[2021] IEHC 65

THE HIGH COURT
CHANCERY

[2020 No. 1875P]

BETWEEN

THE ALFRED BEIT FOUNDATION

PLAINTIFF

AND
DAVID EGAR

DEFENDANT

JUDGMENT of Mr Justice David Keane delivered on the 29th January 2021

Introduction

1. The Alfred Beit Foundation ('the Foundation') moves against David Egar for various, related interlocutory injunctions, principal among which is one restraining him from trespass on the Foundation's lands pending the trial of the present action. In that action, the Foundation seeks, among other reliefs, permanent injunctions in the same terms.

2. The Foundation is an Irish registered company, limited by guarantee. It was incorporated in 1976 by Sir Alfred and Lady Clementine Beit. The Foundation is the owner of the Russborough Estate, near Blessington, County Wicklow. The Estate comprises Russborough House, an eighteenth-century stately home in the Palladian style, together with a demesne of approximately 220 acres of lawn, parklands and woodlands. The National Bird of Prey Centre opened on the Estate in 2016.

3. The report of the Foundation's Committee of Management for the year ended 2019, contains the following description of the Foundation's objectives and activities:

> 'The objectives of the [Foundation] are the promotion of the advancement of education in the fine arts in Ireland for the benefit of the public together with the long term preservation of Russborough, its art collections, gardens and parklands.
>
> In order to achieve these objectives, Russborough can be viewed as three different areas each of which are unique but which are designed to complement each other. These are:
>
> - *Russborough House*
>
> At the heart of Russborough is the house, a 280 year-old Palladian mansion, presenting the bests aspects of an Irish country house to visitors through a wonderful guided tour provided by expert local guides. The house also provides a fitting and suitable venue for appropriate arts, cultural and educational events.
> - *Visitor facilities area*
>
> Surrounding the house is an area comprising a significant visitor attraction in its own right but also generating revenues while limiting the wear and tear on the house. This visitor facilities area includes the many outbuildings, courtyards & grassed areas providing a range of attractions including artisan crafts, specialist activities such as falconry, the playground and the 20,000

square feet, head high, beech hedge maze as well as facilitating family events, concerts, catering and retail.

- *The Parklands Area*
  The remainder of the demesne is the Parklands Area. It provides various attractions for families including parkland walks and trails, the original 18th century walled garden and a woodland, rhododendron walk.'

4. Thus, the Estate comprises a stately house and its demesne that are, both culturally and architecturally, an integrated whole. Moreover, security on the Estate is of the utmost importance, due to the presence in Russborough House of the Beit Art Collection, which has been the subject of several notorious robberies over recent decades.

5. Mr Egar is a farmer in his mid-sixties who lives in Blessington. It is common case that, since around 1976, he has farmed various lands on the Estate with the agreement of the Foundation and with the active approval, while each was alive, of Sir Alfred and Lady Clementine Beit. Sir Alfred died in 1994; Lady Clementine in 2005. For many years, relations between the Foundation and Mr Egar were cordial and cooperative. It suited the Foundation to have parts of the Estate farmed in a manner that did not interfere with other Estate activities and it suited Mr Egar to farm the lands for profit.

6. Sadly, relations between the Foundation and Mr Egar have broken down, due to a dispute that has arisen between them over whether Mr Egar holds, or is entitled to, a leasehold interest in an integral portion of the parklands of the Estate, comprising six fields that directly surround the House on three sides, amounting in aggregate to approximately 100 acres ('the lands'). The lands, though in pasture and woodland, are identified in some documents as part of the 'the lawn', a term once commonly used to denote the parklands associated with a great house but now largely obsolete – at least, in that sense.

7. Mr Egar claims that he holds a commercial tenancy in the lands or, if not, that the Foundation is obliged to grant him one. The Foundation contends that Mr Egar only ever had a licence to farm the lands under various tillage ('conacre') and grazing ('agistment') contracts, the last of which has now expired.

8. Mr Egar owns some separate lands that once formed part of the Estate. Those separate lands were gifted to him by Sir Alfred Beit in the mid-1970s and conveyed to him by the Foundation in accordance with Sir Alfred's wishes in the mid-nineties ('the Egar lands'). Mr Egar leases other lands, referred to as 'the Stacey lands' and 'the Walsh lands', that were also once part of the estate but are now owned by other persons. The Egar, Stacey and Walsh lands are not to be confused with the lands that are the subject of these proceedings.

9. The Foundation derives an important part of its income from events held on the estate. Those events include the annual Royal Horticultural Society of Ireland ('RHSI') Garden Show ('the Garden Show') and the Kaleidoscope Music & Arts Festival ('the Festival').

10. In April 2019, the Foundation entered an agreement with a company named Event Fuels Limited ('Event Fuels'), licencing it to hold the Festival in June of each of the years 2019, 2020 and 2021. During the Garden Show, one of the fields comprising the lands is used for car-parking and, during the Festival, the lands are used for car-parking, camping and various festival activities.

11. In planning those events, the organisers need an assurance that they are entitled to use the lands pursuant to their existing agreements with the Foundation.

12. Mr Egar's claim that he holds, or is entitled to, a lease granting him exclusive possession of the lands is, for that reason, a matter of urgent concern for the Foundation. The restrictions on the conduct of litigation necessitated by the Covid-19 pandemic have prevented an early trial of the Foundation's action, in which it claims that Mr Egar has no interest in the lands, nor any rights over them. Thus, the Foundation seeks interlocutory injunctions against Mr Egar to enable those events to proceed.

Background and procedural history

13. Over many years past, Mr Egar has taken various areas of the estate lands on written 11-month conacre and agistment licence agreements. On 31 March 2018, the Foundation, as owner, and Mr Egar, as licensee, entered a signed written conacre/grazing agreement whereby, in consideration for the payment of €15,000, Mr Egar was licenced to use the lands for the grazing of cattle and sheep from 1 April 2018 to 28 February 2019. That agreement went on to state:

> 'The owner and the licensee agree that on up to three occasions during the agreement there could be requests from the owner to take back parts of the 100 acres to facilitate other events at Russborough at no cost to the owner. Two of those events are as follows.
>
> On 16th April for one day only a crew of 20 people are to film at the lake in front of the house.
>
> In the week before the RHSI Garden Show on Sunday 29th July and on July 29th itself part of the back field beyond the ha-ha will be required to create parking as in previous years.'

14. On 8 February 2019, Mr Egar wrote to Eric Blatchford, the chief executive officer of the Foundation, referencing an earlier meeting and telephone call between them and expressing grave concern about what were described as proposed new arrangements, although the nature of those arrangements was not specified. They may or may not have been those for the inaugural Kaleidoscope Music & Arts Festival – I do not know. The letter went on to state, in material part:

> 'As you are already aware, I am a long-standing tenant farmer in continuous occupation of the said lands for approximately 40 years. It is a matter of fact and evidence will attest to the pre-existing long-standing nature and extent of the

relationship that has ensued between myself and the late Sir Alfred and Lady Clementine.

Mutual trust was the foundation and basis of my long-term tenancy at Russborough. The proposed new arrangements fail to recognise the realities of my tenancy and would greatly undermine and devalue the legal equities that I have acquired. The relationship of landlord and tenant in the Republic of Ireland is a long established and settled matter and applies to all commercial property.

The proposed new arrangements are designed to deliberately restrict and limit my farming operation. My livelihood is farming, and I have built up a stream of revenue that accrues from decades of building farm entitlements under the Common Agricultural Policy.

As you are aware fully aware, I have always been cooperative and will continue to accommodate reasonable requests from Russborough and I have always paid my rent in advance on an annual basis.

Clearly, we must now urgently formalise and recognise our respective positions and it is imperative I have the security of tenure that I am entitled to. I would suggest that you inform all interested parties that I am seeking a 25-year lease with 5-year rent reviews and I would be obliged if you would draft and duly execute same.'

15. Notwithstanding that correspondence, on 1 March 2019, the Foundation, as owner, and Mr Egar, as licensee, entered into a further signed written grazing agreement whereby, in consideration for the payment of €15,000, Mr Egar was again licenced to use the lands for the grazing of cattle and sheep from 1 April 2019 to 28 February 2020. That agreement went on to state:

'The owner and the licensee agree that on occasions during the agreement there could be requests from the owner to take back parts of the 100 acres to facilitate other events at Russborough at no cost to the owner including;

The Kaleidoscope Music & Arts Festival from 28th-30th June 2019 inclusive, the two week set up beforehand plus one week set down afterwards for parking, camping and festival activities on the back, front and side fields including no sheep/cattle on the camping part of the back field for 28 days prior 28th June 2019 and no sheep/cattle on the main arena on the front field for 28 days prior to 28th June 2019.

For a few days before the RHSI Garden Show on Sunday 28th July, and on Sunday July 28th itself, part of the back filed beyond the ha ha will be required to create car parking as in previous years.

Occasional flying displays by the Bird of Prey centre on the side fields.'

