

**APPROVED**

**THE HIGH COURT**

**2010 No. 2596 S**

BETWEEN

ALLIED IRISH BANK PLC

PLAINTIFF

AND

THOMAS J. DORAN

DEFENDANT

**JUDGMENT of Mr. Justice Garrett Simons delivered electronically on 13 May 2020**

**INTRODUCTION**

1. One of the procedural tools available to a litigant is the ability, in certain circumstances, to compel the other party to the proceedings to answer questions on oath prior to the trial. This is done by the delivery of interrogatories. These take the form of written questions (usually admitting of a “yes or no” answer) which the other party is required to answer on affidavit. Employed properly, the delivery of interrogatories can have the benefit of saving costs and reducing the amount of court time required for the hearing of an action. These are laudable objectives.
2. In the present case, however, the enthusiasm of the defendant/counterclaimant (“*the defendant*”) for the *overuse* of interrogatories is matched only by the inexplicable reluctance on the part of the plaintiff (“*the bank*”) to engage in any meaningful way with many of the interrogatories served upon it. This has resulted in an impasse whereby the parties have had to call upon the High Court to adjudicate upon their dispute as to whether the bank is required to answer the outstanding interrogatories. The time and costs

**NO REDACTION NEEDED**

expended upon this interlocutory hearing might well outweigh any savings which might otherwise have been achieved by the intelligent use of interrogatories.

### **THE UNDERLYING DISPUTE**

3. The within proceedings had been commenced by way of summary summons. The bank seeks to enforce what it alleges is a debt owed to it by the defendant. This debt is said to arise out of two loan agreements entered into between the parties in 2006 and 2007, respectively.
4. It had been a condition of the loan agreements that the bank obtain a valuation in respect of certain properties which were to be mortgaged in favour of the bank as security for the debt. The bank has exhibited valuation reports which purport to have been prepared on 11 July 2007. The defendant contends that, in truth, no valuation reports had been obtained at the relevant time, and that the reports now exhibited on behalf of the bank are forgeries. The implication being that the reports had been prepared at a subsequent date, and “back dated” to 11 July 2007.
5. Given the nature of the factual dispute between the parties, the proceedings were deemed unsuitable for summary disposal, and the case was remitted to plenary hearing by order of the High Court dated 19 May 2012.
6. One of the issues which will have to be determined at the full hearing is whether the asserted contractual requirement to obtain a (contemporaneous) valuation report had been complied with. This will entail consideration of the authenticity of the valuation reports of 11 July 2007 relied upon by the bank.
7. The defendant has also raised an issue as to whether the sale of the lands was at arm’s length. More specifically, it is alleged that there was an (undisclosed) connection

between (i) the estate agent who introduced the defendant to the vendor, and (ii) an official of the bank.

8. The defendant delivered interrogatories on 10 December 2018. The principal purpose of the interrogatories is, seemingly, to seek to have the bank admit certain matters in respect of (i) the authenticity of the valuation reports, and (ii) the alleged connection between the estate agent and the official of the bank.
9. A total of 95 separate interrogatories have been raised. The bank has declined to answer many of these. Unhelpfully, the bank has not fully explained its rationale, and, in most instances, has contented itself with providing bald answers such as “*This is not a proper matter for interrogatories*”.

#### **THE MOTION BEFORE THE COURT**

10. This judgment is confined to an application on the part of the defendant for an order directing the bank to answer the interrogatories delivered to it on 10 December 2018. The request for interrogatories had indicated that same were to be answered within a period of four weeks of the date of receipt. In the event, no reply was received within that period; and the defendant next issued a motion, dated 14 February 2019, seeking to direct answers to the interrogatories. This motion ultimately came on for hearing before the High Court on 6 December 2019. By that time, the bank had since delivered answers by way of affidavit dated 29 August 2019. The affidavit was sent under cover of letter dated 6 September 2019. The application on 6 December 2019 proceeded on the basis that many of the answers were unsatisfactory.
11. Neither party bothered preparing a composite document for the court setting out the individual interrogatories and answers in sequence. The consequence of this is that

counsel and the court had to go through the cumbersome exercise of comparing and contrasting two separate documents. This added unnecessarily to the hearing time.

