[2020] IEHC 323

THE HIGH COURT
COMMERCIAL

No. 2017/2108 P

BETWEEN
BLACKROCK MEDICAL PARTNERS LIMITED AND JOSEPH SHEEHAN
PLAINTIFFS

AND
GALWAY CLINIC DOUGHISKA LIMITED
AND PARMA INVESTMENTS LIMITED
DEFENDANTS

JUDGMENT of Mr. Justice Quinn delivered on the 2nd day of July, 2020

1. The first named defendant Galway Clinic Doughiska Limited (the "Operating Company"), is the operating company of Galway Clinic, a private hospital operating at Doughiska, Galway.

2. The Operating Company is a wholly owned subsidiary of Marpole Limited ("Marpole"). At the time of the events giving rise to these proceedings, the first named plaintiff Blackrock Medical Partners Limited, ("BMPL"), was the holder of a 25% shareholding in Marpole and the second named defendant, Parma Investments Limited, ("Parma"), was the holder of a 75% shareholding.

3. BMPL was a wholly owned subsidiary of BMPL Galway LLC, and the second named plaintiff, Dr. Joseph Sheehan, claims to be its beneficial owner.

4. On 11 June, 2004, there was executed a Subscription and Shareholder Agreement (the "Agreement") relating to Marpole Limited. This governed the arrangements for the subscription for shares and investor arrangements concerning Marpole and the Operating Company, and regulated the conduct of the business of those companies. Marpole and the Operating Company are referred to in the Agreement as the "Companies".

5. Clause 5 of the Agreement contained covenants relating to the business of the Companies whereby the Investors, defined as BMPL, Parma and BMD, an entity which has since divested itself of its shareholding, covenanted with each other that they would take all necessary actions to ensure compliance with the covenants concerning governance of the Companies.

6. Clause 5.9 governed "*restricted transactions*" in which it was agreed that the Companies would not do any of certain matters listed in Schedule Three to the Agreement without the prior written consent of both Parma and BMPL.

7. The restricted transactions included at Schedule Three para. 9 the incurring of any borrowings or expenditure exceeding €250,000.

8. On 1 February, 2017, the board of directors of the Operating Company made a decision by a majority vote to approve a project to construct a new two-storey medical facility estimated to cost approximately €17 million. The decision was opposed by the nominees of BMPL, who were in a minority.

These proceedings

9. In these proceedings, commenced 6 March, 2017, the plaintiffs challenge the validity of the board decision of 1 February, 2017, by reference to Clause 5 and Schedule Three of the Agreement.

10. In the plenary summons the plaintiff seeks the following reliefs:

"(a) An order declaring void and of no effect the purported decision made by the first named defendant in relation to the capital expenditure proposal on the 1st February, 2017.

(b) A declaration that the defendants and each of them are bound by and are required to give efficacy to the 'restricted transactions' provisions as set out in Schedule Three to the Subscription and Shareholders' Agreement executed by the first named plaintiff and both of the defendants (amongst others) dated 11th June, 2004.

(c) A declaration that the first named defendant is not entitled to approve or act upon any capital project involving capital expenditure in excess of €250,000 otherwise than with the consent of the first named plaintiff and in accordance with the provisions of the Subscription and Shareholders' Agreement dated 11th June, 2004.

(d) An order for specific performance against the second named defendant of its obligations pursuant to Clause 5 and Schedule Three of the Subscription and Shareholders' Agreement, including, if necessary, an order directing the second named defendant, by itself or through its shareholding in Marpole Limited, to take all such steps as are necessary to convene a meeting of the first named defendant at which a resolution is passed rescinding the decision of the Board of 1st February, 2017.

(e) A permanent injunction restraining the first named defendant from acting upon or recognising any decision of its Board of directors in circumstances where such a decision would constitute a breach of the obligations of the defendants or any of them arising on foot of the Subscription and Shareholders' Agreement dated 11th June, 2004.

(f) On behalf of the first named plaintiff damages as against the defendants and each of them for breach of contract.

(g) On behalf of the first named plaintiff damages as against the first named defendant for inducing and/or procuring a breach by the second named defendant of its contractual obligations to the first named plaintiff.

(h) On behalf of the first named plaintiff damages against the defendants and each of them for breach of fiduciary duty.

(i) On behalf of both plaintiffs damages against the defendants and each of them for conspiracy.

(j) Such further or other relief as this honourable Court shall see fit."

