THE HIGH COURT

[2023] IEHC 583

2013 No. 6784P

BETWEEN

JIM CAHILL

PLAINTIFF

AND

KARL SEEPERSAD, DESMOND SEEPERSAD and TARA SEEPERSAD

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 25 October 2023

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Introduction

1. On 12 July 2008 Brigid Seepersad died tragically in a road traffic accident shortly after her arrival in the USA. She left surviving her, and living together in her family home, her three children (who are the defendants in these proceedings) and her second husband (the plaintiff), who is the stepfather to those children. Unbeknownst to any of them, a mere two days before her death, Brigid had secured a decree of divorce from the plaintiff in the Circuit Court on 10 July 2008 immediately prior to her departure for the USA. This judgment deals with the declining relationship between the parties to these proceedings in the aftermath of Brigid's death and, in particular, the difficulties which arose regarding the nursing home business which was owned by Brigid, and which had been operated by her with the plaintiff up to the time of her death.

2. The trial ran for seven days before the High Court between 6 and 15 December 2022. Thereafter the hearing was adjourned to enable further engagement to take place between the respective experts and to obtain an agreed property valuation for the nursing home premises (the "**Property**"). Those matters took some time. I heard submissions from counsel on the evidence on 13 June 2023 and I now deliver my judgment on the issues arising.

3. Before outlining the evidence and the issues in dispute, it is useful at the outset to highlight a number of matters relevant to this case.

4. It is fair to say that this is a difficult case on many levels. It raises some novel points of law in relation to partnerships and in particular how an Irish court can resolve a partnership dispute where the partners simply cannot work together, where both want to acquire control of the partnership asset and where the usual course of

appointing a receiver is likely to result in significant practical difficulties and in little or no return for any of the parties, given the costs involved. These practical difficulties are further compounded by the nature of the partnership asset in this case, which is an operating nursing home. This nursing home is home to twenty-five residents. It is also a place of employment for the thirty people who work there. It is regulated by law and is subject to stringent compliance obligations and monitoring by the Health Information and Quality Authority ("**HIQA**"). Operation of the nursing home is subject to its meeting the governance and other compliance standards required by HIQA. This dispute is a matter of some concern to HIQA and the ultimate outcome needs to address any ongoing governance concerns to ensure that the nursing home remains operational and viable as a going concern if that is possible.

5. It is difficult to overstate how polarised the parties are from each other. This dispute relates to matters dating back as long as fifteen years and to proceedings issued ten years ago. The evidence was at times emotional, distressing, and difficult for the witnesses. In the interests of protecting the privacy of witnesses as much as is possible while still recording the essential evidence, I have not included in this judgment details of many personal matters that were tendered in evidence or included in detailed witness statements.

6. Both sides engaged expert witnesses to assist the court in relation to financial calculations. From the outset, the plaintiff objected in strenuous terms to the independence of the defendants' financial expert and to the admissibility of his evidence. For reasons which I set out later in this judgment I believe those concerns were justified and I have dealt with his evidence accordingly.

7. It is accepted by all parties that since September 2009 the Property and the nursing home business has been owned by way of a partnership between them, although there was never a formal partnership agreement executed.

8. This is a case where there was wholly unequal access by the partners to documentation and information concerning the business of the partnership. The partnership business has been operated by the plaintiff who controls all accounts and information relating to it. Part of the issues faced by the experts and the court was gaining visibility over and access to that information. The financial experts did however ultimately prepare a joint expert report which has been of considerable assistance to this court, notwithstanding the difficulties regarding the independence of one expert.

9. This is also a case in which there are multiple headings of loss claimed and the quantum is not confined merely to an allocation of the profits of the partnership. This court also needs to address liabilities arising under various settlement agreements previously entered into between the parties. These settlement agreements are in effect the partnership agreement – there is no other formal partnership agreement in place.

10. There are three separate elements which need to be addressed in this case namely (1) how to calculate the entitlements of each partner by reference to their drawings to date and the partnership arrangements set out in the settlement agreements; (2) how to deal with the defendants' claims for damages against the plaintiff for breach of the partnership arrangements and (3) how to deal with the partnership assets (which essentially comprises the Property and the nursing home business operated in it) and the entitlements of each of the partners in the context of dissolution of the partnership.

11. Shortly before the trial commenced, an open offer was made by the plaintiff to the defendants in the total sum of €900,000 on the basis that the plaintiff would purchase the defendants' interest in the nursing home for the sum of €777,000 of which €40,000 would be paid directly to previous solicitors instructed by the defendants who had registered a judgment mortgage over the Property (and the defendants' family home) in respect of unpaid legal fees. The payment of €777,000 would be paid in instalments with €437,000 and the €40,000 due on the judgment mortgage to be paid immediately with the balance of €300,000 to be paid over a period of three years by quarterly instalments of €25,000. €100,000 plus VAT would be paid as a contribution to the defendants' legal costs. The plaintiff offered to provide an indemnity for any revenue liabilities arising for the partnership. There were other non-financial requirements to be undertaken by the defendants in relation to withdrawing professional complaints etc. The defendants rejected that offer and did not propose any open counteroffer. Counsel for the plaintiff brought this open offer to the court's attention at the start of the trial.

The parties and an overview of the background to this dispute

12. The plaintiff is a businessman who married Brigid Seepersad on 28 April 2002.[1] Brigid was a nurse who, with her first husband Hardeo Seepersad, had experience of operating nursing home facilities in the UK. In 2005, the Property was purchased in the sole name of Brigid Seepersad. The purchase was funded by a financial contribution by Brigid and by borrowings in Brigid's sole name. Brigid was registered as the owner of the Property on 7 August 2007.