12. The matter was listed for further directions on 6 February 2020. The parties were requested to file written legal submissions on the following two issues.
  - (A). Is the defendant's motion seeking to compel answers to the interrogatories spent due to the fact that the bank had belatedly delivered answers prior to the hearing on 6 December 2019? Alternatively, can the defendant proceed on the existing motion to seek *further and better* answers?
  - (B). Can the court make an order for interrogatories against a corporate entity concerning the issue of fraud; and, if so, whether Ms. Scanlon, as a manager, is in a position to answer questions as to whether any agent or servant of the bank has committed fraud? Should some of the interrogatories be re-phrased so that she and/or the company secretary can answer them?
13. The parties filed their written legal submissions with the Registrar assigned to this case on 11 May 2020.

### **IS THE MOTION SPENT?**

14. The first issue to be addressed in this judgment is whether the motion of 14 February 2019 is spent. It will be recalled that the motion had been issued at a time when no answers had yet been received from the bank. A set of answers was, belatedly, delivered under cover of letter dated 6 September 2019.
15. The chronology in full is as follows:

10 December 2018	Interrogatories delivered by defendant
14 February 2019	Motion to compel answers issues
8 April 2019	First return date: hearing fixed for 5 December 2019
6 September 2019	Answers provided
6 December 2019	Hearing of motion to compel answers

16. The procedure for interrogatories is governed by Order 31 of the Rules of the Superior Courts (“*the Rules*”). In cases where *fraud* is alleged, it is not necessary for a party to seek the leave of the court to deliver interrogatories in writing for the examination of the opposite party. As noted earlier, the gravamen of the counterclaim in the present case involves an allegation of fraud against the bank. Accordingly, the defendant did not need leave to deliver interrogatories.
17. In the event that the party served does not answer or answers insufficiently, then the remedy for the interrogating party is to issue a motion requiring the opposite party to answer, or to answer further, as the case may be. See Order 31, rules 10 and 11, as follows.
  10. No exception shall be taken to any affidavit in answer but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court on motion.
  11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be; and an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.
18. At the time the motion in the present case issued on 14 February 2019, the complaint was that the bank had failed to make any answer. This remained the position until 6 September 2019.
19. The bank, in its written legal submissions, adopts the position that the motion is now spent, and that the only matter outstanding on the motion is the matter of costs. If and insofar as the defendant wishes to object to the sufficiency of the answers received in September 2019, then it is said a *fresh* motion must issue.
20. Conversely, the defendant, in his written legal submissions, contends that there is no distinction to be drawn between (i) no answer, and (ii) an inadequate answer: in neither scenario has the interrogatory raised been “answered” for the purposes of Order 31, rule

11. It is further contended that the bank's suggested interpretation of the Rules is highly formalistic; unnecessarily burdensome; and would lead to the waste of resources. The provision of any answer or answers—no matter how inadequate—would, on the bank's interpretation, have the effect of automatically exhausting a motion seeking answers. This, it is said, would be open to indefinite abuse by a litigant reluctant to answer the interrogatories or to have matters proceed to trial.

***Findings of the court***

21. Order 31, rule 11 treats differently of a case where *no answers* have been provided to interrogatories, and a case where answers have been provided but the interrogating party asserts that those answers are *insufficient*. The two contingencies are enumerated separately, and a specific remedy provided for each. Strictly speaking, therefore, the defendant should have issued a fresh motion once the answers by way of affidavit had been received in September 2019. The defendant would have been entitled to the costs of the (first) motion. Any complaint as to the sufficiency of the answers should have been the subject of a further (second) motion. This is not unduly formalistic. The “proofs” as between the two forms of application are different. The second motion would have been directed to those specific answers which the defendant says are inadequate. The defendant should also have engaged in correspondence with the bank before issuing a second motion. This is because, in many instances, the bank has sought to explain its refusal to answer a particular interrogatory by saying that the question was vague. The defendant should have sought to clarify his position in correspondence before putting the parties to the time and trouble of a court hearing.
22. In the peculiar circumstances of the present case, however, the irregular form of the motion is not fatal to the application. First, it seems from the chronology that the parties had agreed in April 2019 to the motion being listed for hearing notwithstanding that it

had also been agreed that answers would be delivered in the interim. It is implicit that the parties wished the sufficiency of the (then anticipated) answers to be addressed by the court in the context of the existing motion. Secondly, no objection was pressed at the hearing on 6 December 2019 as to the form of motion. Thirdly, the court heard full argument on the merits of the application on that date.

23. I propose, therefore, to allow the terms of the motion to be amended to reflect the fact that the actual controversy between the parties at the hearing was as to the sufficiency of the answers which had been provided in September 2019.