11. In the Statement of Claim the plaintiffs refer to the Agreement dated 11 June, 2004, to the effect that all capital projects involving expenditure in excess of €250,000 require the consent of certain specified parties including the first named plaintiff. They claim that the capital expenditure approved at the meeting on 1 February, 2017, cannot therefore proceed without their consent and they state that the proposal was opposed by the first plaintiff.

12. The plaintiffs plead that:

(i) The first defendant is not entitled to afford recognition to or purport to act in accordance with the majority decision of the board made on 1 February, 2017.

(ii) The second named defendant is obliged to exercise all voting rights and powers of control to ensure that the first defendant does not engage in conduct that would constitute a "Restricted Transaction", including the proposed extension.

13. The plaintiffs claim that by their actions in voting in favour of and purporting to afford full recognition to the decision of 1st February, 2017 the defendants are guilty of breach of their contractual obligations under the Agreement.

14. It is further pleaded that the first named defendant has induced and/or procured a breach of contract on the part of the second named defendant.

15. It is claimed that the defendants and each of them have committed the tort of conspiracy against both plaintiffs. The particulars given of the conspiracy may be summarised as follows:

(a) That by their actions the defendants and each of them seek and intend to negate the protections afforded to the first named plaintiff as a minority shareholder in Marpole and that by doing so they intend to bring about a devaluation of that shareholding.

(b) That a further intended consequence of the matters complained of is that the first defendant by expending such sums by way of capital expenditure would preclude the repayment of certain investor loans referred to in the Agreement that have remained outstanding since 2004. It is pleaded that the first defendant has long held capital reserves that would permit repayment of the investors' loans but that to date a sum of €3,950,000 remains due and owing to the first plaintiff in respect of its investor's loans.

16. It is alleged that the second defendant has an interest in ensuring that the investor's loan is not repaid. It is alleged that it is the aspiration of Mr. Laurence Goodman, with whom

the second named defendant is alleged to be associated, that Dr. Sheehan will not be in a position to redeem certain other loans in respect of which he is indebted relating to Blackrock Hospital Limited. It is alleged that *"it is Mr. Goodman's intention and desire that Dr. Sheehan be deprived of capital funds and insofar as the proposed capital expenditure can be seen as a mechanism for the use of the first named defendant's capital reserves for a purpose other than the repayment of the investor loans, then that suits the extraneous commercial and litigious interests of Mr. Goodman and his associated companies."*

17. The plaintiffs claim that the defendants have combined together to perform acts which are themselves unlawful and/or have combined together for the sole or predominant purpose of injuring the plaintiffs and each of them.

18. The plaintiffs claim that they will suffer loss and damage the particulars of which are given as follows:

    (a) The "loss of the first named plaintiff's contractual entitlements as reflected in the Agreement".

    (b) The loss of the contractual protections that were expressly agreed for the benefit of the minority shareholders *"which shall result in a very substantial diminution in the value of the minority shareholding."*

    (c) It is claimed that unless restrained from doing so by the court the defendants are *"likely to conduct the business of the first named defendant in the future in a manner that negates the contractual protections that are expressly agreed for the benefit of the minority shareholder as set out in Schedule Three of the Agreement".*

19. In replies to particulars delivered on 10 April, 2017, it is said by the plaintiffs that although no specific date was specified for the repayment of the investor loans it was intended by all parties that the investor loans would be *"repaid when the profits accrued from the Clinic business to [sic] permit same".*

20. The plaintiffs indicated that further particulars of their losses would be furnished *"in due course"* and under certain other headings that the "*loss has not been quantified to date".* With reference to the effect on the second plaintiff of his ability to refinance loans secured over his Blackrock Hospital Limited shareholding it was said that *"the loss has not crystallised to date".*

Defences

21. The defendants deny all of the claims made including the claim that the decision of 1 February, 2017 was in breach of the Agreement. It is denied that the directors of the first named defendant were required to vote in accordance with the "restricted transactions" provisions of the Agreement by virtue of the fact that the first defendant is party to that Agreement.

22. The first defendant pleads that the obligations the subject of Clause 5 of the Agreement are only applicable to and/or binding on "each investor", which term does not include the first defendant.

23. It is pleaded that it does not lie within the power or procurement of the defendants to exercise or procure the exercise of voting rights or other powers of control in the manner alleged by the plaintiffs having regard *inter alia*, to the fiduciary duties of each of the directors of the first defendant.

24. It is also pleaded: -

    (i) That the business of the Operating Company is controlled, undertaken and transacted by its directors,

    (ii) That they owe statutory fiduciary and fiduciary duties to the company.