[1] This is the date specified in the divorce proceedings. However later affidavits by the plaintiff in those proceedings put this date at 1 May 2002

13. Brigid Seepersad and the plaintiff improved the Property, and they ran it as a nursing home together. The couple resided in a family home owned by Brigid which was located close to the Property, with Brigid's three children from her marriage to Hardeo Seepersad.

14. Brigid's three children are the defendants. At the time of Brigid's death, Tara was a 19 year old student; Karl was 17 years old and a student in secondary school and Desmond was 15 years old and a secondary school student. Desmond turned 16 shortly after his mother's death and started 6th year in secondary school the following September (2008).

15. It appears that unhappy differences arose between Brigid Seepersad and the plaintiff. Brigid commenced family law proceedings on 25 October 2007 seeking a decree of divorce against the plaintiff. Ultimately, she obtained a decree of divorce in the Circuit Court on 10 July 2008. The decree was made without any appearance in court by the plaintiff. His evidence is that the decree was granted without his knowledge. Later that day Brigid flew to America to visit relatives and she was tragically killed in a road traffic accident shortly following her arrival there.

16. Brigid Seepersad died intestate. Her estate comprised the family home and its contents, 2 cars (on which there was finance outstanding), cash of approximately stg. £176,000[2] and the Property. There was a mortgage over the family home. There were also significant borrowings against the Property, but these were covered by a life insurance policy. Following a claim on that life policy the borrowings on the Property were discharged by insurers on 5 March 2009 when a claim was paid out in the sum of €1,019,188.

[2] This figure with deduction of foreign debts amounted to Stg£96,000 (€110,000)

17. Following Brigid's death, the plaintiff immediately challenged the decree of divorce including on grounds that he did not have notice of the proceedings and that the parties had not lived apart for the requisite period of time to obtain a divorce. Were the plaintiff to have been successful in setting aside the decree of divorce he would, as a consequence, have been entitled to his legal right share to the estate of Brigid Seepersad as her spouse - that entitlement being to two thirds of her estate.

18. Ultimately the parties settled the plaintiff's challenge to the decree of divorce. While I will deal with these settlement agreements in some detail later in this judgment (and I collectively describe them as **"the Settlement"**), in summary, the first settlement agreement was entered into in September 2009 (the "**2009 Settlement**"). At that time Desmond Seepersad was still a minor and was therefore unable to legally conclude a settlement. The 2009 Settlement was essentially re-executed on the same terms in September 2010 (the "**2010 Settlement**") shortly after Desmond turned 18.

19. The Property was registered in the names of the plaintiff and the three defendants on 25 November 2010 in the proportions of 60% for the plaintiff with the balance of 40% between the defendants equally. Karl and Tara Seepersad had been appointed administrators of their mother's estate on 8 February 2010. They agreed to the assent of the Property into the names of the parties in their capacity as administrators of their mother's estate on 2 June 2010.

20. The evidence is that relations between the parties continued to deteriorate after the 2010 Settlement and a further variation of the settlement terms was agreed in May 2012 (the "**2012 Settlement**"). The context and extent of those changes to the Settlement is important to many of the issues in this case. In June 2012 the decree of

divorce was set aside by the High Court. Part of the terms of the Settlement was that the defendants would not object to this.

21. In November 2012 (some 5 months after the divorce was set aside), the plaintiff declared that he did not wish to continue to work in partnership with the defendants and that he wished to dissolve the partnership and was willing to purchase the defendants' interest in the Property and the nursing home business.

22. On 7 December 2012 the plaintiff terminated all payments to the defendants due to them on foot of the Settlement and that position remains up to the present date.

23. The plaintiff made an offer to the defendants on 10 January 2013 of €255,000 for their interest in the partnership. No agreement was secured, and the plaintiff issued the present proceedings on 3 July 2013. The summons sought an order for dissolution of the partnership pursuant to section 35 of the Partnership Act 1890 (the "**1890 Act**") and, if necessary, the appointment of a receiver. However, that is not now the relief sought by the plaintiff. The defendants confirmed in their defence issued in 2015 that they would consent to the appointment of a receiver to wind up the partnership and to sell the Property.

24. The parties were agreed at the hearing that the partnership between them cannot continue and should be dissolved. All agreed that the relationship between them has long since irretrievably broken down. They accept that there is a subsisting partnership between them. Any averments otherwise in the pleadings were not pursued.

25. As the entitlements of the respective parties flow from the Settlement (as well as general entitlements of partners under the 1890 Act), I propose now to consider the terms of the Settlement in some detail.

The Settlement

26. On 21 September 2009, the parties entered into the 2009 Settlement in the following terms (note the last 2 clauses appear to be repeated and I have not included personal details unless necessary):

"1. For the purposes of this agreement the "Applicant" refers to the children of the late Brigid Seepersad namely Tara Seepersad, Karl Seepersad and Desmond Seepersad. The Respondent refers to John James Cahill.

2. The Respondent will receive a payment of 60% share of the business known as [….] heretofore to be referred to as the 'Nursing Home'. The Applicant shall receive a 40% share of the said Nursing Home. Over the subsequent three years, this figure will reduce by 2% in the first year, 2% in the second year and 1% in the third year resulting in a 55% share to the Respondent and a 45% share to the Applicant.

3. If any of the children should sell their shares to another of their siblings they are entitled two years after that date, to buy those shares back for the price they paid for them. The children shall have first option to purchase their siblings share and should they not wish to purchase a further share, then the Respondent shall have the option to purchase same.

4. The Mortgage upon the property at […] in the County of […] heretofore to be referred to as the 'Family Home' will continue to be discharged by the Nursing Home.