16. A handwritten addendum at the foot of that one-page agreement records:

> 'This is to confirm that David Egar has kindly facilitated the Festival by removing cattle/sheep for 28 days prior to the event and this does not impact on the conacre agreement.
>
> E.D. Blatchford 13/3/2019'

On its face, that addendum suggests a chronological error or inconsistency of some sort, in that the Kaleidoscope Festival took place (by all accounts, very successfully) between the 28 and 30 June 2019, whereas Mr Blatchford's acknowledgment that Mr Egar facilitated the Festival, while ostensibly couched in the past tense, is dated 13 March 2019. Nothing turns on the point because the Foundation acknowledges that Mr Egar did provide great assistance to the organisers of the Festival and the conacre/grazing agreement expressly provided that the Foundation could request the removal from the lands of cattle and sheep for 28 days prior to it.

17. It appears from subsequent correspondence that, on 15 November, the Foundation's solicitors wrote to Mr Egar to offer him a 15-year lease over the lands. I have not been shown that letter or the proposed lease.

18. Mr Egar replied on 3 January 2020, although – as so often happens at the turn of the year – his letter is erroneously dated 3 January 2019. In that reply, Mr Egar stated that the proposed lease failed to recognise the extent of the rights and entitlements that had accrued to him from, what he described as, his tenure and long occupation of the lands, and that it would, through the restrictions contained in its terms and conditions, greatly dilute, what he described as, the equities he had acquired in the lands. Mr Egar asserted that his commercial interest in the lands pre-dates the appointment of the trustees of the Foundation and that, to preserve the commercial value of that interest as his asset and to avoid competing and conflicting uses of his farmlands, it was urgently necessary to put matters on a formal footing. In particular, Mr Egar asserted that it was unacceptable to him that he was not being offered a heritable interest in the lands. Mr Egar expressed his intention to issue legal proceedings if a mutually satisfactory agreement could not be reached within 21 days. In the concluding paragraph of his letter, Mr Egar stated:

> 'In the event that we are unable to reach a mutually satisfactory agreement within the next 21 days it would be advisable to inform all interested parties that it cannot be assumed that I am prepared to consent or that my permission is implied to facilitate any other commercial interests taking place on my farmlands.'

19. On 27 January 2020, a plenary summons issued on behalf of Mr Egar, as a litigant in person, in proceedings entitled 'David Egar v The Alfred Beit Foundation [2020 No. 631P]' ('the Egar proceedings'). On the same date, Mr Egar swore an affidavit to ground a motion for interlocutory relief in that action ('the first Egar affidavit'), although I have not seen the relevant notice of motion. Mr Egar has delivered an undated statement of claim in those proceedings.

20. From those documents and, in particular, the statement of claim, it emerges that Mr Egar contends that he entered into an oral agreement with the late Sir Alfred Beit on an unspecified date over forty years ago whereby, in consideration of the payment of an unspecified annual rent, he was given full possession of the lands for a term of years that was not specified, save that the agreement was intended to be 'one of long standing'. Mr Egar further claims that it is a misrepresentation to suggest that he has occupied the lands under a conacre agreement or as an agistment holder. Mr Egar goes on to claim that the Foundation's use of the lands for other purposes conflicts with, and hence is in breach of, his contractual rights and that his farming interests and needs must take priority over any proposed festivals or planned public gatherings on the lands. The principle remedy sought in the Egar proceedings is an order directing the Foundation to grant Mr Egar a thirty-five year lease over the lands at an unspecified rent, subject to rent reviews at seven-year intervals. Mr Egar also seeks a permanent injunction preventing the Foundation from interfering with his quiet possession and enjoyment of the lands, together with damages for loss of the use of the lands, calculated at €100,000 a year.

21. The Foundation contends that, in conversation on 2 February, Mr Egar informed Brian McDermott of Event Fuels that the Festival could only proceed with his consent so that, in the words attributed to Mr Egar by Mr McDermott, the Foundation would have to 'come to the table' to obtain that consent. Mr Egar denies the Foundation's assertion that this amounted to a threat.

22. On 10 February, the Foundation wrote to Mr Egar through its solicitors to state that, in light of the proceedings he had issued against it, the Foundation was not prepared to grant him a new licence to use the lands; was withdrawing the offer it had made to grant him a 15-year lease over the lands; and expected him to vacate the lands when his existing licence to use them expired on 28 February.

23. The Foundation's solicitors wrote again to Mr Egar on 25 February, reiterating the Foundation's position that, at the expiration of the existing 11-month licence, Mr Egar's contractual entitlement to use the lands would end. The letter went on to state that Mr Egar had no right to assert a veto over the holding of the Festival, before concluding that, should he fail by close of business on 27 February to provide various undertakings, including one to vacate the lands at the end of February 2020 and not to trespass on them after that, the foundation would take legal proceedings against him in which it would seek appropriate injunctive relief.

24. On 3 March, the Foundation's solicitors sent a further ultimatum to Mr Egar to provide the necessary undertakings by close of business on 5 March or face legal action. In the statement of claim that he delivered in his proceedings, Mr Egar pleads that this letter was a 'formal notice to quit' and that he is, thus, facing ejectment.

25. It is common case that Mr Egar has not removed his livestock from the lands nor taken any other step to vacate them. Indeed, he has replaced the Foundation's padlocks on various gates on the lands (to which both the Foundation and Mr Egar had keys) with his

own padlocks (to which the Foundation does not have keys). In April 2019, the Foundation had placed the original padlocks on the gates for health and safety reasons in circumstances where the public have access to the grounds of the Estate.

26. The Foundation procured the issue of a plenary summons on 9 March. In its statement of claim, delivered two days later, it prays for three substantive reliefs: first, a declaration that Mr Egar has no right or interest in the lands; second, damages against Mr Egar for trespass and other wrongs; and third, various permanent injunctions, including one restraining Mr Egar from trespassing on the lands.

27. On 10 March, the Foundation completed an ex parte docket, seeking liberty to effect short service of a motion giving notice of an application for interlocutory injunctive relief against Mr Egar. A notice of motion issued on the same date, returnable for the 20 March. The motion is grounded on an affidavit sworn by Mr Blatchford on 9 March ('the first Blatchford affidavit'). Mr Egar swore an affidavit in reply on 18 March ('the second Egar affidavit').

28. Unfortunately, due to the arrival in Ireland of the Covid-19 pandemic, the President of the High Court directed, on 16 March, that all matters listed for the remainder of that legal term were to stand adjourned generally, with liberty to re-enter each only when necessary or appropriate to do so.

29. On 27 March, Mr Egar sent an unsolicited cheque to the Foundation in the sum of €7,500, describing it as payment of the first half of the annual sum due for his use of the lands. The Foundation's solicitors wrote in reply on 6 April, restating the Foundation's position that Mr Egar no longer had any right or interest to assert over the lands; reminding Mr Egar of the Foundation's pending application for an interlocutory injunction restraining him from trespassing upon the lands; and confirming to Mr Egar that his cheque would be destroyed, rather than presented for lodgement or payment.

30. Mr Blatchford swore a second affidavit on behalf of the Foundation on 14 May ('the second Blatchford affidavit').

31. On 29 May, the Foundation issued a motion seeking the re-entry of its interlocutory injunction application. That motion was grounded on an affidavit of Mr Blatchford sworn on 29 May ('the third Blatchford affidavit')

32. Mr Egar swore an affidavit in reply to the second and third Blatchford affidavits on 7 June ('the third Egar affidavit').

33. On 16 June, Mr Blatchford swore a further affidavit ('the fourth Blatchford affidavit') and Mr Egar responded with a further affidavit of his own sworn on 19 June ('the fourth Egar affidavit').

34. On 23 June, the hearing commenced before me. David Holland S.C. appeared with Mairéad E. Smith B.L., instructed by Osbornes Solicitors LLP, for the Foundation, as applicant. Mr Egar appeared as a litigant in person, as respondent, assisted by a

McKenzie friend named Orla McNulty. As lunchtime approached, while Mr Holland was still opening the affidavits exchanged in the application, I repeated the suggestion previously made by Reynolds J that the parties consider mediation. Commendably, the parties took it up and I was asked to adjourn the matter to permit the necessary arrangements to be put in train. When the matter came back before me one week later, I was informed that progress towards mediation had been made and I adjourned the application for a longer period to enable that process.

35. I gather that mediation did occur but that, unfortunately, it was unsuccessful. Hence, the hearing of the application resumed before me on 4 November.

36. In the interim, Mr Egar had sworn a further affidavit on 8 October ('the fifth Egar affidavit'). As Mr Egar acknowledges, that affidavit sought to impugn the attitude and approach of the Foundation to the mediation that had occurred and included a request for an order directing the Foundation to pay his costs or expenses of the mediation. Without prejudice to the Foundation's contention that, as a matter of law, Mr Egar should not be permitted to raise such an issue or bring such an application, Eamonn Denieffe, a partner in the firm of solicitors representing the Foundation, swore an affidavit on 13 October ('the Denieffe affidavit'), largely – though not entirely – comprising a response to Mr Egar's complaints of intentional delay and lack of good faith on the part of the Foundation in the conduct of the mediation, and Mr Blatchford swore an affidavit on 22 October ('the fifth Blatchford affidavit'), also responding to those complaints.