### **INTERROGATORIES: GENERAL PRINCIPLES**

24. The Court of Appeal has said that the use of interrogatories is to be encouraged. See *McCabe v. Irish Life Assurance plc* [2015] IECA 239; [2015] 1 I.R. 346, [3].

“Often the delivery of interrogatories can obviate the necessity for expensive and time consuming discovery, can dispose of issues prior to trial, can lessen the number of witnesses and result in an overall shortening of trials. In many cases which lend themselves to the delivery of interrogatories the procedure is simply ignored.”

25. It may be helpful to recall the following general principles which govern the use of interrogatories.
26. First, interrogatories may be served not only in relation to facts *directly in issue*, but also in respect of facts the existence or non-existence of which is relevant to the existence or non-existence of facts directly in issue. (*Goodbody Ltd v. Clyde Shipping Company Ltd*, unreported, Supreme Court, 9 May 1967).
27. Secondly, the right to serve interrogatories is not confined to facts which are in the peculiar knowledge of the *other* party. Rather, they may also be used for the purpose of obtaining an admission from the other side. (*Goodbody Ltd v. Clyde Shipping Company Ltd*, unreported, Supreme Court, 9 May 1967).

28. Thirdly, interrogatories will only be allowed where they are necessary either for disposing fairly of the cause or matter or for saving costs. (Order 31, rule 2). See also *McCabe v. Irish Life Assurance plc* [2015] IECA 239; [2015] 1 I.R. 346.
29. Fourthly, interrogatories will not be allowed where what is being sought is not an answer in respect of a factual matter, but rather relates to the *interpretation* of the contents of a document. (*Bula Ltd. v. Tara Mines* [1995] 1 I.L.R.M. 401 (at 406); *Woodfab Ltd v. Coillte Teoranta* [2000] 1 I.R. 20 (at 26)).

### **BANK IS NOT REQUIRED TO ANSWER OUTSTANDING INTERROGATORIES**

30. The interrogatories in dispute have been identified in a written note provided to the court at the hearing on 6 December 2019. For the reasons which follow, I have concluded that the bank is not required to provide a further answer in respect of any of these interrogatories.
31. For ease of exposition, I set out each of the individual interrogatories and replies under five broad headings in an appendix to this judgment. Each heading reflects a category of interrogatories in respect of which I am satisfied that the bank is not required to reply.
32. The first category of interrogatories seeks to have the bank respond to questions as to the meaning and effect of certain documents. More specifically, the interrogatories relate to the *content* of the valuation reports which are relied upon by the bank as fulfilling the condition precedent under the loan agreements. The bank is, for example, requested to confirm that the valuation figure stated in the valuation report dated 11 July 2007 is exactly the same as the price paid for the lands by the defendant. The bank is also requested to confirm that there is a spelling mistake in one of the documents.
33. With respect, this is not a proper use of interrogatories. See *Bula Ltd. v. Tara Mines* [1995] 1 I.L.R.M. 401 (at 406).

“Interrogatories to be allowable must be as to facts in issue or facts reasonably relevant to establish facts in issue. Interrogatories as to mere evidence as distinct from facts or as to opinions or matters of law such as the meaning or effect of documents or statements or conduct are not permissible. Nor is it appropriate that unnecessary interrogatories should be put such as to facts within the knowledge of and readily capable of proof by the interrogating parties.”

34. See also *Woodfab Ltd v. Coillte Teoranta* [2000] 1 I.R. 20 (at 26).
35. The central dispute between the parties is as to the authenticity of the valuation reports, and, in particular, as to whether they were actually prepared contemporaneously with the entering into of the two loan agreements, i.e. as opposed to being produced *subsequently* as alleged by the defendant. This category of interrogatories is of no assistance in relation to this issue. The defendant has been provided with copies of the valuation reports relied upon by the bank. It appears that the defendant intends to advance an argument that the documents are not authentic, by pointing to what he says are errors in the content of same. If and insofar as the defendant wishes to insinuate that the (alleged) existence of obvious errors in respect of the description of the property or the spelling of the valuer’s own name indicates that the documents were not prepared by the valuers at the relevant time, he does not require the assistance of interrogatories to do so. The alleged errors appear on the face of the documents, and assuming that the defendant can prove that they are indeed erroneous, then he can make an argument to the trial judge as to what inferences are to be drawn. The defendant may also put the documents to the relevant witnesses, and they can be asked to explain the existence of the errors.
36. The second category of interrogatories are all directed to the central allegation in the counterclaim, namely that the valuation reports have been forged. The within proceedings have been remitted to plenary hearing precisely because they give rise to disputed issues of fact. The proceedings are therefore to be resolved on the basis of oral evidence, which can be tested by way of cross-examination. The defendant, by raising