5. The Family Home will be transferred into the names of Tara, Karl and Desmond Seepersad.

6. The monies which currently lie in the UK accounts and the Ulster Bank Account […] will be divided equally between Tara, Karl and Desmond Seepersad.

7. The profits in the first three years from the operation of the Nursing Home shall be divided 50/50 between the Applicant and Respondent. From the fourth year onwards profits shall be divided with 55% to the Respondent and 45% to the Applicant. For the avoidance of doubt the drawings and school fees are included in the Applicants profits and from (sic) part of same.

8. The Respondent will receive a payment of €150,000 in recognition of his contribution to the Nursing Home. The Respondent will be paid this money over a period of five years by way of monthly instalments of €2,500 payable from the Nursing Home account.

9. The Respondent will bear his own costs in connection with his application to have the Decree of Divorce set aside or appealed. In respect of same the Respondent agrees not to make any subsequent claim against the estate of the Applicant irrespective of the outcome of the said application. This agreement is in settlement of any claim the Respondent may have against the estate of the Applicant. The Applicant will not oppose the Respondent's said application.

10. In the event that the Nursing Home is put up for sale by the Applicants estate it is agreed that the Respondent will be given a Right of First Refusal.

11. The parties shall endeavour to keep this agreement confidential for the benefit of the Nursing Home and its contractors.

12. The Respondent shall receive a salary of €5,000 per month for his ongoing work in the Nursing Home.

13. Tara Seepersad shall receive a salary of €12,000 per annum for her ongoing work in the Nursing Home.

14. A sum of €72,000 shall be drawn down from the earnings of the Nursing Home. The figure shall be used to discharge the Applicant's domestic bills

including that of the VHI and mortgage repayments.

14. The Nursing Home will be responsible for the discharge of school and college fees for a period of five years up to a maximum of €25,000.

16. The Nursing Home shall be responsible for the payment of the running and maintenance of all vehicles used by the Applicant and Respondent.

17. The Nursing Home will discharge the legal costs incurred by O'Connor & Bergin Solicitors and D.R. Pigot & Co. Solicitors arising out of negotiations concluding these settlement terms.

18. The Respondent will bear his own costs in connection with his application to have the Decree of Divorce set aside or appealed. In respect of same, the Respondent agrees not to make any subsequent claim against the Estate of the Applicant irrespective of the outcome of the said application. This agreement is in settlement of any claim the Respondent may have against the estate of the Applicant. The Applicant will not oppose the Respondent's said application.

19. The parties shall endeavour to keep this agreement confidential for the benefit of the Nursing Home and its contractors."

27. On 9 August 2010 the 2009 Settlement (less one of the duplicated clauses) was re-executed by the defendants. This was because one of the defendants, Desmond, had turned 18 in the interim period.

28. On 11 May 2012, the 2010 Settlement was amended as set out below (with changes being shown by way of strike out if deleted and by underlining if added). This resulted in the 2012 Settlement which is in the following terms:

"*Further to the Settlement Terms signed between the parties on the 9th of August 2010, the parties agree the following supplemental terms in addition or in clarification of the 2010 Settlement:*

A) *The 2010 Settlement shall stand in full save where specifically amended hereunder;*

B) *This settlement shall follow the same numbering as the 2010 Settlement*;

1. For the purposes of this agreement the "Applicants" refers to the children of the late Brigid Seepersad namely Tara Seepersad, Karl Seepersad and Desmond Seepersad. The Respondent refers to John James Cahill.

2. The Respondent will receive a payment of 60% share of the business known as [..] heretofore to be referred to as the 'Nursing Home'. The Applicant shall receive a 40% share of the said Nursing Home. Over the subsequent three years, this figure will reduce by 2% in the first year, 2% in the second year and 1% in the third year resulting in a 55% share to the Respondent and a 45% share to the Applicant. It is agreed that the Respondent shall retain his 60% interest until 8th of August 2015 in light of the amended provisions of paragraph 14 hereunder.

3. ~~If any of the children should sell their shares to another of their siblings they are entitled two years after that date, to buy those shares back for the price they paid for them.~~ The ~~children~~ Applicants shall have first option to purchase their siblings share and should they not wish to purchase a further share, then the Respondent shall have the option to purchase same.

4. The Mortgage upon the property at […] in the County of […] heretofore to be referred to as the 'Family Home' will continue to be discharged by the Nursing Home.

5. The Family Home will be transferred into the names of Tara, Karl and Desmond Seepersad. The Respondent renounces any entitlements, legal or beneficial, he may have to the Family Home and transfers any interest he may have in equal shares to the Applicants and each of them.

6. The monies which currently lie in the UK accounts and the Ulster Bank Account […] will be divided equally between Tara, Karl and Desmond Seepersad.

7. The profits in the first three years from the operation of the Nursing Home shall be divided 50/50 between the Applicant and Respondent. From the fourth year onwards profits shall be divided with 55% to the Respondent and 45% to the Applicant. For the avoidance of doubt the drawings and school fees are included in the Applicants share and form part of same.

8. The Respondent will receive a payment of €150,000 in recognition of his contribution to the Nursing Home. The Respondent will be paid this money over a period of five years by way of monthly instalments of €2,500 payable from the Nursing Home account.

9. The Respondent will bear his own costs in connection with his application to have the Decree of Divorce set aside or appealed. In respect of same the Respondent agrees not to make any subsequent claim against the estate of the Applicant irrespective of the outcome of the said application. This agreement is in settlement of any claim the Respondent may have against the estate of the Applicant. The Applicant will not oppose the Respondent's said application.

10. In the event that the Nursing Home is put up for sale by estate of the Applicant's mother ~~the Applicants estate~~ it is agreed that the Respondent will be given a Right of First Refusal.

