contamination litigation was settled) and these proceedings, which were issued on 11 April 2014, were accordingly brought within the applicable six year limitation period.

66. While it is true that certain equitable reliefs (including specific performance of elements of the contract) were sought on the plenary summons and statement of claim (including specific performance of the "express and/or implied agreement whereby the defendants undertook and agreed to take all necessary steps to recover costs from Texaco (Ireland) Ltd") these reliefs were not pursued before me and the issue of delay or *laches* as a defence to a claim for such reliefs, accordingly, does not arise.

67. Being satisfied that the plaintiff has a good claim for sums due under the 1997 agreement against Mrs. Bradley, and that claim is not statute barred, I will accordingly proceed to consider the appropriate quantum of the plaintiff's claim.

Quantum of the claim

68. The quantum of the sums said to be due under the 1997 agreement (or, in the alternative, sums due by way of damages for breach of contract) was said to be encapsulated in the invoice sent on 27 September 2007 by the plaintiff to the Bradleys' solicitor, Mr. Myles. That invoice

comprised some ten separate matters, totalling €66,524, together with VAT at 21% of €13,970, leaving an overall total of €80,494.

69. The sums contained in headline terms on that invoice were as follows (I should say that each head of claim on the invoice contained a more detailed breakdown of itemised costs under each heading but I do not reproduce those breakdowns here in the interests of space):

1. Site Investigation April 1996	€3,743.00
2. Site Investigation Bishop's Garage September 1998 to October 2002	€20,647.60
3. No.5, Maxwell Terrace Investigation 30/9/98 & 7/10/98	€2,291.00
4. Trench Investigation at 5 Maxwell Terrace, 3rd October 2002	€3,705.00
5. Exterior Borehole Investigation at 5 Maxwell Terrace, 4th October 2002	€4,435.50
6. Interior Borehole Investigation at 5 Maxwell Terrace, 7th October 2002	€7,056.50
7. Indoor Air VOC Surveys 17/4/98 to 23/10/98	€6,846.00
8. Site Meetings with Clients, Meetings with Solicitors, Consultants, Engineers, Site Inspections, Telephone Calls and General Administration 1994 to 2007.	€12,000.00
9. Indoor Air Survey at 5 Maxwell Terrace 29/10/03 and 13/11/03	€2,800.00
10. To Provide & Install A Vacuum Extraction Unit at 5 Maxwell Terrace November 2003	€3,000.00

Total before VAT:	**€66,524**
VAT @ 21%	**€13,970**
TOTAL including VAT	**€80,494**

70. A general complaint was made on behalf of Mrs. Bradley that these sums could not be properly interrogated as they were not sufficiently vouched. A forensic accountant, Orla McGahon, was called on behalf of Mrs. Bradley (and, indeed, was the only defence witness)

who sought to explain that she was unable to prepare a report on the verifiability of the sums claimed in the absence of provision of appropriate vouching documentation.

71. The plaintiff agreed to make discovery of documentation *"relating to the calculation of payments allegedly due to the plaintiff"* in respect of these proceedings and the oil contamination proceedings to include "all relevant timesheet and invoices."

72. In the discovery affidavit sworn by Mr. McDonnell on 24 October 2019 on behalf of the plaintiff, it was said in respect of this category, *"timesheets and related documents that were entered into by staff of the defendant* [sic. Plaintiff] *at the time the works that were carried out the subject of this invoice which works having been carried out prior to settlement of the underlying action by the defendants with Texaco"* were no longer available and were scheduled in the second schedule of the discovery affidavit.

73. An explanation provided in the discovery affidavit by Mr. McDonnell on behalf of the plaintiff stated that:

> *"The documents that were once in the plaintiff's possession* [in this category] *relate to a period covering the 15 years prior to the settlement entered into by the defendants in the underlying action of 2008 which was reached to a large degree by relying on the invoices provided. The result is that in some cases, nearly 26 years have elapsed since the discovery requests the subject in which this affidavit as to document relates but in all cases the documents were destroyed after the invoices were used to settle the underlying proceedings and were not at any stage, until now, queried by the defendants or anyone on their behalf."*

74. Ms. McGahan in her evidence expressed surprise at the fact that the underlying documentation had been destroyed. In mitigation, on behalf of the plaintiff, it was pointed out that at no stage since the issue of the omnibus invoice (and a related document detailing breakdown of meetings engaged with and worked on) in September 2007, had there ever been any information sought by the Bradleys in relation to the figures or any challenge to the description of the work done.