these particular interrogatories, is seeking to by-pass this process. In effect, the interrogatories at 34 to 37 (inclusive) seek to have the bank answer the central allegation in the case, namely that the valuation reports were forged by or on behalf of the bank, its employees or agents. This is not a permissible use of interrogatories.

37. It is to be noted that the recent judgment of the High Court (Barr J.) in *McGregor v. Health Service Executive* [2017] IEHC 504, [27] similarly refused leave to deliver interrogatories on the “core” issue in those proceedings.

“Each of these questions asks the defendant to admit negligence or wrongdoing on the part of its servants or agents. These allegations represent the core of the plaintiff’s case against the defendant. As liability has been put in issue by the defendant in its defence, it is pointless giving the plaintiff liberty to issue these interrogatories, as the defendant will presumably just answer ‘No’ to each of the questions posed, unless the defendant has decided to concede liability in respect of some or all of these matters. If it has reached such a conclusion, then it will have to amend its defence, or make formal concessions by way of open correspondence. It seems to me that it is both pointless and inappropriate to ask the defendant by way of interrogatories to admit that it, or its servants or agents, were negligent or in breach of duty in the manner set out in these interrogatories. Accordingly, I will disallow questions (18) – (23) inclusive.”

38. The approach of the defendant is especially inappropriate in the context of a corporate party. It is unreasonable to expect a single individual within the company to set out on oath whether or not any employees or agents of the company might have been involved in forgery. The court is entitled to take judicial notice of the fact that Allied Irish Bank employs thousands of people. Ms Sharon Scanlon cannot be expected to speak to the actions of all of these individuals.
39. The defendant has pointed out in his written legal submissions that the interrogatories had specified that they should be answered by Ms Scanlon and/or the relevant officers, employees or servants of the bank. It is said that the respondent to each interrogatory was therefore expressly left to the discretion of the bank.

40. With respect, the defendant cannot “put it up” to the bank to prove the central allegation in the defendant’s own counterclaim. If the defendant wishes to pursue an allegation of fraud against the bank, then he must adduce evidence in the ordinary way. This is the core issue in the counterclaim. It seems to me that these issues are more properly explored by way of examination and cross-examination, rather than by way of interrogatories.
41. The third category of interrogatories consists of questions the wording of which is vague or imprecise. Rather than seek a direction from the court compelling further answers to these interrogatories, the defendant should instead have taken the obvious step of serving amended interrogatories clarifying the vagueness and imprecision. There is an onus on the interrogating party to formulate the interrogatories in intelligible terms. It would be unfair to make an order directing the opposing party to respond to questions the precise meaning of which is not clear.
42. The fourth category of interrogatories are ones which relate to the acts of a third party, namely Mr Robert Scanlon. There is no suggestion that Mr Scanlon is an employee of the bank and, therefore, it is difficult to understand how the bank could properly be interrogated in relation to his actions.
43. The fifth and final category of interrogatories are ones which relate to matters of evidence.

#### **PROPOSED FORM OF ORDER**

44. The notice of motion is amended so as to allow the defendant to seek an order pursuant to Order 31, rule 11 of the Rules of the Superior Courts requiring the plaintiff to answer further the interrogatories delivered on 10 December 2018. (See paragraphs 22 and 23

above). That application will then be dismissed for the reasons set out under the previous heading.

45. In the exercise of my discretion under Order 99 of the Rules of the Superior Courts and under Section 169(1)(c) of the Legal Services Regulation Act 2015, I propose to make no order for costs to mark the court's disapproval at the manner in which both sides conducted this application. It is entirely unsatisfactory that neither side filed written legal submissions in advance of the hearing on 6 December 2019, and did not bother to prepare a composite document for the court setting out the individual interrogatories and answers in sequence. This had the consequence of counsel and the court having to go through the cumbersome exercise of comparing and contrasting two separate documents. This added unnecessarily to the hearing time.
46. Whereas it might be said that the "event" has been decided in favour of the bank, in that it does not have to provide further answers, the perfunctory explanations provided by the bank for not answering certain of the interrogatories is not condoned by the court. Had the bank better explained its rationale, then the defendant might have held off bringing this application.
47. The attention of the parties is drawn to the practice direction issued on 24 March 2020 in respect of the delivery of judgments electronically, as follows.