11. The parties shall endeavour to keep this agreement confidential for the benefit of the Nursing Home and its contractors.

12. The Respondent shall receive a salary of €5,000 per month for his ongoing work in the Nursing Home.

13. Tara Seepersad shall receive a salary of €12,000 per annum for her ongoing

work in the Nursing Home.

14. A sum of €72,000 shall be drawn down from the earnings of the Nursing Home. The figure shall be used to discharge the Applicant's domestic bills including that of the VHI and mortgage repayments. The payment of the said €72,000 p.a. as set out in paragraph 14 shall be paid for a period of 5 years from the 10th of August 2010. Thereafter the profit shall be divided as per paragraph 7 – 45%/55%.

14. The Nursing Home will be responsible for the discharge of school and college fees for a period of five years up to a maximum of €25,000. It is acknowledged that Tara has 2 years of a Masters to complete and Desmond has 3 years (in addition to work experience) to complete his degree. Karl shall be entitled to the benefit of the balance of the €25,000 fund toward educational costs commencing autumn 2012 for 5 academic years.

16. The Nursing Home shall be responsible for the payment of the running and maintenance of all vehicles used by the Applicant and Respondent.

17. The Nursing Home will discharge the legal costs incurred by O'Connor & Bergin Solicitors and D.R. Pigot & Co. Solicitors arising out of negotiations concluding these settlement terms.

18. The parties shall endeavour to keep this agreement confidential for the benefit of the Nursing Home and its contractors.

19. If the Applicants share of the profits are insufficient to meet the payment of the mortgage on the family home after the 15th of August 2015, the Respondent agrees that the Nursing Home shall meet any shortfall; the Applicants agree same shall be a loan to them repayable from their future profits thereafter.

~~*Dated this 9th day of August 2010*~~

Dated this 11th day of May 2012".

29. There was a considerable amount of evidence given regarding the circumstances in which the Settlement came to be put in place and the circumstances in which the amendments were agreed in the 2012 Settlement. These matters are central to the issues this court must decide. I will accordingly deal with the evidence of the parties on this aspect in some detail. In summary, it is the defendants' position that the 2009 Settlement was driven by the plaintiff, but this is disputed by him. The amendments reflected in the 2012 Settlement were sought by the defendants they say to guarantee the stated payments to them in circumstances where the previously agreed payments were not being honoured by the plaintiff in a timely manner or at all. The plaintiff disputes this.

30. The defendants say that the payment guarantees in the 2012 Settlement were given by the plaintiff outside court on 11 May 2012 but that the Settlement was effectively binned by the plaintiff a mere six months later, on 7 December 2012, when the plaintiff unilaterally terminated all payments due to the defendants, causing enormous and lasting hardship and loss to them. It is argued by the defendants that given their young age and the fact that the plaintiff owed them a fiduciary duty (both as a partner and as their stepfather), his actions were all the more egregious. I will consider the evidence on this and also the plaintiff's contention that he was justified in ceasing payments at that time and since then.

The factual evidence adduced on behalf of the plaintiff.

31. Three witnesses were called to give evidence by the plaintiff – namely, the plaintiff, his financial expert Mr Declan Walsh FCA and Mr David Pigot (who had previously advised the defendants in relation to the Settlement). Another witness statement was tendered prior to trial on behalf of the plaintiff but as this witness did not give

evidence and her evidence was disputed by the defendants, I have not considered this evidence as it is not properly before the court. I propose to firstly consider the factual evidence adduced on behalf of the parties. I will then separately consider the expert evidence.

The plaintiff's own evidence

32. The plaintiff in his witness statement describes himself as the Chief Executive of the nursing home and details his corporate experience and professional qualification as a member of the Institute of Chartered Secretaries & Administrators. He confirmed in his evidence that he had considerable experience in business, having been involved with several large corporates where he worked on negotiating business plans, restructuring projects and mergers. He said that he brought a merger together and created what is now known as Lakeland Dairies. He confirmed "*I was instrumental in that and I was the chief executive of Lough Egish Dairy*" [3].

33. He confirmed that he married Brigid Seepersad "*in 2001*"[4], having divorced his first wife (whom he has now remarried[5]). He has two children from his first marriage. He and Brigid arrived back to Ireland from the UK and purchased the Property (then also operating as a nursing home) in 2005 for €1,025,000. The plaintiff said he arranged finance "*for over €750,000*" with his corporate banking contacts and "*from people I knew*" and Brigid contributed €180,000 from a property she had owned in the UK. The plaintiff did not himself put any money into the venture.[6] The Property was registered solely in Brigid's name[7].

[3] P104, lines 4-6, Transcript Day 1 – 14.48
[4] In fact, the date of this marriage was in 2002 according to court proceedings.
[5] P105, line 7, Transcript Day 1 – 14.50
[6] P108, line 27, Transcript Day 1 – 14.47
[7] Plaintiff says this was to keep down tensions with Haredo Seepersad.

34. The plaintiff outlined a difficult initial period with the nursing home regarding registration issues - that he said he resolved. He said that Brigid was not permitted to be the director of nursing, so a new director of nursing had to be employed. This led to early additional unanticipated costs. He said they had to upgrade the nursing home to meet compliance standards and that he negotiated substantial borrowings to cover the renovations and the need for cash flow. Those borrowings required a life cover policy.