37. A portion of Mr Denieffe's affidavit was directed to the quite separate issue of the Foundation's acknowledgment that an early trial would serve as an alternative to the determination of its interlocutory injunction, since the matter would not become urgent again until the beginning of 2021, when planning would have to start for the various events that are due to take place in the summer, subject to the impact of the Covid-19 pandemic. Mr Blatchford swore a further affidavit on 3 November 2020 ('the sixth Blatchford affidavit') noting that, since it had become clear that no trial date would be available before June, the interlocutory injunction application had taken on renewed urgency due to the Foundation's pressing need to provide the organisers of those events with the appropriate assurances concerning its possession and control of the lands.

38. After hearing argument on the point when the hearing resumed on 4 November, I ruled that I was not prepared to have regard to any of the averments in the fifth Egar affidavit, the Denieffe affidavit, or the fifth Blatchford affidavit about what occurred during the mediation process since, in order to be effective, that process must be confidential; indeed, that is what is required by law under s. 10 of the Mediation Act 2017. In anticipation of such a ruling, the Foundation had not produced a copy of the fifth Blatchford affidavit in court and, as a result, I have no knowledge of the specific averments it contains.

39. Mr Holland S.C. then finished opening the other affidavits, before making an oral submission on behalf of the Foundation in support of its application. When it was Mr Egar's turn to make a submission in opposition to that application, he applied instead for

an adjournment to enable him to reply to the sixth Blatchford affidavit, sworn and furnished to him the previous day. I acceded to that application.

40. Mr Egar swore a further affidavit on 26 November ('the sixth Egar affidavit'). Mr Blatchford swore a further affidavit in response on 3 December ('the seventh Blatchford affidavit').

41. The hearing of the application resumed, once again, on 9 December and concluded on that date. In opposition to the application, Mr Egar furnished the Foundation and the Court with a copy of written legal submissions that he had prepared.

42. Save for those averments that purport to address what occurred during the mediation process, I have considered the contents of all the affidavits exchanged, the oral submissions of each side and the written submissions of Mr Egar. I make that point principally to assuage the concern expressed by Mr Egar that he might be in some way prejudiced if prevented from 'reading into the record' each of his affidavits and his written legal submissions. As the volume of litigation increases and court time becomes an ever scarcer resource, the lengthy oral recitation of documents that the court has already had an opportunity to read is becoming as impractical as it is superfluous.

The present application

43. The foundation seeks five separate interlocutory injunctions against Mr Egar, restraining him from: (a) trespass on the lands; (b) slander of the Foundation's title to the lands; (c) intimidation (in the narrow legal sense of the threatened infliction of economic harm on the Foundation by unlawful means); (d) wrongful infliction of economic damage on the Foundation or interference with its contractual relations with Event Fuel Ltd; and (e) any act or omission, calculated or likely to interfere with the intended holding of the Festival on the said lands in June 2020.

44. Mr Egar opposes that application and joins issue with the Foundation on its underlying claim that he has no interest or estate in the lands in reliance on his own claim to either an existing tenancy or an entitlement to a prospective 35-year commercial tenancy over the lands, or both.

45. Events have moved on since the Foundation issued its motion on 10 March 2020 and the fifth interlocutory injunction sought must now be read as one referable to the holding of the Festival in June 2021, rather than June 2020.

The test for an interlocutory injunction

46. The proper approach to an application for an interlocutory injunction was recently restated in *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd* [2019] IESC 65 (Unreported, Supreme Court (O'Donnell J; Clarke CJ, McKechnie, Dunne and O'Malley JJ concurring), 31 July 2019) ('*Merck*').

47. The general principles remain those identified by Lord Diplock in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL) (at 407-9) and approved by the Supreme Court in

Campus Oil v Minister for Industry (No. 2) [1983] 1 IR 88 (O'Higgins CJ and Griffin J, Hederman J concurring) ('the *Campus Oil* principles').

48. In summary, those principles are that the applicant must establish that: (1) there is a serious issue to be tried on the applicant's entitlement to a permanent injunction; (2) the balance of convenience favours the grant of interlocutory relief, which requires, but is not limited to, a consideration of whether damages would be an adequate and effective remedy for an applicant who fails to obtain interlocutory relief but later succeeds in the action at trial and, if not, whether the applicant's undertaking to pay damages would be an adequate and effective remedy for a respondent against whom interlocutory injunctive relief is granted but whose defence to the action succeeds at trial. While Lord Diplock's speech in *American Cyanamid* was ambiguous on whether the adequacy of damages was a consideration antecedent to, or part of, that of the balance of convenience, the judgment of O'Donnell J in *Merck* (at para. 35) has now clarified that it is preferable to consider adequacy of damages as part of the balance of convenience, thus emphasising the flexibility of the remedy.

49. Where an injunction is sought that is, in substance, mandatory rather than prohibitory, the *Campus Oil* principles are subject to the significant refinement that an applicant must establish at least a strong case, likely to succeed at the hearing of the action, and not merely surmount the lower threshold of establishing a serious question to be tried; *Maha Lingam v Health Service Executive* [2005] IESC 89, [2006] 17 ELR 137 (*per* Fennelly J at 140), and *Charleton v Scriven* [2019] IESC 28, (Unreported, Supreme Court, 8 May 2019). The Foundation accepts – correctly, in my view – that, in seeking orders the effect of which would be to require Mr Egar to deliver up vacant possession of the lands, the strong case test is the one that it must meet in order to obtain the relief that it seeks in the present application; *Bank of Ireland v O'Donnell* [2016] 2 IR 185, *Charleton v Scriven,* already cited, *Murphy v McKeown* [2020] IECA l75 (Unreported, Court of Criminal Appeal, 26 March 2020).

50. In *Merck*, O'Donnell J pointed out that it would be an error to treat the *Campus Oil* principles as akin to statutory rules (at para. 34), before later outlining the steps that might usefully be followed in considering an interlocutory injunction application (at para. 64):

> '(1) First, the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted;
>
> (2) The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. In many cases, the straightforward application of the *American Cyanamid* and *Campus Oil* approach will yield the correct outcome. However, the qualification of that approach should be kept in mind. Even then, if the claim is of a nature that could be tried, the court, in considering the balance of

convenience or balance of justice, should do so with an awareness that cases may not go to trial, and that the presence or absence of an injunction may be a significant tactical benefit;

(3) If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice;

(4) The most important element in that balance is, in most cases, the question of adequacy of damages;

(5) In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy;

(6) Nevertheless, difficulty in assessing damages may be a factor which can be taken account of and lead to the grant of an interlocutory injunction, particularly where the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy. In such cases, it *may* be just and convenient to grant an interlocutory injunction, even though damages are an available remedy at trial;

(7) While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial;

(8) While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.'

51. Finally, in approaching the test I must apply to the evidence that I have attempted to summarise, I am conscious of Lord Diplock's admonition in *American Cyanamid* (at 407):

> 'It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial.'

The issue to be tried

52. The central issue raised in the Egar proceedings and that raised in these proceedings are two sides of the same coin. In the Egar proceedings, the principal remedies sought are a permanent injunction restraining the Foundation from interfering with Mr Egar's quiet possession and enjoyment of the lands and an order directing the Foundation to grant him a 35-year commercial property lease over them. In these proceedings, the principal remedy that the Foundation seeks is a declaration that Mr Egar has no right or interest in

the lands. It is, thus, tolerably clear that the Foundation's defence to Mr Egar's proceedings will be that he has no right or interest – much less an entitlement to a 35-year commercial lease – over the lands and that Mr Egar's defence to the Foundation's proceedings will be that he has a substantial interest in the lands in the form of an existing lease or an entitlement to a prospective 35-year commercial lease, or both.

53. Both sides have expressed the view that, ultimately, the two sets of proceedings should be either consolidated or, at least, tried together. While the benefits of such a course for the efficient administration of justice are obvious, no such application has yet been brought. I cannot agree with Mr Egar's submission that, as his proceedings were the first issued, they must conclude before any further step is taken in the Foundation's proceedings. It seems to me that both actions should proceed in the ordinary way, subject to whatever application there may be on either side for their consolidation or for linked trials. For that reason, I reject Mr Egar's submission that the present application represents an impermissible attempt to leapfrog his proceedings in order to supersede or suppress them. That is not to say that the contention that the Foundation's claims could be more efficiently and economically pursued as a counterclaim in the Egar proceedings is without merit, merely that it is not material to the present application.

The evidence

54. The issues that I have just identified can only be fully argued and properly determined at trial. Nonetheless, I must next seek to summarise the evidence the parties have adduced on affidavit, not in an attempt to resolve any of the large number of conflicts of fact that the affidavits reveal, since that is not my function on an interlocutory injunction application, but simply to consider the significance of that evidence and of those conflicts in the application of the appropriate test for an interlocutory injunction to restrain trespass.

i. ownership of the lands

55. It is common case that the Foundation is the legal and beneficial owner of the fee simple in the lands.

ii. conacre and agistment agreements or a lease

56. The Foundation claims that, for many years past, Mr Egar has taken various areas of the parklands (or 'lawn') on 11-month conacre or agistment licences. It has produced in evidence the two most recent agreements of 31 March 2018 and 12 March 2019. Mr Egar does not deny that he signed those agreements. Rather, in the second Egar affidavit, he avers that he signed them 'for accounting purposes only' to obtain a receipt for his tax records, and that they represent 'short term arrangements' made on the clear understanding that they were without prejudice to his rights and interests in the lands. Neither of the written agreements exhibited records any such understanding, recital or qualification.