"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

48. In the event that either party wishes to make submissions as to why the court should not make a costs order along the lines proposed above, short written submissions should be filed in the Central Office within fourteen days of today's date, and a copy of same emailed to the Registrar assigned to this case.

Approved  
Gareth S. Mans

**APPENDIX*****1. Interrogatories involving interpretation of documents***

18. Did not this valuation value the lands at Irishtown 1 at exactly the same price as paid for it by the Defendant?

*This is not an interrogatory.*

19. Did not the valuation dated the 11<sup>th</sup> July 2007 contain an error in describing the lands at Irishtown 1 as having ‘extensive road frontage’ when it in fact only had 100 metres of road frontage?

*This is not an interrogatory.*

21. Did not this valuation dated 11<sup>th</sup> July 2007 value the lands at Irishtown 2 at exactly the same price as paid for it by the Defendant?

*This is not an interrogatory.*

22. Did not this valuation dated 11<sup>th</sup> July 2007 contain an error in describing the lands at Irishtown 2 as having ‘*extensive road frontage*’ when in fact the lands at Irishtown 2 are landlocked?

*This is not an interrogatory.*

24. Did not this valuation contain an error in that it stated that the house at Rathfarnham, Co. Dublin has an en suite bathroom when it does not?

*This is not an interrogatory.*

25. Did not this valuation contain an error in that it stated that the house at Rathfarnham, Co. Dublin had no visible extension?

*This is not an interrogatory.*

27. Did not this Valuation dated 15<sup>th</sup> November 2004 contain an error in that it stated that the house in Rathfarnham, Co Dublin has en-suite bathroom when it does not?

*This is not an interrogatory.*

28. Did not this Valuation dated 15<sup>th</sup> November 2004 contain an error in that it stated that the house in Rathfarnham had no visible extension?

*This is not an interrogatory.*

29. Does not this Valuation dated 15<sup>th</sup> November 2004 contain an error in that the signature for Mr David McDonnell contains a misspelling of his second name?

*This is not an interrogatory.*

30. Do not the purported valuations exhibited by the Plaintiff in respect of Irishtown 1, allegedly from the same firm of valuers in respect of the same lands, differ markedly in terms of content and detail from those exhibited by the Defendant and dated 9<sup>th</sup> March 2011?

*This is not an interrogatory.*

31. Do not the purported valuations exhibited by the Plaintiff in respect of Irishtown 1, allegedly from the same firm of valuers in respect of the same lands, differ markedly in terms of valuation from those exhibited by the Defendant and dated 9<sup>th</sup> March 2011?

*This is not an interrogatory.*

32. Do not the purported valuations exhibited by the Plaintiff in respect of Irishtown 2, allegedly from the same firm of valuers in respect of the same lands, differ markedly in terms of detail from those exhibited by the Defendant and dated 9<sup>th</sup> March 2011?

*This is not an interrogatory.*

33. Do not the purported valuations exhibited by the Plaintiff in respect of Irishtown 2, allegedly from the same firm of valuers in respect of the same lands, differ markedly in terms of valuation from those exhibited by the Defendant and dated 9<sup>th</sup> March 2011?

*This is not an interrogatory.*

## **2. Interrogatories re: fraud**

34. Did not the Plaintiff or any of its employees or agents forge the valuations in respect of the lands at Irishtown 1 and Irishtown 2?

*This is not an interrogatory. Without prejudice, however, the plaintiff nor any of its employees forged any valuation.*

35. Did not the Plaintiff or any of its employees or agents cause or procure the forgery of the valuations for the lands at Irishtown 1 and Irishtown 2?

*This is not an interrogatory.*

36. Did not the Plaintiff or any of its employees or agents forge the valuation in respect of the house at Rathfarnham?

*This is not an interrogatory.*

37. Did not the Plaintiff or any of its employees or agents cause or procure the forgery of the valuation in respect of the house at Rathfarnham?