35. The plaintiff confirmed he was living in the family home with Brigid and her three children up to the time of her death. He said he "*was not aware*"[8] that in July 2008 a divorce was granted to Brigid Seepersad in the Circuit Court. He said he became aware of the divorce after Brigid's death. He then got in contact with a legal friend of his and "*proceeded to lodge*" a reversal of the divorce. Ultimately that application was granted by Judge Abbott in the High Court (in June 2012). The plaintiff acknowledged that the divorce was set aside by agreement with the defendants.[9]

36. He said that he left the family home in "*February 2009*"[10]. He acknowledged that the 2009 Settlement "*had been started to be prepared in, back in December time, as part of the solution to the late Brigid Seepersad dying intestate*"[11] The plaintiff said he was never interested in any part of Brigid's estate other than the nursing home[12]. He confirmed that the purpose of setting aside the divorce was to permit him to claim a share of Brigid's estate. He said he continued to run the nursing home as a going concern after Brigid's death and that he increased staff levels and carried out

[8] P114, line 27, Transcript Day 1 -15.08
[9] P117, line 1, Transcript Day 1 – 15.13
[10] P115, line 29, Transcript Day 1 – 15.11 later confirmed to be 9 February 2009 (p120)
[11] P116, lines 5-7, Transcript Day 1 – 15.11
[12] P117, lines 7-9, Transcript Day 1:" I was only interested in the nursing home and the running of the nursing home, and my share and participation in it".

the extension works required by HIQA. He also did all the administration. He said, "*I was a one-man show and I rarely saw a day ending in twenty hours*".[13]

37. The plaintiff acknowledged that the defendants worked in the nursing home during summer holidays and would "*help out with a bit of maintenance and things like that"*[14]. He said Tara continued to visit the nursing home for about six months but gradually stopped coming altogether.

38. The plaintiff denied that he essentially created the 2009 Settlement[15]. He conceded however that he often met Tara at a petrol station where they would have discussed the proposed terms of settlement. He said it was "*all handled through the solicitors*"[16] He gave evidence that it was in fact the High Court who had noticed that Desmond had signed the 2009 Settlement when he was still a minor and that this would have to be dealt with. The 2009 Settlement was then re-executed in August 2010. At that time the plaintiff said the nursing home was registered in Tara's name, as were the bank accounts.[17] He said "*I had great difficulty in getting her to give me correspondence, getting her to give me the post, meeting me or anything*"[18]

39. He said that the intention of clause 13 of the 2010 Settlement (which referred to Tara receiving a salary of €12,000 per annum for her ongoing work in the nursing home) was "*to encourage Tara to participate in the nursing home… To become in time a person that could be the person in charge… The involvement Tara had in the nursing home was minute. It was difficult, because we were trying to run a business of which she was the authorised signatory for the cheques and for the delivery of*

[13] P119, lines 17-18, Transcript Day 1 – 15.19
[14] P121, lines 28-29, Transcript Day 1 - 15 24
[15] P123, line 23, Transcript Day 1-15.28
[16] P124, line 11-12, Transcript Day 1-15.29
[17] In fact, Tara was registered as proprietor of the nursing home following her mother's death (P23, line 10-12, Transcript Day 2 -11.41)
[18] P127, lines 1-3, Transcript Day 1-15.34

post and so forth, and I was having great difficulty in that. I had great difficulty as well getting her to submit information regarding their tax affairs, so they could be returned"[19] He later said of this payment that "*It was a reward for her. But only for participating in the nursing home; not for, saying, we'll give you 12,000 a year for the rest of your life*".[20]

40. The plaintiff said that he was funding the nursing home and that he "*hadn't taken my money*" [21] He said he took his first salary in 2009 but that stopped because the business was "*illiquid*", and he secured additional funding to keep it operating. He confirmed that the first payment he took on his €150,000 payment under the 2010 Settlement was on 11 January 2011.[22]

41. The plaintiff confirmed his understanding that the educational costs of €25,000 was a per annum figure for the "*tuition and education, and not for accommodation or anything else*". He said that payments were made in 2009 in accordance with the 2009 Settlement. The €25,000 limit was not reached on fees as one of the defendants hadn't started education. Those payments continued up to December 2012. The plaintiff agreed with the figures calculated by his expert as being €393,222 paid to the defendants from September 2009 to the end of 2013 (in fact payments ceased at the end of 2012). The plaintiff said that the defendants had been overpaid by that stage. He referenced repayments of estate debts and also monies spent on the family home, in support of this contention. The plaintiff confirmed that the mortgage on the defendants' family home was being paid by standing order from the nursing home account. Other payments would have been made by way of cheque or directly to the defendants.

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[19] P140, Transcript Day 1-16.01
[20] P141, Transcript Day 1-16.03
[21] P137, lines 20-21, Transcript Day 1-15.55
[22] P6, line 19, Transcript Day 2-11.07

42. The plaintiff gave evidence regarding what he described as an incident in January 2012 involving the first named defendant who he alleged had turned up unannounced and intoxicated to the nursing home. Following that incident, the plaintiff's solicitors wrote to the defendants' solicitors on 2 February 2012. This letter stated that if any of the defendants wished to call to the nursing home, they should contact the manager so proper procedures could be put in place. The plaintiff said he took this action to protect the nursing home residents. [23]

43. Counsel for the plaintiff put it to him that there had been complaints made by the defendants that the plaintiff did not provide funds for a gravestone for their mother although he had agreed to do so. The plaintiff accepted that he had agreed during negotiations that funds would be made available for that purpose but that he didn't do it. He said:

> *"I did agree and it's - I won't call it oversight.*
>
> *I should have done it. There was so much going on that I neglected to do it, which was wrong on my part and shouldn't have happened".*[24]

44. The plaintiff gave evidence that he had ideas to build a new nursing home and he had obtained an assurance of a recommendation for bank funding of €1.6 million to do that. He believed this would be beneficial to the overall nursing home operation and would enhance its profitability. He had a site identified and had drawings prepared. He said however "*That got binned because when I asked Tara Seepersad that I wanted to use the collateral of the nursing home as part of the guarantee to the business plan, she told me no, and that I could do what I like, she wouldn't agree to it*".[25] This appears to have been in 2012.