57. In the sixth Egar affidavit, he avers that those agreements were made solely to satisfy the land availability test for the Single Farm Payment under the Common Agricultural Policy, whilst he awaited a long-term lease, and that he signed those – what he describes as, interim – agreements without prejudice and subject to qualification in line with the

terms of his letter, dated 6 February 2019, to Mr Blatchford. Once again, neither agreement refers to that letter, which postdates the first agreement, nor to any such reservation or qualification as that letter contains.

58. Mr Egar avers that the relevant facts and circumstances are particularised in the statement of claim in his proceedings against the Foundation in which he pleads that he entered into an agreement with Sir Alfred Beit over 40 years ago, whereby he was given full possession of the lands at an unspecified annual rent and for an unspecified period that was, nonetheless, intended to be 'long-standing'. In the first Egar affidavit, he avers that, in response to his expressed concerns about the lack of a formal agreement and, hence, of his security of tenure, Sir Alfred Beit had assured him that he could farm the lands for as long as he desired.

iii. an 11-month take or continuous occupation by Mr Egar

59. Mr Blatchford avers that, since he commenced his role as CEO of the Foundation in 2007, Mr Egar has vacated the lands on 28 February each year by removing his grazing livestock, as he was required to do under each of those agreements. Mr Egar denies that he has vacated the lands, averring that he has held over from year to year and that his livestock, particularly his bulls, rams and breeding ewes have always overwintered. The significance of this last averment is not clear, since the grazing agreements exhibited by the Foundation, which run from the beginning of March each year to the end of the following February, plainly permit overwintering. Mr Blatchford responds that he has walked the lands each year at the beginning of March and found no obvious sign of cattle or sheep on them.

60. Mr Egar avers that he has sublet the lands to a person named John Driver under a short winter grazing agreement, which includes the month of March, that has been renewed for the last four years. He exhibits a handwritten letter from Mr Driver, dated 11 March 2020, to that effect. Mr Blatchford responds that the Foundation was unaware of the assertion of any such arrangement until it received the statement of claim in the Egar proceedings, claiming damages for, amongst other things, the potential loss of income from 'winter sub-letting for sheep grazing.' The Foundation's solicitors wrote to Mr Driver on 23 March and 29 April 2020, asserting that Mr Egar had no authority to enter into any agreement with him concerning the lands and requiring him to immediately vacate them. The Foundation exhibits a letter, dated 3 May 2020, from Mr Driver, stating that he has not owned cattle since the year 2000 and that none of his sheep are now on the lands.

61. Mr Egar exhibits letters from four persons in support of his position. Peter O'Sullivan wrote on 30 May 2020 that, between 2011 and 2014, he assisted Mr Egar with lambing in the months of February and March when sheep were present in the fields to the rear and the side of Russborough House. In an undated letter, Christopher Miley wrote that he worked with Mr Egar from 2007 to 2012 and lambed sheep – mainly on the back lawn and side lawn of Russborough House – from the middle of February to the middle of April each year. In another undated letter, Michael Francis wrote that he has walked the estate daily for 23 years and that he has enjoyed assisting Mr Egar in the lambing season, with lambing in March being his favourite. Finally, John McCarville, a retired Garda detective,

wrote on 16 March 2020, that he was involved in the investigation of the robberies at Russborough House and, on one occasion, toured the estate with Lady Clementine Beit who spoke fondly and highly of her 'land tenant' David Egar and was at pains to stress that she did not wish to upset Mr Egar in any way.

62. Mr Egar avers that a memorable incident occurred in March 2019 when Mr Blatchford cut his finger while conducting an inspection of Mr Egar's separate lands with Mr Egar and Mr McDermott of Event Fuels. While crossing the lands on their way back to Russborough House, they encountered Mr Egar's Simmental stock bull, which had been over-wintered on the lands together with a lame cow. Mr Egar also exhibits Department of Agriculture stock movement forms for Mr Driver's livestock that he asserts establish that Mr Driver's sheep have been present on the lands for a period including the month of March over each of the last four years. For what it is worth, the first such form appears to me to record only that Mr Driver was to dispatch a number of sheep to Mr Egar on 6 December 2018 and the second only that he was to move sheep for the period between 19 November 2019 and 10 April 2020 to lands held by Mr Egar. Those forms do not seem to me to record that those sheep were to be moved specifically on to the lands the subject of the present application.

63. Mr Egar avers that from the mid-1970s onwards, he has had exclusive possession of the lands and use of the original farm buildings immediately adjacent to Russborough House, which he used for rearing calves and lambs over the winter months, and for storing hay and straw. Mr Egar further avers that in 2011, after negotiations with the chairman of the Foundation, Marcus Beresford, and its CEO, Mr Blatchford, he relinquished his interest in the farmyard (since redeveloped as the National Bird of Prey Centre), in consideration for being provided with an alternative stock-handling facility of his own design and construction at a location on the Estate of his own choosing, paid for by the Foundation. Mr Egar acknowledges that the Foundation, and not he, paid the contractor €18,000 in May 2012 for the construction of that facility.

64. In response to that evidence, Mr Blatchford reiterates his claim that Mr Egar has vacated the lands at the end of February each year before going on to aver as follows.

65. Each year since Mr Blatchford became CEO in 2007, Mr Egar has signed an 11-month grazing agreement that concludes at the end of February and Mr Blatchford has checked the lands at the beginning of March to confirm that the lands have been vacated and that there is no obvious sign of stock on the lands. Mr Blatchford exhibits photographs taken by Joanna Barry, a tenant who has resided on the lands for approximately four years, and one taken by him on various dates in March 2018 and 2019, showing vacant fields on the lands, together with a photograph taken by Ms Barry on 8 April 2019, which Mr Blatchford describes as the first day after the lands had been vacated that cattle returned to a field at the front of the house.

66. Mr Blatchford confirms that he recalls the encounter with Mr Egar's Simmental bull on the lands on the day that he cut his finger but does not recall the month in which that incident took place. The bull was on other Estate lands, just outside the lands licensed to

Mr Egar. The organisation of the 2019 Festival was in train from November 2018 to May 2019 and Mr Blatchford walked the lands with Mr Egar and Mr McDermott numerous times during that period.

67. In a further affidavit, Mr Egar avers as follows in reply. Throughout the winter and spring of 2018/19, he outwintered 20 large beef heifers of mixed breed and different colours that were highly visible on the lands. They were fed within the perimeter wall and fenced off and confined to the woodland for shelter. He drove his large orange Kubota tractor, hauling loads of silage, across the lands during that period. Mr Blatchford is disingenuous in exhibiting photographs of empty snow-covered fields taken in March 2018, because the heaviest snowfalls in living memory occurred during that month and Mr Egar had to move his livestock indoors in consequence.

68. Mr Blatchford accepts that, from the 1970s onwards, Mr Egar was permitted the use of some of the farm buildings that stood adjacent to Russborough House but denies that he ever had exclusive possession of any of them. Those building were demolished in 2011 to make way for the development of the National Bird of Prey Centre and coach-parking area. When the Foundation informed Mr Egar of that redevelopment, he said that he needed a cattle crush or stock handling facility. Because the Foundation wished to see the grazing of the lands continue but was anxious to have Mr Egar manage his stock away the House, it permitted him to choose a location for the facility behind woodland some distance away. The Foundation paid the cost of construction.

iv. maintenance of the lands

69. Mr Blatchford avers that, over the years, when it has been necessary to carry out repairs or maintenance on the lands, such as repairs to fencing or broken water pipes, or the removal of fallen trees, that has been done either by the Foundation or at the Foundation's expense.

v. assistance with the Festival

70. It is common case that Mr Egar facilitated the holding of the Festival in 2019 by permitting his own separate lands to be used to provide additional car-parking spaces and Festival access points, and that he put in long hours, using his own machinery, to erect fencing and gates for that purpose without seeking, or receiving, payment or reward. Mr Egar avers that he did so in a spirit of goodwill and that Mr Blatchford thanked him for his help at a public meeting after the Festival.

71. Mr Blatchford avers in reply that, while he does not dispute that Mr Egar provided the assistance he describes or that he acted in a spirit of goodwill, the Foundation waived a proposed increase in the grazing agreement licence fee (from €15,000 in 2019 to €17,500 in 2020) in recognition of that assistance.

72. Mr Egar denies the existence of any such proposed increase. Rather, he avers that the parties had agreed that there should be a rent review and that the Foundation had instructed Paul Doyle of Doyle Auctioneers, Blessington, to establish the open market value of the lands for that purpose. According to Mr Egar, Mr Doyle expressed the view that a marginally higher rent could be achieved on the open market; Doyle auctioneers

prepared an 11-month letting agreement that Mr Egar refused to sign; and Mr Egar and Mr Blatchford then agreed that Mr Egar would continue to pay €15,000.

73. In response to those claims, Mr Blatchford denies that the Foundation instructed Doyle Auctioneers to establish the open market value of the grazing licence. He exhibits emails from Mr Doyle of 15 and 16 June 2020, confirming that neither Mr Doyle nor Doyle Auctioneers provided any advice to the Foundation in 2019 in relation to the lands. He avers that the suggestion that Mr Doyle produced a draft agreement on behalf of the Foundation that Mr Egar refused to sign is untrue, while reiterating that Mr Egar did sign a written 11-month conacre/grazing agreement with the Foundation on 1 March 2019.