75. (I should note in passing that it emerged during the cross-examination of Ms. McGahan that the letter of instruction to her from the Legal Aid Board noted that, following the settlement

with Texaco, the Bradleys purchased a different property in Dundalk at the end of 2008 and moved into that property in early 2009. The letter noted that *"The remaining €250,000 left from the claim was spent over a period of 10 years"*.)

76. Ms. McGahan was furnished by the Legal Aid Board with a copy of the plaintiff's discovery affidavit and the accompanying documentation and asked for her advices in relation to it. The instruction letter expressed stated that "*on initial review, it would appear that some of the categories entered relate to a number of the plaintiffs to the Personal Injuries actions and not solely the Bradley family. We have concerns as to how some of the figures were calculated also in the absence of breakdown and the variation between administration of the individual cases and also potential duplication"*. The underlying pleadings were not provided to Ms. McGahan. Having reviewed the material furnished, Ms. McGahan came back to the Board with a note of additional information which she felt she required to prepare a forensic accounting report. This list of information included seeking copies of the invoices raised, *"an outline of the circumstances which lead to substantially more time, tests and reports being required for the property at 5 Maxwell Terrace as distinct from the other properties involved in the action at that time?"*, invoices for third party costs and an itemised breakdown of how the charging of time for meetings was apportioned to the parties. Other specific information was sought, including a breakdown of the applicable time, staff member and charge-out rate making up the fee of €12,000 in respect of meetings in the period 1994 to 2007 as reflected in the plaintiff's invoice of September 2012 (which as noted earlier was a reproduction of the September 1997 invoice).

77. In fairness to her, Ms. McGahan, was put in a difficult position, in terms of the evidence she could give to the Court, by the fact that she had not been told that the defendants had conceded that the work was done; she was not given the discovery furnished in three volumes by the defendants containing evidence of the work done by the plaintiff (including detailed reports of site investigations) and she was not told anything about the Bradleys' view of the work done. She therefore had a very restricted set of information before her. In the circumstances, I do not believe that her evidence materially advanced my understanding of the underlying issues in the case.

78. It is relevant to observe in this context that one of the curious features of this case is that neither the Bradleys, nor anybody else on their behalf, ever sought to explain why, in

circumstances where it was not disputed that substantial work was done by the plaintiff on their behalf (which resulted in them gaining a very significant settlement), not a single cent was ever paid out or offered to the plaintiff. Nor was there any explanation as to why there was never any queries raised in respect of the figures claimed by the plaintiff or any further explanation sought of the work underpinning the sums claimed, if there was any legitimate doubt in relation to that work or the fees being claimed in respect of it.

Specific issues

79. In cross-examination of Mr. McDonnell, counsel for the Bradleys honed-in on two aspects of the September 2007 invoice, being item 2 (relating to the site investigation of the Bishops' Garage between September 1998 to October 2002) in the total sum of €20,645 (before VAT) and item 8 (relating to meetings) totalling €12,000. I will deal with these items in reverse order.

Item 8: meetings

80. In terms of the general approach to the compilation of the composite invoice of September 2007, Mr. McDonnell explained that the plaintiff went through its records for all of the work done in respect of all of the Maxwell Terrace plaintiffs and sought to allocate out work done specifically for individual cases to that client; in terms of work done which stood to the benefit of all or many of the plaintiffs, the fees for that work done were sought to be split fairly between the various plaintiffs.