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[23] P27, Transcript Day 2- 11.50
[24] P50, lines 17-20, Transcript Day 2
[25] P29, lines 5-9, Transcript Day 2-11.54

45. The plaintiff confirmed that the divorce matter was due back before the High Court in May 2012. He said that under the Settlement the defendants had agreed they wouldn't object to the setting aside of the divorce. However, he said the defendants sought to object before the court in 2012 - in breach of the 2010 Settlement.

46. When asked by his own counsel as to why the plaintiff had confirmed he did not wish to continue with the partnership on 6 November 2012, the plaintiff replied:

"*… In simple terms, I had enough. I was at the end of a situation where there was no relationship with ourselves. There was no sign that things could be improved and, eh, there was absolutely no cooperation or otherwise in trying to operate within the nursing home. I was experiencing difficulties with getting things done, getting registrations done and getting accounts, getting funding. Everything was just uphill and there was no sign of cooperation taking place. I was not overly upset but I was very dismayed and very disillusioned by their behaviour in interfering with the divorce proceedings. I saw that as the drawing line that, you know I couldn't go on any more. Everything that was going to be done was being undone, and there was a lot of safety issues about myself in the nursing home and my movements as well. .. [the business] was being prevented from growing. There was no approach to looking to develop it or getting on. I also felt at the time, you know, that why should I hang around, you know I was quite capable of going back and doing good things other places. I just didn't see any way around it when they breached the agreement. That was the last straw.*"[26] In response to the court's question as to what breach of the agreement he was referring to, the plaintiff confirmed that the breach was that "*they wouldn't interfere with the divorce proceedings*". He confirmed that that was still

[26] P37-38, Transcript Day 2-12.11

foremost in his mind in December 2012 albeit that the divorce was set aside in May 2012.[27] This was an important exchange on the evidence to which I will later return. The plaintiff was then directed by his counsel to the terms of the letter issued by his solicitors to the defendant's solicitors dated 6 November 2012 which was in the following terms:

"Dear David,

I confirm that I have met with Jim Cahill regarding the Agreement between the Seepersads and himself. Mr. Cahill has informed me that the partnership is no longer working and has instructed me to commence the process of dissolving the Partnership Agreement. To this end, he would be willing to either purchase the interests of Karl, Des and Tara Seepersad or, alternatively, they could purchase his interest in the nursing home.

I would be very grateful if you could contact your clients and let us know within the next 10 to 14 days whether your clients wish to be bought out of the agreement or whether alternatively they wish to purchase Mr. Cahill's share.

I look forward to hear from you."

47. When the court enquired from the plaintiff as to whether there was any significant deterioration between May 2012 (when the 2012 Settlement was signed) and November 2012 (when the correspondence was issued confirming that the plaintiff was seeking to commence the process of dissolving the partnership), the plaintiff

[27] P38 line 6, Transcript Day 2

responded: "*Basically, communication obstruction to try and run the nursing home*"[28].

48. The plaintiff gave evidence that on 10 January 2013 he made an offer of €255,000 to buy out the defendants' interest in the nursing home. The time for responding to that offer was extended to 7 February 2013, by letter dated 31 January 2013. Nothing came of that offer. These proceedings were then instituted in July 2013.

49. The plaintiff said that he had no complaint or contact from the defendants that they needed money[29] (this was however later contradicted). He said he was conscious of the fact that they had received funds from the UK. He acknowledged that the payments to the defendants never recommenced.[30] The plaintiff said that in relation to the stopping of payments and the commencement of proceedings to dissolve the partnership "*it was my understanding or my belief that that would be a short duration and that it couldn't proceed to years and years*".[31] When asked by the court as to why that was so, the plaintiff gave the following answer:

"*My understanding was that we would enter into the court proceedings and that it would be resolved in a short period. That didn't happen, unfortunately. Also, I had a situation that were I to make payments, I didn't have the funds to make the payments. Were I to look at what the impact would be at that time, the situation would be that I would have requirements from the banks of hundreds of thousands to be able to make those payments and tell them the reason why I wanted it was because I wanted to pay the shareholders which had not been forthcoming.*"[32]

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[28] P43, lines 25-26, Transcript Day 2-12.23
[29] P47, Transcript Day 2
[30] P48, line 4, Transcript Day 2 – 12.31
[31] P49, lines 7-10, Transcript Day 2
[32] P49, Transcript Day 2 -12.35

50. The plaintiff later clarified his answer in the following terms:

"*What I'm saying is that looking at the impact of the payments, were this to be made, and looked down for those number of years, I would have required hundreds of thousands from the bank to tell them I wanted to pay drawings. Also, the liquidity of the business at that time couldn't sustain it. It was illiquid. So I then felt do I do something that can't be done, do I do something that should resolve itself in a short period of years, or do I put the nursing home into jeopardy and run down the value of the nursing home. I hadn't got the funds to write cheques at that time and if I was to do it on a continuous basis, we wouldn't be here talking today. There'd be no nursing home. So I was wearing a hat of protection not only for myself, but for the defendants*".[33]

51. I will return to this particular evidence later in this judgment.

52. The plaintiff denied that he forced Tara to stop working at the nursing home.[34] He denied that he had ever promised the other two defendants that they would be included in the running of the nursing home.[35]

53. The evidence from the plaintiff is that he took a slight reduction in salary (€55,000 rather than €60,000) in 2010. Between 2011-2014 he took his salary of €60,000 each year as stated in the 2012 Settlement (and 2009/2010 Settlements). He confirmed that he had been receiving more than €60,000 salary from 2015 to date rising to €90,000 in 2021. He said that the 2012 Settlement did not state the salary amount was capped at €60,000.[36] He compared his salary to what the director of nursing received and believed the increase was appropriate.