74. In turn, Mr Egar reiterates his claim that the firm of Doyle Auctioneers was involved in trying to impose an 11-month letting agreement on him, adding that the firm invoiced him for its services, although without exhibiting that invoice.

75. Separately, Mr Blatchford avers that Mr McDermott of Event Fuels has informed him that, on 2 February 2020, Mr Egar informed Mr McDermott that the grant by Wicklow County Council of a licence to hold the Festival was contingent on Mr Egar's consent and that Mr Egar would withhold that consent unless the Foundation 'comes to the table', a statement which both Mr Blatchford and Mr McDermott took to mean that Mr Egar was asserting an entitlement to exclusive possession of the lands. Mr Egar objects to – what he describes as – the outrageous characterisation of this a threat, rather than – as he would assert – a statement of fact.

v. security of the Estate

76. The Foundation contends that the grant of a lease, or of any equivalent interest involving exclusive occupation of the lands, would be entirely inconsistent not only with the cultural and architectural integrity of the Russborough Estate, but also with its security. It is common case that Russborough House contains the Beit Art Collection and has been the subject of several notorious robberies in the past.

77. To illustrate that concern, Mr Blatchford avers to an incident that occurred on 3 May 2020, while the Estate was closed to the public due to the Covid-19 pandemic and the remotely controlled entrance gates of the Estate were shut. A vehicle with three occupants was observed and photographed on the Coach Road that traverses the lands. Mr Egar had the security codes for the entrance gates to the Estate and had placed his own padlocks on the internal gates on the lands. The vehicle was later observed exiting the Estate through a field gate rather than either of the two public access gates. Mr Blatchford reported the incident to An Garda Síochána as a suspected trespass on 5 May. Mr Egar wrote to Mr Blatchford the following day, to advise the Foundation that one of the occupants of the vehicle was Mr Egar's stockman, Ken Patton. The Foundation has since changed the security code on the Coach Gate, which is one of the two public access gates.

78. Mr Egar responds to those averments as follows.

79. It is outrageous to allege that he is a security risk. Mr Blatchford has concocted a claim of criminal trespass against him. That claim is highly malicious. The Foundation has instructed its solicitors to write threatening and menacing correspondence to the owner of the vehicle concerned. That vehicle has been used on the lands almost daily to assist in herding and tending Mr Egar's livestock. The other two occupants of the vehicle that day were Mr Patton's father and his son. Mr Patton and his father would have been known to Mr Blatchford as he had employed them to provide night-time security during an arts and sculpture festival held on the Estate the previous year.

80. Mr Blatchford responds to those allegations in the following way.

81. The Foundation has never alleged that Mr Egar is a security risk but, rather, that the grant by Mr Egar of Estate access to unknown third parties, by giving them the codes to open the gates to the Estate and the keys to open the internal gates on the lands, creates a security risk for the Estate.

82. Mr Blatchford had never seen the vehicle on the lands until he saw the photograph taken of it on 3 May. That photograph was taken by Ms Barry. Ms Barry has confirmed to Mr Blatchford that she walks the Estate grounds every day; knows all the vehicles of staff and residents; and had never seen the van or its occupants on the lands before the day she took that photograph. She took the photograph because she thought it strange that a van should be driving up and down the coach road during lockdown and was concerned that trespassers had gained access to the Estate.

83. Mr Blatchford did not employ Mr Patton and his father to provide security during the Arts and Sculpture Festival – the organiser of that festival did. The organiser asked Mr Blatchford if he knew of anyone who might do that job and Mr Blatchford consulted Mr Egar who gave him a name and number that he passed on. Mr Blatchford took no particular notice of those details and had no personal interaction with those persons. He does not know Mr Patton, although he might perhaps recognise him if he saw him.

84. Mr Blatchford's complaint of trespass to An Garda Síochána was genuine, not malicious. The Garda investigation of that complaint was not within Mr Blatchford's control.

an injunction *ex debito justitiae?*

85. The Foundation claims an entitlement to the interlocutory injunctions it seeks *ex debito justitiae* ('as an obligation of justice' or 'as a matter of right') on the basis that it has good title to the lands and Mr Egar's status as a trespasser upon them is indisputable.

86. In *Patel v W.H. Smith (Eziot) Ltd* [1987] 1 WLR 853, the owners of a freehold property in Leicester, England, commenced proceedings against the owners of an adjoining property for an injunction restraining them from parking vehicles or placing dustbins or other property in the plaintiffs' yard. The defendants pleaded the existence of both a right of way allowing them to use the yard for loading and unloading their vehicles and a prescriptive right to park vehicles along the outside wall of the yard by virtue of a lost modern grant or 20 years' user as of right. The plaintiffs' accepted that the defendants

had been parking vehicles in that way at that location for almost forty years. However, they contended that the defendants' entitlement to load, unload and park vehicles in the yard arose solely from a licence to do so as long as they caused no nuisance, and not from any vested right or easement. The County Court refused the plaintiffs' application for an interlocutory injunction, and they appealed that decision to the England and Wales Court of Appeal, which allowed their appeal.

87. In his judgment, with which Neill and May LJJ agreed, Balcombe LJ stated (at 858):

> 'What, then, are the principles which a court should apply in a case of this type? It seems to me that, first, prima facie a landowner, whose title is not in issue, is entitled to an injunction to restrain trespass on his land whether or not the trespass harms him.'

88. And later (at 859):

> 'However, the defendant may put in evidence to seek to establish that he has a right to do what would otherwise be a trespass. Then the court must consider the principles set out in *American Cyanamid Co. v. Ethicon Ltd*. [1975] A.C. 396 in relation to the grant or refusal of an interlocutory injunction. I cite a short passage from the well-known speech of Lord Diplock in that case, at p. 407:
>
> > "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is not party of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial."
>
> In considering that passage, one must bear in mind that in this type of case it is the defendant who is making the claim, because the plaintiff has established, without objection, that he has a title to the land in question.'

89. Before concluding, in material part (at 861):

> 'If there is no arguable case, ... then questions of balance of convenience, status quo and damages being an adequate remedy do not arise.'

90. The concurring judgment of Neill LJ includes the following passage (at 862):

> 'In my judgment it is necessary to scrutinise the plaintiffs' arguments in this case with particular care because in order to succeed they have to surmount three formidable hurdles. First, they are seeking to bring to an end a state of affairs which, on the uncontradicted evidence of the defendants, has existed de factor for 40 years. Second, these are interlocutory proceedings, where the only material before the court is in the form of affidavit evidence and the documents which have

been exhibited, no oral evidence has been given. Third, the plaintiffs are seeking to reverse the decision of the judge, who refused the grant of an injunction in the exercise of the discretion vested in him.

Nevertheless, the plaintiffs start with one very substantial advantage. They are the owners of the yard.... Prima facie, therefore, they are entitled to prevent other persons entering the yard without their permission and against their will because such entry would, again prima facie, constitute a trespass. Accordingly, it is for the defendants to show that they have some right which is independent of the wishes of the plaintiffs to do that which they seek to do and have done for many years.... At this stage, of course, the defendants' task is not to prove this right on the balance of probabilities, but only to put forward some evidence of its existence which goes beyond the stage of mere assertion.'

91. The principles identified by Balcombe LJ were approved by Keane J in *Keating & Co Ltd v Jervis Shopping Centre* [1997] 1 IR 512 (at 518) and have been consistently applied in many subsequent cases in our courts. The following helpful summary of that jurisprudence is provided in Kirwan, *Injunctions Law and Practice* (3rd edn, Round Hall 2020) (at 10-496):

'[W]here no evidence is before them to show that the defendant has a right to do what would otherwise be a trespass, the courts are prepared to grant an injunction without reference to the *American Cyanamid/Campus Oil* guidelines. For example, in *Ferris v Meagher* [2013] IEHC 380 (at para. 19), Birmingham J. found that the tenant in question had not made out an arguable defence and, as such, had "no entitlement to remain in occupation and is a trespasser." In *Havbell Dac v Dias* [2018] IEHC 175 (at para. 42), and referencing Keane J.'s judgment in *Keating*, as well as the *Ferris* case and Laffoy J.'s judgment in *Kavanagh v Lynch* [2011] IEHC 348, Costello J. in the High Court held that, prima facie, the plaintiff was entitled to an injunction to restrain a trespass on an interlocutory basis unless the defendant put in evidence to establish that he had a right to do what otherwise would be a trespass. Costello J. observed that there was no such evidence before the court. That being so, she felt that it was not necessary to consider the *Campus Oil principles*. Equally, in *Beltany Property Finance Dac v Doyle* [2019] IEHC 307 (at para. 69), Allen J. was quite clear in his assertion that "[a]bsent any *bona fide* issue which would engage the *Campus Oil* principles, the plaintiff is entitled to an interlocutory injunction *ex debito justitiae.'*

92. Most recently, those principles were affirmed by the Court of Appeal in *Clare County Council v McDonagh* [2020] IECA 307 (Whelan, Noonan and Power JJ). Whelan J explained (at para. 79):

'Where, as here, [the relevant party] has a plain and clear established right of property and [the other party's] potential defence lacks substance, the court will not consider the balance of convenience and it ought to proceed to grant the

interlocutory mandatory and/or prohibitory injunctions even where the trespass complained of causes no harm.'