    (iii) That the directors nominated by the second defendant to the Board of the Operating Company voted to approve the development in good faith, based on the recommendation of the Operating Company's independent executive and that they acted in what they honestly believed to be the best interest of the Operating Company as they were statutorily obliged to do, and in accordance with independent legal advice provided by the Operating Company's solicitors.

25. The second defendant pleads that the plaintiffs' claim incorrectly conflates the actions of Parma, with votes taken at board level by the persons nominated by it to act as directors of the Operating Company.

26. In relation to the allegation that Parma was attempting to deprive the second plaintiff of funds to prevent him from redeeming his loans in relation to the Blackrock Hospital, the second defendant pleaded that there is no connection between the proposed development at Galway Clinic and the repayment of the Blackrock loans and that the defendants are under no obligation to procure the immediate repayment of the investor's loans, having regard to the terms of those loans, which it is said were unsecured, interest free and subordinated, and that there was no specific date for repayment.

27. These proceedings were commenced on 6 March, 2017. Pleadings closed with the plaintiffs' Reply and Defence to the Counterclaim delivered on 23 June, 2017. There followed exchanges of discovery which were completed by March 2018. No further steps have been taken in these proceedings since the discovery was exchanged. The proceedings were adjourned before the Commercial List on approximately fourteen occasions since June 2018.

Other relevant events

28. In 2018, BMPL commenced separate proceedings under s.212 of the Companies Act, 2014 in which the respondents were Marpole Limited and Parma Investments Limited.

29. The parties agreed that the s.212 proceedings would be linked and heard together with these proceedings, although not formally consolidated.

30. On 1 February, 2019, the secured lenders to BMPL appointed a Receiver, Mr. Ken Fennell of Deloitte, over the assets of BMPL including its shares in Marpole.

31. On 12 December, 2019, Parma entered into a share purchase agreement to acquire from the Receiver the 25% shareholding of BMPL in Marpole. That share transfer was concluded on 27 May, 2020 after the transaction had secured clearance from the Competition and Consumer Protection Commission.

32. In January, 2020, the Receiver instructed the discontinuance of the s.212 proceedings, and a Note of Discontinuance was filed on 17 January, 2020.

This application

33. On 26 February, 2020 the defendants issued this application for the following orders:

    (1) Orders pursuant to O.29 of the Rules of the Superior Courts and s.52 of the Companies Act, 2014 requiring the plaintiffs to provide security for the costs of the proceedings and further orders including the fixing of an amount to be paid by way of security costs and an "unless" order to the effect that if the amount of the security were not paid within a period of 28 days these proceedings would stand dismissed or stayed.

    (2) "Further or in the alternative an order pursuant to the inherent jurisdiction of the court (or O.19 r. 27 or 28 of the Rules of the Superior Courts) dismissing or striking out the proceedings in whole or in part on the grounds that the issues the subject of the proceedings are moot and/or that the proceedings are bound to fail, fail to disclose a reasonable cause of action and/or are an abuse of process."

34. The application was initially returnable before the court on 2 March, 2020. Directions were given regarding exchanges of affidavits and the matter was then listed for hearing on 9 June, 2020.

35. The plaintiffs were initially represented by Messrs Shannon & O'Connor Solicitors. Messrs Shannon & O'Connor have since been discharged and now there are no solicitors on record for the plaintiffs.

36. In correspondence with the defendants' solicitors, Messrs A&L Goodbody, Dr. Sheehan has informed the defendants of the following:

    (1) That he was not aware "*until recently*" of the fact that he was a plaintiff named in these proceedings.

    (2) That he has made a filing in a court in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, under Chapter 11 of the US Bankruptcy Code and is availing of the automatic worldwide stay associated with that filing.

37. In an email of 3 June, 2020, to Messrs Goodbody, Dr. Sheehan requested a temporary adjournment of the motion listed for 9 June, 2020, for a period of three weeks "*while I arrange to participate in the Commercial List (as suggested) to secure a stay, and if not granted have time to prepare for that motion that should be scheduled for around the 30th June, 2020, if I am required to do it remotely".*

38. No application was made by the plaintiffs to this court for an adjournment.

39. On 8 June, 2020, being the day before the listed hearing of this application, Dr. Sheehan, having been given by the Registrar of this court the necessary joining instructions for the remote hearing scheduled for 9 June, 2020, emailed the Registrar in the following terms:

> *"Dear Ms. Brennan,*
>
> *As per your email with regards to the hearing, due to the Global Automatic stay associated with my US Chapter 11 filings, I will not be able to attend.*
>
> *Please provide the emails below to the judge between my US Chapter 11 Attorneys and A&L Goodbody (defendants' solicitors). I have nothing further to add.*
>
> *I wish this global stay to be upheld until the conclusion of the Chapter 11 proceedings as governed under the OECD, which Ireland is part of.*
>
> *Regards,*
>
> *Dr. Joseph Sheehan.*

40. The "*emails below*" comprised emails from Mr. David K. Welch, an attorney in Chicago, to Messrs A&L Goodbody, asserting that the *"global automatic stay applies worldwide (even to your Republic of Ireland) regardless of whether this is consistent with domestic law in the relevant foreign country. See, In Re Pro-Fit Holdings, 391 BR 850 (Bankr. C.D. Cal. 2008: See also, In Re Nakash, 190 BR 763 (Bankr SDNY 1996) wherein court held that the automatic stay applies to actions against a chapter 11 debtor and his property outside the United States."* [emphasis added]

41. When the matter was listed before this Court on 9 June, 2020, at 11 am Irish time I adjourned the application to Thursday, 25 June, 2020, at 2 pm in recognition of the following:

    (1) Dr. Sheehan's request for an adjournment to enable him to prepare for the hearing, made in his email to Messrs Goodbody on 3rd June, 2020, and

    (2) the time difference between this Court and Dr. Sheehan's place of residence in Chicago.

42. The plaintiffs were duly notified of the adjournment and I heard the defendants' application on 25 June, 2020.

43. There was no appearance or representation by or on behalf of the plaintiffs at the hearing.

44. No submission has been made to this court as to the effect of any stay under the Chapter 11 proceedings on these proceedings or on this application. I have considered the correspondence from Dr. Sheehan and from Mr. Welch regarding the stay. The furthest Mr. Welch goes is to submit that the stay applies to actions *"against a Chapter 11 debtor*". These proceedings are an action by and not against Dr. Sheehan.

45. Nothing contained in the emails of the plaintiff or Mr. Welch identified any impediment to the court proceeding with the hearing of the defendants' application.

Evidence of Mr. Sheeran

46. The application is grounded on an affidavit sworn by Mr. Declan Sheeran on 26 February, 2020, and a supplemental affidavit sworn by Mr. Sheeran on 3 June, 2020. No replying affidavit having been filed, these affidavits are the only evidence before the court in this application.

47. Mr. Sheeran states that he is the Secretary of Parma Investments Limited, the second named defendant. He is also a Director of Marpole Limited and of Galway Clinic Doughiska Limited. Mr. Sheehan refers to the history of these proceedings and to other proceedings between the same and related parties.

48. Mr. Sheeran refers to the decision of the Board of the Operating Company made on 1 February, 2017, to approve the capital expenditure of approx. €17 million on the construction of a new two-storey medical facility at the Galway Clinic premises. He then says that a decision was taken by the board in December 2017 to defer the commencement of the work on the proposed development. He said that this decision was taken for commercial reasons including, he states, the "*weaker than expected financial performance of the Clinic*." He says that since then *"the project has not proceeded*." He says that in December 2018 the Clinic appointed a new Chief Executive Officer who is continuing to review the Clinic's strategy, including its plans for investment in new facilities.

49. Mr. Sheeran then refers to the purchase by Parma of the shares of BMPL in Marpole, which was completed on 27 May, 2020, the effect of which is that Parma is now the owner of the entire shareholding in Marpole. Accordingly the plaintiffs enjoy no continued shareholding interest in Marpole or its subsidiary.

50. In support of the application for security for costs, Mr. Sheeran summarises the grounds of defence in the proceedings as follows:

    (a) That the directors nominated to the Board of Galway Clinic by Parma voted to approve the proposed development in good faith, based on the recommendation of the Operating Company's independent executive.

(b) That Parma is not legally responsible for the decisions or votes of persons nominated by it to act as directors of the Operating Company.

(c) That the plaintiffs' claim incorrectly conflates the actions of Parma with votes taken at board level by the persons nominated by it to act as directors of the Operating Company, who he says are obliged to take decisions independently of Parma and in the interests of the Operating Company itself.

(d) He says that the claim of a conspiracy between Parma and the Operating Company to injure the plaintiffs is baseless. He says that the decision to approve the proposed development was taken in the best interests of the Operating Company based on medical and financial advice presented to the Board. He says that there is no evidence to support the contention that the decision was taken to injure the plaintiffs.