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[33] P49-50, Transcript Day 2.
[34] P53, line 10, Transcript Day 2.
[35] P52, line 6, Transcript Day 2 - 12.41
[36] P55, line 19, Transcript Day 2 - 12.50

54. The plaintiff admitted that he did not discuss with the defendants the employment of his own two children in the nursing home. His daughter Liadh was employed at an initial salary of €40,000 (now there five years). Referring to her previous role with a "*large, international organisation*", he said "*I had a huge task with my conscience of asking her to give up such a prominent position that she had*" [37]. His son Ruairi was initially employed on the technology side and then moved to the complaints side. The plaintiff said that as the Chief Executive of the nursing home, his employment of staff doesn't have to be signed off by the defendants[38].

55. The plaintiff also confirmed that he retained Mr Squires in 2010 as accountant to deal with the partnership accounts for the nursing home and that Mr Squires is the plaintiff's son-in-law. The plaintiff said that Mr Squires prepared the annual financial statements but not the audited accounts. The plaintiff believed that at the behest of the defendants' expert, complaints of a professional nature have been made against Mr Squires and as a result of that, Mr Squires is no longer providing services to the nursing home. He said that it was only recently that the defendants became aware that Mr Squires was related to the plaintiff.

56. The plaintiff said he agreed with the report of his own expert that between 21 September 2009 and the end of 2013 the defendants received a figure of €393,000 odd. The profit for the nursing home between 21 September 2009 and September 2021 was €941,371. On that basis the plaintiff's expert believes the plaintiff has received €189,664 excess drawings and the defendants have received €46,000 less than they should - leaving a shortfall in drawings and share in profit that the defendants should be entitled to of approximately €235,000. [39]

[37] P56, line 27-28, Transcript Day 2 – 12.53
[38] P60, line 8-9, Transcript Day 2 – 13.00
[39] P67, Transcript Day 2

57. The plaintiff painted a fairly bleak picture of the sustainability of the nursing home as a business and the overall market for nursing homes. He said that the nursing home "*as a 100% business in the market would not be sustainable*".[40] He said the value in the nursing home comes "*in relation to your endeavouring, which I've been trying to do all the years, to try and acquire the other partners' shares. That makes it viable to a point but there's a point beyond which it can't go and it doesn't create a marketable property*."[41] He confirmed that "*My intention always has been, right down the whole period of time, to try to negotiate the settlements, trying to do mediation and all the rest, was to acquire the 40% interest and we made a number of offers. We had mediations, we had all sorts of things, but never got to a point where it appeared to me there was a serious attempt to address it. On that particular note as well, from 2013 from when the proceedings for dissolution was instigated, I found it very difficult to accept that it took until June of this year for any action to be taken by the other parties in relation to sorting out the issue.*"[42]

58. The plaintiff confirmed that he had been contacted directly by the defendants' expert witness, Mr Stafford, last June to try to negotiate a settlement. He said that:

"*Early June of this year and he said he could see a way to sorting this out within five or six weeks if we agreed to do certain things, people like legal people and solicitors are adding costs and it should have been sorted out years ago and the reasons why it wasn't. So that was the type of conversation that took place and I asked him subsequently, I said: "Look, I need time to think about this" and I asked him subsequently had he the authority of the Defendants to do this and he said yes*."[43]

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[40] P68, lines 23-24, Transcript Day 2
[41] P69, lines 2-6, Transcript Day 2
[42] P70, lines 1-12, Transcript Day 2
[43] P70-71, Transcript Day 2

He said that Mr Stafford visited the nursing home, but the negotiations didn't go anywhere as "*It became obvious to me that there was a different agenda*". [44]

59. On cross-examination the plaintiff was referred by counsel to a letter the plaintiff had written to the Circuit Court office six days after Brigid's death which said:

"Firstly, as I am sure you will understand, the grief the entire of the family are suffering and experiencing with the sad, tragic loss of my beloved wife, Brigid. ..In particular the unexplainable pain of loss our three children are suffering, and all and everything should and must be done to help them through this time of grief, both now and in the future….

I am seeking that the Decree be set aside. Both Brigid and I had agreed ..during that week (on the 7th & 8th July 2008) that the proceedings would not be pursued…. I believed that the divorce proceedings were ended, had I believed otherwise, I would have attended and contested them….. I am emotionally drained with the saddest loss of my life, my beautiful Brigid and doing my best and all in my power to give support to our children, who I look on as my own….. I ask that the court set aside the Divorce.

I love my wife, Brigid, always have, and I love her children the same as if they were my own. I only have what is in their best Interest now and for the future. I am fully aware of the very volatile difficult times they experienced when they were young and now to add to that, more unbearable suffering and loss."