93. Does Mr Egar, who must otherwise be a trespasser on the lands, have a right to occupy them? Put another way, does Mr Egar have an arguable case that he has a lease over the lands or that he has an equitable entitlement to be granted such a lease?

94. Mr Egar's claim to an existing lease is most clearly identified in the statement of claim in his own proceedings. It contains the plea that he entered into an oral agreement with the late Sir Alfred Beit on an unspecified date over forty years ago whereby, in consideration of the payment of an unspecified annual rent, he was given full possession of the lands for a term of years that was not specified, save that the agreement was intended to be one of long standing.

95. That claim suffers from two fatal infirmities.

96. Under s. 4 of the Landlord and Tenant Law Amendment Act Ireland 1860 (23 & 24 Vict c 154) ('Deasy's Act'), only a lease of land from year to year or for some lesser period can be created orally. Under that section, a lease for any longer period must be evidenced in writing, either by deed or by a note in writing signed by the landlord or by an agent of the landlord authorised in writing to do so. Hence, if Sir Alfred Beit did grant Mr Egar a lifetime lease over the lands by oral agreement more than forty years ago, as a matter of law that lease is not valid. If, on the other hand, Sir Alfred had granted Mr Egar a lease (or succession of leases) from year to year or for a lesser period, any such period would have expired no later than a year after Sir Alfred's conveyance of the lands to the Foundation or a year after Sir Alfred's death, whichever occurred sooner. It follows that Mr Egar cannot now claim a valid subsisting lease over the lands by reference to the agreement he claims with Sir Alfred Beit.

97. The second difficulty with Mr Egar's claim to a subsisting lease over the lands is his failure to put forward any evidence of its existence which, in the words of Neill LJ in the *Patel* case, goes beyond the stage of mere assertion.

98. Allowing that Mr Egar had, as he claims, a close relationship, based on profound mutual respect, with Sir Alfred and Lady Clementine Beit dating back to the nineteen seventies; that he farmed the lands in tillage and livestock consistently from 1976 onwards; that he did so to the highest standards; and that Sir Alfred Beit assured him that he could farm the lands for as long as he desired to do so, those propositions are just as consistent with the grant of a series of licences as they are with that of a lease, if not more so. The evidence before me establishes that, as one might expect, when Sir Alfred Beit wished to convey a heritable interest in certain other Estate lands to Mr Egar, he had no difficulty in doing so.

99. Mr Egar accepts that he did enter into each of the last two conacre/grazing agreements exhibited on behalf of the Foundation. He has not attempted to argue that either of those agreements, properly construed, was intended in substance to create the relationship of

landlord and tenant, rather than that of licensor and licensee, between him and the Foundation. Rather, his case is that those agreements did not bind him because he signed each solely for accounting, tax, and Single Farm Payment eligibility purposes. He has made no response to the Foundation's broader claim that, for many years prior to that, he had taken the lands on similar 11-month licences. Unlike Evans v Monagher (1872) IR 6 CL 526 or *Irish Land Commission v Andrews and Dooley* [1941] IR 79, there is no issue here that a tenancy may have been disguised as a series of conacre or agistment agreements to circumvent a prohibition on subletting or otherwise parting with possession of the lands. That is not surprising, as there is no evidence whatsoever of any such prohibition affecting the fee simple interest in the lands held successively by Sir Alfred Beit and the Foundation.

100. I mention these matters solely to demonstrate that I can find nothing in the intention of the parties as evidenced by their transactions as a whole, or in the construction of any written agreement between them, that would support what is, in effect, the mere assertion by Mr Egar of the existence of a lease, rather than of successive licences.

101. Further, this is not a case that attracts the application of the principle that, if an agreement satisfies all the requirements of a tenancy, then it produces a tenancy, regardless of the intention of the parties or the terminology they employ; a principle vividly illustrated in the following way by Lord Templeman in *Street v Mountford* [1985] AC 809 (at 819):

> 'The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.'

102. Although it is not considered dispositive, the factor traditionally accorded the greatest weight in the assessment of whether a tenancy exists is the presence or absence of exclusive possession. Giving judgment in the Supreme Court in *Gatien Motor Co Ltd v Continental Oil Co of Ireland Ltd* [1979] IR 406, Kenny J explained (at 420):

> 'When determining whether a person in possession of land is to be regarded as a tenant or being in some other category, exclusive possession is undoubtedly a most important condition but is not decisive. A person may be in exclusive possession of land but not be a tenant. The existence of a relationship of landlord and tenant or some other relationship is determined by the law on a consideration of many factors and not by the label the parties put on it. Even if the documents disclose an intention to confer exclusive possession on the person in possession, it does not necessarily follow that he is a tenant. All the terms of the document and the circumstances in which it was entered into have to be considered.'

103. There is no doubt that, for many years, Mr Egar has been in possession of the lands (in the sense of being in sole occupation of them as a farmer) but possession in that sense is a feature of both licences and leases. To establish a tenancy as distinct from a licence, exclusive possession is the most important, though not necessarily decisive, factor. In

the leading work in this area, *Landlord and Tenant Law* (3rd edn, Bloomsbury Professional 2014), Professor Wylie explains the distinction in the following way (at para. 238):

> 'It is clear that person may be entitled to occupation of some form in relation to land which does not amount in law to possession, ie the legal possession of the land remains with the owner who grants the occupational rights and it is he, not the occupier, who can maintain an action for trespass or nuisance in the event of interference by a third party. Such is the traditional view of the conacre and agistment arrangements so common in Ireland. It is also clear that many "licence" arrangements have this characteristic of conferring occupation rights rather than possession. Furthermore, the occupation in question may be exclusive, in the sense that the owner of the land has agreed that sole occupation is to be given to the occupier, but this again does not necessarily amount to possession, still less to exclusive possession. Thus lodgers, hotel residents, servants and the like, whatever their contractual rights as against the landowner, do not have tenancies. What appears to be missing in cases such as these is the right of the occupier "to call the place his own" – the land occupied remains under the "control" of the grantor of the occupational rights. A tenant, on the other hand, has exclusive possession in the sense that he is in control of the demised premises and can keep the landlord out so long as the tenancy lasts.'
>
> (footnotes omitted)

104. In at least one of the affidavits that he has sworn in the present application, Mr Egar avers that Sir Alfred Beit gave him 'full possession' of the lands. In deference to Mr Egar's use of that expression as a litigant in person, it is not clear whether he intends to convey that Sir Alfred Beit gave him exclusive possession, rather than sole occupation, of the lands. If that is what Mr Egar means, I conclude that it is a mere assertion, inconsistent with the other evidence adduced on the application.

105. Each of the two exhibited agreements, signed by Mr Egar, recites that the Foundation licensed him to use all the grass on the lands *in the possession of the Foundation* for grazing cattle and pasturing sheep. It is innately implausible that either Sir Alfred Beit or the Foundation, as successive owners of the Russborough Estate, sharing the objective of the long term preservation of the Estate's parklands, would grant exclusive possession of the parklands immediately surrounding the House to another person, conferring upon that person and his successors the right to keep Sir Alfred Beit (and, later, the Foundation) out of those lands for a period that, without being defined, was intended to extend over many decades. I cannot accept that the verbal statement that Mr Egar attributes to Sir Alfred Beit – that Mr Egar could farm the lands as long as he desired – is capable of having that effect. Moreover, any such claim is belied by the fact that the Foundation placed padlocks on the gates on the lands (for health and safety reasons) without objection by Mr Egar until the present dispute arose.

106. The written statements of other persons, suggesting that Mr Egar kept cattle or sheep, or both, on the lands in the month of March each year, are undoubtedly evidence of breach

of the licence agreements. But those statements establish no more than the non-enforcement or lax enforcement by the Foundation of the strict terms of those agreements. They do not establish the acquiescence of the Foundation in that activity and, even if they did, that would not be evidence of the existence of a lease.

107. That point is well illustrated by the case of *Moore's Estate; Fitzpatrick v Behan* [1944] IR 295. Although that decision turned on the proper construction of certain words used in s. 40(1) of the Land Act, 1933, it is the Supreme Court's conclusions of fact that are of great relevance to this case.

108. The facts that were not in dispute in that case were these. By a series of agreements in writing made annually over a period of approximately 40 years prior to 1931, Mr Behan was given the use of certain lands in Kildare for grazing. Those grazing agreements varied from time to time to cover periods of between six and eleven months. Mr Behan took the lands year after year without a break. He never took his stock off the lands and the animals roamed freely over them winter and summer. He was never asked to remove his stock and his occupation of the lands was continuous. After 1931, Mr Behan continued in occupation of the lands under a series of verbal agreements to the same effect until, in 1942, he sought but was refused a declaration of the Irish Land Commission that, on those facts, the lands were his 'holding' under a 'contract of tenancy', as each of those terms was used in s. 40(1) of the Act of 1933.