81. Accordingly, in respect of the claim for meetings in the sum of €12,000, the evidence suggested that, out of 106 meetings which were itemised in respect of this head of fees, some 100 meetings related to all of the litigating Terrace residents. The overall sum for those 100 meetings came to some €57,000. This was sought to be split equitably between the litigating Terrace residents, depending on the extent of their involvement. Accordingly, the plaintiff allocated some €11,400 of these group meetings to the Bradleys, with a separate specific meeting on 25 September 2002 in relation to their case being separately billed to them for €600, giving the total of €12,000. (The latter meeting arose in circumstances where the Bradleys had been advised to get their case on urgently in light of Mr. Bradley's poor health). A suggestion was made in cross-examination of Mr. McDonnell that a large number of these meetings took place with Mr. Myles, the solicitor, without any client present and that many of the descriptions

of the meetings contained the same generic description to the effect that the meeting was *"to discuss progress of the cases"* with the implicit suggestion that the work was not *bona fide* done at all. It was also pointed out that Mr. McDonnell was accompanied by an assistant at each of these meetings. It was suggested in cross-examination that the assumption was that Texaco was a deep pocket which would pick up the tab with the suggestion being that, in essence, the plaintiff could afford to *"gild the lily"* when specifying fees in respect of these items.

82. Mr. McDonnell robustly and, in my view, convincingly rejected these suggestions. I accept Mr. McDonnell's evidence that he only attended at meetings and charged for meetings, which had been requested by Mr. Myles and that the meetings were all *bona fide* held. Mr. McDonnell explained that the rates he charged were competitive market rates and in line with rates which he charged to insurance companies and where the insurance companies would only pay rates they regarded as reasonable in circumstances where there was a lot of competition in the insurance market for the type of services that the plaintiff provided. In the absence of any evidence that the charge-out rates were not appropriate, I believe that the fees charged in respect to these meetings were reasonable. I also accept Mr. McDonnell's evidence that the amount of the overall meeting fee allocated to the Bradleys was equitable, particularly in circumstances where the Bradleys' house, as in effect the lead property (and the property closest to the source of contamination) was the focus of more work than the other residents on the Terrace.

Item 2, Bishops' Garage site investigations

83. In my view, there is force in the contention made, through cross-examination of Mr. McDonnell, that is not appropriate to fix the Bradleys with the entire of the sum billed to them for "site investigations for Bishops' Garage from September 1998 to October 2002" (being €20,645) in circumstances where (as is clear from the reports contained in discovery documentation underpinning the site investigations) that site investigation work inured for the benefit of the other Terrace claimants also. It seems to me that a figure of €11,500 (excluding VAT) as an attribution to the Bradleys would be appropriate in respect of that sum, in light of Mr. McDonnell's evidence that the Bradleys' house was the lead property and nearest the Bishops' garage site.

84. In the circumstances, in my view, the plaintiff was entitled to a sum of €57,379 plus VAT at 21% of €12,050, total €69,429 in respect of the work done by it pursuant to the 1997 agreement.

Interest claim

85. As the plaintiff has been successful in its claim for judgment/damages for breach of contract, it is necessary to consider the plaintiff's claim for interest.

86. The plaintiff seeks interest on three alternative bases:

(i) Pursuant to the interest clause in the 1997 agreement.

(ii) in the alternative, interest pursuant to SI 388/2002 being the European Communities (Late Payment in Commercial Transactions) Regulations 2002 ("the Late Payment Regulations").

(iii) in the further alternative, interest under the Courts Act, 1981 as amended from the date of institution of the proceedings to the date of judgment, or for such period as the court considered appropriate.

87. In my view, this is a case in which some level of interest would be appropriate given the length of time the plaintiff has had to wait to secure payment under the 1997 agreement. No satisfactory explanation was provided either prior to trial or at the hearing itself as to why the Bradleys took such an obdurate position in the face of the plaintiff's claims. The sums sought by the plaintiff were far from inordinate when viewed against the sum of €500,000 compensation received by the Bradleys and spent by them on a new house and other (unspecified) matters in a ten-year period after 2009. No response was ever sent to the September 2007 invoice. This was not a situation where a legitimate concern was raised as to whether the work was done or, where the work was done, whether it had been properly (or excessively) charged for. No explanation at all (let alone a good explanation) has been provided as to why the plaintiff was not paid a single cent for the work done despite the very substantial settlement its work had been instrumental in securing for the Bradleys. While I appreciate that Mr. Bradley died in 2010 and Mrs. Bradley has long suffered from poor health, their daughters were presumably familiar with the work done by the plaintiff for their parents and were aware

of the level of settlement achieved for their parents (indeed, as earlier noted, their daughter Kieva, who is Mrs. Bradley's guardian *ad* litem in these proceedings, herself received a settlement in the oil contamination litigation).