(e) Mr. Sheeran says that the claim that the proposed development was approved in order to preclude the repayment of investor loans to BMPL is untrue and makes no logical sense. He says that those loans are unsecured, interest free, subordinated loans advanced by the shareholders to the company in 2004. There is no obligation on the company to repay the investor loans by a specific date. He says that under the terms of Agreement the loans are only repayable either on a "*realisation*" or with the agreement in writing of the shareholders, neither of which has occurred.

(f) Mr. Sheeran states that the decision to approve the proposed development has caused the plaintiffs no loss or damage and that no financial loss has ever been properly identified and he refers to the fact that the proposed development did not ultimately proceed.

51. Mr. Sheeran refers to the fact that following the sale of BMPL's shares in Marpole the claim is now moot and has no prospect of success.

52. In support of the application for dismissal of the proceedings Mr. Sheeran makes similar averments.

53. With particular reference to the question of mootness Mr. Sheeran states that in circumstances where Parma has acquired all of the shares in Marpole and where the board decision the subject of the proceedings has not been implemented the question of whether or not the board is obliged to obtain BMPL's consent for the proposed development is now entirely academic and of no practical consequence. He points out that BMPL will not at the time of trial be a shareholder in Marpole or in the Operating Company or a party to the Agreement.

54. As regards Dr. Sheehan personally, Mr. Sheeran refers to the fact that Dr. Sheehan never personally owned shares in Marpole or in the Operating Company. Although he is a party to the Agreement he is not an "investor" within the meaning of the Agreement and

therefore not a party entitled to rely on the covenants in Clause 5 or Schedule Three on which the claim is based.

55. Mr. Sheeran exhibited a letter dated 6 June, 2018, from the plaintiffs' then solicitors, Messrs. Shannon & O'Connor, confirming that the plaintiffs were willing to withdraw their claims for damages against the first named defendant.

Jurisdiction of the court

56. The absence of any evidence by the plaintiffs before the court on this application is significant having regard to the tests identified by the Supreme Court in *Keohane v Hynes* [2014] IESC 66, in which Clarke J. considered the extent of the court's obligation to examine or assess any evidence on such an application. At para. 6.2, he stated:

> *"It is important to emphasise that the extent to which it is appropriate for the court to assess the evidence and the facts on a motion to dismiss as being bound to fail is extremely limited."*

57. In this case the only evidence before the court is the evidence given by Mr. Sheeran and it stands uncontroverted.

58. The underlying basis of the jurisdiction was considered further by Clarke J. at para. 6.5 as follows:

> *"It is important, for the avoidance of any doubt, that the overall principle be clearly stated. As pointed out in many of the authorities, not least in the judgment of Murray J. in Jodifern, the underlying basis of the jurisdiction to dismiss as being bound to fail stems from the court's inherent entitlement to prevent an abuse of process. Bringing a case which is bound to fail is an abuse of process. If it is clear to a court that a case is bound to fail, then the court has jurisdiction to prevent that abuse of process by dismissing the proceedings."*

59. He continued:

> *"It is for that reason that all of the jurisprudence emphasises that the jurisdiction is to be sparingly exercised and only adopted when it is clear that the proceedings are bound to fail rather than where the plaintiff's case is very weak or where it is sought to have an early determination on some point of fact of law."*

60. Clarke J. quoted from his judgment in *Lopes v. Minister for Justice, Equality and Law Reform* [2014] IESC 21, where he had observed, at para. 2.5, as follows:

> *"In order to defeat a suggestion that a claim is bound to fail on the facts all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings."*

61. In the absence of any submissions or affidavit by the plaintiffs, this Court is faced with no evidence or description of such a credible basis.

62. The doctrine of mootness was considered by Clarke J. in *P.V. v. The Courts Service* [2009] 4 IR 264 where he stated:

> *"…the starting point of any consideration of mootness has to be a determination as to whether the issue sought to be litigated is still alive in any meaningful sense such that it cannot, in the words of Murray C.J. in O'Brien v. Personal Injuries Assessment Board be 'purely hypothetical or academic'".*

63. Finally, in relation to the jurisdiction concerning the purpose of proceedings Costello P. in *McSorley v. O'Mahony* (Unreported, High Court, 6 November, 1996) held that: -

> *"It is an abuse of the process of the courts to permit the court's time to be taken up with litigation which can confer no benefit on a plaintiff. It is also an abuse to permit litigation to proceed which will undoubtedly cause detriment to a defendant and which can confer no gain on a plaintiff".*

Claims for declarations, specific performance and injunction

64. The reliefs claimed at paras. (a), (b), (c), (d) and (e) comprise: -

(i) Declarations as to the effect of the Agreement on the decision of 1 February, 2017, and the effect of the provisions of that Agreement on any future decisions regarding capital expenditure,

(ii) The claim for specific performance of the provisions of Clause 5 and Schedule Three and,

(iii) An injunction restraining the Operating Company from acting on or recognising any decision in breach of the Agreement.