109. In giving judgment in the Supreme Court, Murnaghan J (with whom Geoghegan, O'Byrne and Black JJ agreed), provided this explanation of the difference between a tenancy and a grazing contract (at 299):

> 'There has been, for a very long time, a clear distinction between two forms of agreement: - (a) where land was let by the owner to another person in such a manner that the possession of the land passed from the owner to that other person, and (b) where the owner retained possession, but granted the grazing or some other form of user of the land, to the other party. In each of these cases a contractual agreement existed between the parties; the former was a contract of tenancy, the latter merely a contract, not of tenancy, but for grazing or other purposes.'

110. In material part, Murnaghan J concluded (at 300):

> 'Now, the legislature has expressed its intention in these words, and has used words which have a definite meaning in the Land Act Code and the Court must refer to the Land Act Code for the meaning of the terms used. In that Code the expressions "holding" and "contract of tenancy" imply that the owner parts with possession of the lands to a person who becomes a tenant of the lands. On the facts of this case that has not occurred.'

111. Thus, it is clear that the neither the parties to that case nor the Supreme Court, which ultimately decided it, saw any basis to conclude that a failure to remove stock from lands

in the interval between the end of one grazing contract and the commencement of another could be used to imply a grant of exclusive possession sufficient to turn a grazing contract into a contract of tenancy.

112. Returning to the facts of the case at hand, the comment attributed to Lady Clementine Beit that Mr Egar was her 'land tenant' is of no probative value given the requirement to look to the substance of the relationship between the parties rather than the terminology that they (or other persons) have used to describe it. After all, to call a five-pronged digging implement a spade, rather than a fork, does not make it so.

113. In the statement of claim in his separate proceedings, Mr Egar claims an equitable entitlement to a prospective 35-year commercial lease over the lands. In the written legal submissions that he has filed in opposition to the present application, Mr Egar invokes, as the basis for that claim, the court's equitable jurisdiction to apply the doctrine of estoppel and, separately, the equitable maxim that equity regards as done what ought to have been done, which is illustrated by the leading case of *Walsh v Lonsdale* (1882) 21 Ch D 9 (CA).

114. For my part, I cannot see how Mr Egar can bring the facts he asserts within either the doctrine of promissory estoppel or that of proprietary estoppel. The statement that he attributes to Sir Alfred Beit – that Mr Egar could farm the lands for as long as he desired – is not the promise of a lease, since the lands could be farmed under licence as easily as under lease. Hence, it cannot amount to an unambiguous representation that a lease would be granted. In *The Barge Inn Ltd v Quinn Hospitality Ireland Operations 3 Ltd* [2013] IEHC 387, (Unreported, High Court, 15 August 2013) (at para. 68), Laffoy J identified the existence of an unambiguous representation as one of the essential ingredients of promissory estoppel, adopting the analysis of that concept set out in McDermott, *Contract Law*, (Butterworths 2001). Equally and for the same reason, the relevant statement cannot amount to clear evidence of an assurance that a lease would be granted, as a necessary component of any claim of proprietary estoppel.

115. Further, Mr Egar has advanced no claim and adduced no evidence of detriment, or alteration of his position, in reliance upon the assurance of a lease, such as would render it inequitable to permit the Foundation to resile from that assurance. In a schedule to the statement of claim in his separate proceedings, Mr Egar claims to earn a net income from the lands of €100,000 a year before tax, after payment of both the licence fee (or, in Mr Egar's words, the rent) of €15,000 and €2,000 in ancillary expenses. Mr Egar does not challenge the Foundation's assertion that it funded the construction cost of the stock handling-facility on the lands and that it has borne the cost of all necessary repairs and maintenance on the lands.

116. Hence, even if Mr Egar was given an assurance of a lease, there is no evidence that, in reliance upon it, he incurred the substantial detriment necessary to establish an estoppel. Clarke J identified substantial detriment as a necessary ingredient of proprietary estoppel in *Bracken v Byrne* [2006] 1 ILRM 91 (at 101), citing the judgment of Murphy J in *McCarron v McCarron* (Unreported, Supreme court, 13 February 1997). Here, there is

nothing to support the claim that the labour and monies that Mr Egar expended on fertilising and improving the lands went beyond what was required to farm the lands effectively under licence.

117. For these reasons, I can find no serious question to be tried on Mr Egar's asserted entitlement to a lease by operation of the doctrine of estoppel.

118. In *Walsh v Lonsdale*, there was an accomplished, detailed, written agreement to execute a lease over a woollen mill and all of its machinery for a seven-year term at a specified rent, calculated by reference to the number of looms to be run (stipulated to be no less than five hundred and forty), which lease was to include all of the same covenants and conditions as those in another identified lease. The tenant went into possession under that agreement. When the owner of the building purported to exercise a right of distraint for non-payment of rent, the tenant pleaded that, as the lease envisaged by the agreement had not been executed, his tenancy was instead one from year to year, under which there was no such right. The prior merger of the courts of common law and of equity under the Supreme Court of Judicature Act 1873 formed the backcloth to the judgment, in which the England and Wales Court of Appeal (Jessel MR, Cotton and Lindley LJJ) observed (at 15-16):

> 'Now since the Judicature Act the possession is held under the agreement. There is only one Court, and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the same terms in equity as if a lease had been granted, it being a case in which both parties admit that relief is capable of being given by specific performance.'

119. The position here is quite different. Beyond mere assertion, there is no evidence of an agreement for a lease, just as there is no evidence of a lease. The verbal statement that Mr Egar attributes to Sir Alfred Beit – that Mr Egar could farm the lands for as long as he desired – cannot be construed as an accomplished agreement for the grant of a lease. It follows that a lease cannot be deemed to have been granted in reliance upon the equitable maxim because there was no agreement or other binding obligation whereby that ought to have been done. Keane, *Equity and the Law of Trusts in Ireland* (3rd edn, Bloomsbury Professional 2017) (at para. 3.56) confirms that the maxim only applies where a person is under an enforceable obligation with which he has not complied. On the evidence before me, it is impossible to conclude that Sir Alfred Beit was under an enforceable obligation to grant Mr Egar a lease over the lands, much less that the Foundation is now under an enforceable obligation to do so.

120. For completeness and although Mr Egar advanced no such argument, I accept the Foundation's submission that Mr Egar can have no entitlement to a tenancy in the lands under the Landlord and Tenant (Amendment) Act 1980 because, in order to come within the definition of a qualifying 'tenement' under s. 5(1) of that Act, the lands would have to be covered, at least in part, by buildings to which the remaining lands must be subsidiary and ancillary; see, for example, the judgment of Hunt J in *Board of Management of St Patrick's School v Eoghan Ó Neachtain Ltd* [2018] IEHC 128, (Unreported, High Court, 5

March 2018) (at para. 28). In this case, there is no evidence of any buildings on the lands, and the lands are in any event very obviously subsidiary and ancillary to Russborough House.

121. I conclude that Mr Egar has failed to show that he has any right to occupy the lands independent of the wishes of the Foundation, beyond the mere assertion that he holds a lease over the lands or has an equitable entitlement to be granted such a lease. Differently put, Mr Egar has failed to establish that there is a serious issue to be tried on whether he has an existing lease over the lands or an equitable entitlement to be granted one. As the Foundation's title over the lands is not in issue, the *Campus Oil* principles are not engaged, and the Foundation is entitled as a matter of right to an injunction to restrain Mr Egar from trespassing on the lands.

The *Merck* Principles

122. Lest I am incorrect in that conclusion, adopting the approach of both Birmingham J in *Ferris v Meagher* [2013] IEHC 380, (Unreported, High Court, 31 July 2013) and Costello J in *Havbell Dac v Dias* [2018] IEHC 175, (Unreported, High Court, 20 March 2018), I propose to consider whether the Foundation would be entitled to the relief it seeks under the *Campus Oil* principles, following the steps suggested by the Supreme Court in *Merck*.

123. First, it seems to me that, if the Foundation succeeds at trial, an order is granting it the permanent injunctions it seeks is likely to be granted.

124. Second, I am satisfied that the Foundation has put forward a strong case, likely to succeed at the trial of the action, that Mr Egar never had more than a licence to farm the lands under various tillage and grazing contracts, the last of which has now expired, and, correlatively, that Mr Egar does not hold a leasehold interest in the lands and has no entitlement to any such interest, in equity or otherwise. I have no reason to believe that the action will not go to trial as, even with the benefit of interlocutory injunctions restraining trespass; slander of its title to the lands; and wrongful interference with its contractual relations with third parties, the Foundation will still have an obvious and pressing interest in conclusively establishing its entitlement to quiet possession of the lands.

125. Taking the third and fourth steps together, I must next consider the balance of convenience or balance of justice, acknowledging that, in most cases, the most important element in that balance is the question of the adequacy of damages. In embarking on that consideration, I am required to be robustly sceptical of any claim that damages are not an adequate remedy (the fifth step), while acknowledging the potential significance of any difficulty in calculating or assessing damages that would prevent them from being a precise or perfect one (the sixth step).

126. If injunctions are refused but the Foundation succeeds at trial, would an award of damages be an adequate remedy for the loss or damage caused to it during the intervening period? Similarly, if injunctions are granted against Mr Egar but the Foundation later fails at trial, would the payment of damages – on foot of the undertaking

to do so that the Foundation has provided – be an adequate remedy for the effects on Mr Egar of injunctions wrongly imposed upon him?