*This is not an interrogatory.*

### 3. *Vague interrogatories*

38. Did not the Plaintiff commission the said valuations from McDonnells?  
*The wording of this Interrogatory is vague. It does not identify which valuations are being referred to.*
45. Did not the Plaintiff send correspondence or maps or other instruction to McDonnells in respect of any of the valuations?  
*This is not an appropriately worded Interrogatory. It refers to correspondence unspecified, maps unspecified, instructions unspecified and valuations unspecified.*
46. Did not the Plaintiff generate any documentation in respect of that commission?  
*This is not an interrogatory.*
47. Did not the Plaintiff make or take any record of its communications with McDonnells?  
*This is not an interrogatory.*
48. Did not the Plaintiff maintain any record of its communications with McDonnells?  
*This is not an interrogatory.*
57. Was the valuation for the house at Rathfarnham commissioned by the Plaintiff not sent to the Plaintiff by email?  
*This Interrogatory is not appropriately worded. It does not specify which of the two valuations is referred to.*
58. Was the valuation for the house at Rathfarnham commissioned by the Plaintiff not sent to the Plaintiff by post?  
*Please see 57 above.*
59. Was the valuation for the house at Rathfarnham commissioned by the Plaintiff not delivered to the Plaintiff by hand?  
*Please see 57 above.*
60. Was the valuation for the house at Rathfarnham commissioned by the Plaintiff not sent to the Plaintiff by fax?  
*Please see 57 above.*
63. Was not Robert Scanlon paid for the valuation of Irishtown 1?  
*This interrogatory is unclear and not appropriately worded. It does not specify the date of the valuation referred to.*
64. Was not Robert Scanlon paid for the valuation of Irishtown 2?

*This interrogatory is unclear and not appropriately worded. It does not specify the date of the valuation referred to.*

75. Did not Sharon Scanlon request that Michael Lynch authorise any alleged payment to Robert Scanlon?

*This is vague and does not constitute a proper Interrogatory.*

78. Was not any record made of the payment made by the Plaintiff in relation to the valuations it commissioned?

*This is not a proper Interrogatory. It is vague, does not identify what valuations meant, does not identify what dates, does not identify what commission.*

80. Was not payment debited from or made payable from any of the Plaintiff's bank accounts?

*This is not a proper Interrogatory; the wording is vague.*

82. Did not the Plaintiff tell the Defendant about the valuations after they had been received from McDonnells?

*This is not an Interrogatory. The wording is vague.*

90. Did not the Plaintiff write directly to John Madden & Associates Ltd on 22<sup>nd</sup> May 2007 in respect of possible rezoning of the lands at Irishtown?

*This is not an Interrogatory. It does not identify the correspondence or the connection as to how it has given rise to any subsequent letter.*

93. Did not Mr Madden on 31<sup>st</sup> May 2007 issue a revised letter indicating that the lands at Irishtown would be rezoned?

*This is not an appropriate interrogatory. It requires assumptions and comparisons in relation to unspecified documentation.*

95. Is it not the case that all communications from John Madden & Associates Ltd were directly between that firm and the Plaintiff and did not involve the Defendant?

*This is not a proper Interrogatory. It is vague and does not identify what communications, what type of communication or what dates.*

#### ***4. Interrogatories re: acts of third parties***

73. If so did not Robert Scanlon carry out the alleged valuations without the knowledge and approval of McDonnells?

*This is not a proper matter for Interrogatories.*

74. Did not Robert Scanlon personally retain the payment made by the Plaintiff in respect of the valuations?

*This is not a proper matter for Interrogatories.*

**5. Interrogatories re: evidence**

16. Did not Ms Scanlon state or indicate to the Plaintiff's credit committee (howsoever titled) that the Defendant was purchasing Irishtown 2 and that this would give him access to the lands at Irishtown 1 through College Hill?

*This is not an interrogatory.*

88. Does not the Plaintiff have any objective basis for its belief that the memory of David McDonnell is deficient or faulty?

*This is not a proper Interrogatory.*

89. Does not the Plaintiff have any objective basis for its belief that the memory of James McDonnell is deficient or faulty?

*This is not a proper Interrogatory.*

92. Did not the Plaintiff communicate with John Madden & Associates Ltd between 24<sup>th</sup> of May 2007 and 31<sup>st</sup> May 2007 regarding the Defendant?

*This is not an appropriate Interrogatory.*

94. Did not the Plaintiff apply pressure to John Madden & Associates Ltd to change its view on the possibility of rezoning of the lands at Irishtown between 24<sup>th</sup> May and 31<sup>st</sup> May 2007?

*This is not an appropriate Interrogatory.*