65. I have concluded that it is appropriate to dismiss these claims for the following reasons.

66. Firstly, in circumstances where Parma has acquired BMPL's shares in Marpole, a court cannot grant an injunction in favour of BMPL to restrain any breach of the Agreement. BMPL no longer has any prospect of obtaining such relief at trial.

67. Secondly, the claims are moot in circumstances where the decision of 1st February, 2017 was never implemented and accordingly there is no longer any "live controversy" between the parties.

68. Thirdly, the claims for declarations, injunctions and specific performance, cannot confer any benefit on the plaintiffs in circumstances where they have no continuing material interest in the outcome of the decisions of the Board of BMPL.

Damages

69. In light of the letter of Shannon & O'Connor dated 6 June, 2018, the claims for damages were not being pursued against the first defendant.

70. I have concluded that the claims against Parma for damages should also be dismissed for the following reasons.

71. Firstly, the decision of the board of the Operating Company made on 1 February, 2017, which is the root of these proceedings, was never implemented. The evidence before the court is that the board subsequently decided to defer the proposed development for commercial reasons.

72. Secondly, no meaningful particulars of alleged financial loss have been furnished, despite the commitment given by the plaintiff in replies to particulars in April 2017 that such particulars would be furnished at a later stage.

73. Thirdly, the allegation that the actions of the defendants *"shall result in a very substantial diminution in the value of the minority shareholding"*, has not been substantiated. If BMPL were still a shareholder its rights under the Agreement would not have been extinguished by the actions by the defendants and accordingly could still be maintained.

74. Fourthly, no particulars were given to support a contention that a fiduciary duty is owed by one shareholder to another.

75. Fifthly, as regards the claim for damages for conspiracy, a central element of such a claim is the requirement to prove a common intention by the defendants to injure the interests of the plaintiff.

76. The claim that the defendants were acting to deprive the plaintiffs of capital by delaying or frustrating the repayment of investor loans is a bare assertion, contradicted by the sworn evidence of Mr. Sheeran that the decision of 1 February, 2017, was made on the recommendation of the Clinic's independent executive concerning the clinical and operational requirements of the Clinic.

77. Finally, in relation to conspiracy, the claim rests on the theory that the purpose of the decision was to preclude the repayment of investor loans. Those loans were interest free, unsecured and subordinated and were, under the terms of the Agreement, expressed to be only repayable *"upon a realisation or with the agreement in writing of all shareholders"*, neither of which events ever occurred. That being the case BMPL had no immediate right to be paid the investor loan, even in circumstances where the Operating Company held reserves.

Claims by Dr. Sheehan personally

78. Dr. Sheehan was never personally the holder of shares in Marpole or in Galway Clinic. Although he was a party to the Agreement he is not an "investor" within the meaning of that agreement and accordingly the covenants in favour of investors contained in Clause 5 and Schedule Three have no application to him personally. Therefore, he had no standing to pursue claims in reliance on those provisions.

79. Similarly, the claim by Dr. Sheehan for damages for conspiracy is bound to fail for the reasons considered at para. 76 and 77 above.

Conclusion

80. Although the defendants deny that the decision of 1 February, 2017, was in breach of the Agreement on this application very limited submissions were made as to the question of whether the decision constituted an act which was a "*restricted transaction*" and therefore would, under the terms of the Agreement, have required the prior written consent of the first named plaintiff. This is not surprising, since, on its face, such a decision would appear to be such a transaction. The submissions of the defendants focussed on the standing of the plaintiffs, mootness, an absence of particulars of loss or damage, and the alleged futility of the cause of action where the declarations sought cannot now confer any benefit on the plaintiffs. I am satisfied that the claims are moot and can confer no benefit on the plaintiffs. Therefore it would be an abuse of the process of this court to permit any further court time to be dedicated to the proceedings and I shall make an order dismissing the proceedings.

81. As I have decided to dismiss the proceedings, it is not necessary in this judgment to decide on the application for security for costs.