127. The Foundation submits that, should Mr Egar remain in occupation of the lands and continue representing to others that he is entitled to exclusive possession of them, the Foundation will suffer damage not only to its right of occupation and control of the lands but also to its reputation and income. In turn, that will affect its capacity to carry out its principal charitable objective, the preservation and enhancement of the Russborough Estate and the Beit art collection. The Foundation submits that damages would not be an adequate remedy for that loss.

128. I see great force in that submission for three reasons. First, the loss and damage apprehended is not simply financial. The Foundation's occupation and control of the lands and its fundraising activities upon them are directed towards its charitable objectives and, thus, the public benefit. Second, an award of damages to the Foundation is unlikely to be a precise and perfect remedy for the impairment of those objectives and that benefit, should the Foundation later succeed at trial. And third, even if it did not entitle the Foundation to an interlocutory injunction as a matter of right (although I have held that it does), the continuing interference with its undisputed property rights could not readily be compensated in damages. As Clarke J explained in *Allied Irish Banks plc v Diamond* [2012] 3 IR 549 (at 589-590):

> 'The courts have always been anxious to guard property rights in the context of interlocutory injunctions; see for example *Metro International SA v Independent News & Media plc* [2005] IEHC 309, [2006] 1 I.L.R.M. 414. ... The mere fact that it may, therefore, be possible to put a value on property rights does not, of itself, mean that damages are necessarily an adequate remedy for the party concerned is entitled to its property rights instead of their value.'

129. Mr Egar submits that, should he not be permitted to remain in occupation of the lands, it will result in 'the cessation and finality of [his] entire working life', for which damages would not be an adequate remedy. However, that is also a bare assertion, unsupported by evidence. On behalf of the Foundation, Mr Blatchford avers that it is unclear whether and to what extent Mr Egar truly requires the lands for his farming activities or may be able to reorganise those activities by limiting them to the Egar, Stacey and Walsh lands or by licensing other grazing lands. Certainly, in the absence of some evidence that goes beyond the stage of mere assertion, it is hard to give weight to that that submission. Further, the grant of the interlocutory injunctions sought should not cause Mr Egar any irremediable damage, since there is no suggestion that the Foundation proposes to take any irrevocable step, such as the sale of the lands.

130. The lands are not a family farm in the familiar sense of having a family farmhouse (or any dwelling house) upon them. Nor are they lands that have historically been in the possession or occupation of Mr Egar's family. Mr Egar's claim to be entitled to remain in occupation of them is based on the mere assertion that he holds an existing leasehold interest in them or, in the alternative, that he is entitled to be granted a 35-year

commercial lease over them. The mere assertion of a particular property right, unsupported by any evidence, is not sufficient to engage the presumption against the adequacy of damages to compensate for the loss of a property right. Further, Mr Egar's claim to a 35-year commercial lease over the lands serves to confirm that, from his perspective, this is a commercial case in which he alleges the breach of either a lease agreement or an agreement to execute a lease. Indeed, Mr Egar has quantified the value of that claim at €100,000 for each year he is out of occupation of the lands. I am, thus, constrained to be robustly sceptical of his claim that damages would not be an adequate remedy for him should interlocutory injunctions be granted but the Foundation's claim fail at trial.

131. The Foundation calls into question Mr Egar's ability to pay damages should injunctions be refused but its claim against him later succeed at trial. In response, Mr Egar has exhibited an independent valuation of his livestock inventory (comprising 113 head of cattle) in the sum of €103,950 that is dated 18 November 2020, although he is silent about his assets and liabilities more generally, and about his income and expenditure. While I am not persuaded on that evidence that, should the Foundation be refused the injunctions it seeks but later succeed in its claims at trial, Mr Egar would necessarily be able to pay the appropriate compensation in damages and costs, I do not attach very much weight to that factor in striking the balance of convenience here. The point would only take on significance if I could be satisfied that damages are an adequate remedy for the Foundation, leaving Mr Egar's asserted inability to pay those damages as the only remaining plank on which the Foundation's argument for interlocutory injunctions might then rest.

132. Conversely, Mr Egar calls into question the Foundation's ability to pay damages, should injunctions be granted but the action fail at trial. To meet that submission, Mr Blatchford has exhibited the Foundation's most recent financial statements, which are those for the year to 31 December 2019. It is clear from those statements – and, in particular, the Foundation's balance sheet, which discloses a balance of assets over liabilities in excess of €13 million, including investments valued at in excess of €8 million – that the Foundation has the ability to pay any reasonable award of damages in respect of injunctions wrongly granted to it pending trial.

133. I do not think any broader question of the balance of convenience is significant here. I am conscious of the oft-quoted dictum of McCracken J in *B & S Ltd v Irish Auto Trader Ltd* [1995] 2 IR 142 (at 145) that it is normally a counsel of prudence, though not a fixed rule, that if all other matters are equally balanced, the court should preserve the status quo. However, the identification of the status quo to be preserved here is not necessarily as straightforward as it might seem. Mr Egar would no doubt argue that it is his occupation of the lands and that he should, therefore, remain in occupation of them pending trial. But the Foundation can argue with at least equal force that the status quo is the existence of its undisputed title to the lands and of Mr Egar's inability to produce any evidence beyond mere assertion that he holds, or is entitled to hold, any interest in them, rendering him a trespasser. The argument that a likely trespass should be allowed

to continue on the basis that it represents the status quo is not an attractive one and, even if accepted, would almost certainly lead to the disapplication of what is not, in any event, a fixed rule. I do not have to decide the point on the present application because, having already concluded that damages would not be an adequate remedy for the Foundation if injunctions were wrongly refused but would be for Mr Egar if they were wrongly granted, I am not satisfied that all other matters are equally balanced.

134. I conclude, therefore, that the balance of convenience, or least risk of injustice, lies in favour of the grant of the interlocutory injunctions that the Foundation seeks.

135. It should not be necessary to reiterate that, in dealing with the present interlocutory application, I am not purporting to finally decide any of the legal or factual issues in controversy between the parties in the action. As Hardiman J observed in *Dunne v Dun Laoghaire-Rathdown County Council* [2003] 1 IR 567 (at 581), on a full hearing the evidence may be different and more ample and the law will be debated at greater length.

Conclusion

136. I conclude as follows.

(a) As the Foundation's title over the lands is not in issue, and as Mr Egar has failed to provide evidence of a lease, or his entitlement to a lease, that goes beyond the stage of mere assertion, the *Campus Oil* principles are not engaged, and the Foundation is entitled as a matter of right to the injunctions that it seeks.

(b) If I am wrong about that and the *Campus Oil* principles are engaged, the Foundation has shown a strong case that it is likely to succeed at the trial of the action.

(c) If injunctions are refused but the Foundation succeeds at trial, an award of damages would not be an adequate remedy for the loss or damage caused to it during the intervening period because: (1) damages would not address the impairment of the Foundation's charitable objectives and, hence, of the public interest, rather than solely the infliction upon it of a financial loss; (2) damages would not adequately address the prior interference with the Foundation's undisputed property rights in the Estate; and (3) damages could not be a precise or perfect remedy for those wrongs.

(d) If injunctions are granted against Mr Egar but the Foundation later fails at trial, the payment of damages – on foot of the undertaking to do so that the Foundation has provided - would be an adequate remedy for the loss or damage caused to Mr Egar during the intervening period because his countervailing claim is a commercial one for the breach of either a lease agreement or an agreement to execute a lease, the value of which he has specifically quantified at €100,000 for each year he is out of occupation of the lands.

(e) Hence, the overall balance of justice – or least risk of injustice – favours the grant of the injunctions sought.

137. I will therefore grant the Foundation interlocutory injunctions restraining Mr Egar from:

(i) any trespass on the Foundation's lands more particularly described in the schedule to the plenary summons in these proceedings and outlined in red in the map annexed to it;

(ii) any slander of the Foundation's title to those lands;

(iii) any interference with the Foundation's contractual relations with any other person or persons concerning the use of the lands; and

(iv) any act or omission calculated or likely to interfere with the holding of the Festival or any other activity on the lands, pending the trial of the present action.

138. At various points in the affidavits that he has sworn in opposition to the present application, Mr Egar avers that he wishes to apply for various reliefs including: (a) a declaration that he is not a trespasser on the lands; (b) a declaration that the lands meet the land availability rules for the purpose of Mr Egar's entitlement the Single Farm Payment under the Common Agricultural Policy; (c) a direction that Mr Egar's authorised workmen be allowed to continue to assist him in farming the lands; and (d) an order restraining the Foundation from making defamatory statements about him or breaching his right to privacy. In so far as the issues involved have not been implicitly addressed and determined in the context of the present judgment, any such application must be properly brought in accordance with the applicable rule of court.

Final matters

139. On 24 March 2020, the Chief Justice and Presidents of each court jurisdiction issued a joint statement recording their agreement that, in light of the COVID-19 pandemic and the need to minimise the exposure of persons using the courts to unnecessary risk, the default position until further notice is that written judgments are to be delivered electronically and posted as soon as possible on the Courts Service website. The statement continues:

> '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.'

140. Thus, I direct the parties to correspond with each other to strive for agreement on any issue arising from this judgment, including the issue of costs. In the event of any

disagreement, short written submissions should be electronically delivered to the registrar within 14 days, to enable the court to adjudicate upon it.