88. On the other side of the scales, no full explanation was provided by the plaintiff as to why it took some six years for these proceedings to issue. As for the period since the institution of the proceedings, while I accept that the plaintiff sought to progress its proceedings reasonably, there were clearly periods of time when the proceedings were not progressed at any rapid pace.

89. Ultimately, it was not disputed that it is a matter for the Court to achieve a fair award of interest in all the circumstances.

90. In relation to Courts Act interest, s.22(1) Courts Act, 1981 gives the court a discretion to order the payment of interest when the court orders the payment by any person of a sum of money (including damages). However, s.22(2) provides that nothing in s.22(1) "*shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise*". In light of the contractual term relating to interest (which I address below) it does not seem to me that I have jurisdiction to award Courts Act interest in this case.

91. As regards the contractual interest claim, there were a set of special conditions attached to the 1997 agreement. One of those conditions (which appears to have been modelled on the type of special conditions found in contracts for the conveyancing of land or property) included the following (at condition 4(a)):

> *"Should the Employer fail to pay to the Contractor the Contract Price from the proceeds of a successful conclusion of the aforementioned High Court action in the manner specified or any part thereof within 10 days after notice thereof shall have been given, interest should be payable thereon from the date of such notice until the date of payment at a rate of 4% per Annum above the Single A Bank over-draft rate charged from time to time during such period by the Irish Clearing Banks to borrowers."*

92. The Court was given a table of the "Single A Bank over-draft rate" rates in the period from 2008 to 2022 which ranged from 11.85% to 13.2%, leaving a contractual interest range of 15.85% to 17.2% in that period. The plaintiff provided an interest calculation based on the rates specified in condition 4(a) in the period from 7 June 2008 to 5 April 2022 (applied to the ex-VAT principal claimed of €66,524) which amounted to €154,695.

93. In relation to the contractual claim for interest, Counsel for the plaintiff quite fairly accepted in closing submissions that the claim for interest under condition 4(a) of the 1997 agreement could operate unfairly given the level of rates involved and did not press that claim. In my view, it would not be just to apply the contractually stipulated interest rate given the extent to which that rate was at variance with underlying ECB rates and the value of money in the claim period.

94. In relation to the Late Payment Regulations interest claim, Regulation 5 of the Late Payment Regulations provides that the late payment interest under the Regulations shall be the European Central Bank (ECB) refinancing rate, plus 7% (up to 15 March 2013) and plus 8% from 16 March 20I3 to date. I was furnished with a table of the ECB refinancing rates from June 2008 to December 2022 which ranged from 3.25% (at the start of that period) to 0% (from 1 July 2016 to 27 July 2022), the rate going back up to 2.5% from 28 July 2022.

95. It was not disputed that those Regulations could apply in principle in the event that the Court held that the plaintiff was entitled to sums under the 1997 agreement.

96. I am satisfied that it would be appropriate to grant some interest under the Late Payment Regulations. Based on its ex-VAT principal claimed of €66,524, the plaintiff provided the Court with a calculation of interest under the Regulations for the period 7 June 2008 to 31 December 2022 which amounted to €74,124. In light of delays in instituting the proceedings and the fact that it took almost 7 years for the matter to come to trial, in my view, an appropriate award of interest in all the circumstances would be an award of interest for a sum of €30,571 under the Late Payment Regulation i.e. some 50% of the amount claimed (bearing in mind that I have awarded the plaintiff somewhat less by way of principal than it claimed).

97. This brings the total award in favour of the plaintiff against Mrs. Bradley to a sum of €100,000.

Conclusion

98. In conclusion, I award the plaintiff, as against Mrs. Bradley, the sum of €69,429 for breach of the 1997 agreement, together with interest on that sum of €30,571, total award €100,000.