60. When asked how that situation had changed he replied that "*It changed as things developed as we went along the road of how I was being treated, how I was being put into a situation that there was violence against me, put into a situation that I couldn't understand why their natural father wasn't there to look after them and*

[44] P71, lines 13-14, Transcript Day 2 – 14.23

help them as well, why a stepfather should do that, and the father in question was attacking me."[45]

61. He said he had the children's best interests at heart at the time of the 2012 Settlement and that indeed "*I still have their best interests at heart. That's what I did with the nursing home for them.*"[46]

62. He conceded that all the borrowings for the nursing home were in Brigid's sole name and that he had not contributed anything financially but he said that he ".. *organised the finance. Otherwise, it wouldn't have been got. That's my contribution.*"[47]

63. It was put to the plaintiff that his relationship with Brigid had broken down long before the divorce and that Tara would give evidence of her mother sobbing that she could not understand why the plaintiff would not divorce her when they had no relationship whatsoever. The plaintiff said in evidence "*Yeah, I don't agree with it.*"[48]

64. The plaintiff was cross-examined about reneging on the commitment he had given to pay for a gravestone for Brigid. In Tara Seepersad's witness statement, she had said "*Mum was left without a gravestone or headstone for over a decade, another huge ongoing irreversible trauma. This was only put right this year in 2022, over 14 years after my Mum had tragically died. My biological father, Hardeo Seepersad, who lives in the UK came forward with the funds to erect a headstone and gravestone."*[49]

65. The plaintiff said he didn't know that had happened. He said that "*I regret that I not only overlooked it, but it appeared I reneged on it. It was not intentional*."[50] He was

[45] P75, lines 7-13, Transcript Day 2
[46] P75, lines 21-24, Transcript Day 2 – 14.28
[47] P77, lines 9-10, Transcript Day 2 – 14.30
[48] P79, line 22, Transcript Day 2 – 14.33
[49] P82, lines 1-7, Transcript Day 2
[50] P82, lines 11-13, Transcript Day 2

challenged on this. He admitted he had told the defendants to organise the headstone and the wording to put on it. It was put to him that the defendants had done that but couldn't get the plaintiff to pay for it. Another part of Tara's statement was put to him that:

"We contacted Mr. Cahill repeatedly asking for money for our Mum's gravestone. He made excuse after excuse, broke promise after promise. He delayed it for as long as he could repeatedly. I think he took pleasure in knowing our Mum was in an unmarked grave in the mud and nothing else"[51]

The plaintiff described that statement as:

"It's not only wrong, it's contemptuous. That is totally wrong and it's describing something that never happened and trying to make me out to be some kind of, let's put it, non-human person."[52]. It was suggested to him that this was a deliberate and calculated act of cruelty to the children. He denied this explaining that it was *"Part of my neglect in not paying for it, as I explained earlier. It should have been. I can't wind back the clock. I regret it"*.[53] He denied that he was repeatedly asked to pay for the gravestone. Initially he denied this outright – *"From the time we came to where it appeared we were parting company; I never had a request from any one of the Defendants looking for money."*[54]. However, he later conceded under cross-examination: *"No, no, I'm trying to be honest with you and tell you. They did ask me. How many times would be the lower side of the medium of ten."* [55] He agreed that the funeral expenses to include the cost of a headstone were provided by him to his solicitors and were included in Brigid's Inland Revenue Affidavit.

[51] P83, lines 19-24, Transcript Day 2
[52] P83, lines 27-29, Transcript Day 2 – 14.37
[53] P84, lines 7-9, Transcript Day 2 – 14.38
[54] P84, lines 17-19, Transcript Day 2 – 14.38
[55] P85, lines 13-15, Transcript Day 2 – 14.39

66. The plaintiff was then questioned about bringing Tara to a solicitor's office in Dublin to swear an affidavit that the plaintiff could use in his proceedings to set aside the divorce. The version set out in Tara Seepersad's witness statement in the following terms was put to him:

"In October 2008, only six weeks after burying my Mum, Mr. Cahill announced he and I alone were going to Dublin to take care of some unexplained business. No explanation was given despite the long journey to Dublin from my family home in […]. There was plenty of time to do so and had he not wanted to conceal the truth from me, he told me to get ready and get in the car. We went straight to Dublin City Centre, which I recognised from having been there ice skating with my school friends previously…

So this was the first time he brought me to a solicitors in Dublin. O'Connor & Bergin Solicitors, they were his solicitors and he brought me into their offices with no explanation other than "we have to go here to make sure the nursing home stays open so you can pay the mortgage or you will lose your family home." The fear, as a 19 year old, of hearing this was overwhelming. I couldn't lose my family home, not weeks after losing my Mum. This is the home my Mum bought for us three children to grow up in, the home I have lived in since I was 6 years of age. The pressure was unbearable. Inside the offices, he had an affidavit of Tara Seepersad prepared, stating that he was a great father figure."

67. Initially the plaintiff responded "*No, that's not true* ."[56] He said "*I never brought Ms. Seepersad to Dublin to introduce her to a solicitor about what had to be done or otherwise. I dealt with everything through the legal people that were set up*."[57] It

[56] P92, line 25, Transcript Day 2 – 14.49
[57] P93, lines 19-22, Transcript Day 2 - 14.40

was put to him that in October 2008 he had gone back to the Circuit Court Judge who had granted the divorce and she had refused to set it aside. The affidavit from Tara was then required by him to advance his challenge to the divorce. He said "…*I never brought Tara Seepersad to sign affidavits about divorce or anything*."[58]

68. The affidavit was then opened to the plaintiff. As it arises in the context of family law proceedings, I do not intend to set its contents out in this judgment. It is however a document which does not appear to be written in Ms Seepersad's own words and has all the hallmarks of being pre-prepared for her to sign. It extols the virtues of the plaintiff's relationship with the defendants and their late mother and supports the proposition that the plaintiff be allowed to administer Brigid's estate and regularise all matters concerning her intestacy.

69. On the following day under further cross examination the plaintiff, when presented with an affidavit he himself had sworn in those proceedings on the same date, at the same location and before the same witness, said:

"A.*I still can't recall driving Tara Seepersad to Dublin. I could be wrong. I don't recall it.*

Q. Well, you manifestly are wrong, Mr. Cahill, isn't that right?

A. If I'm wrong, I'm wrong". [59]

70. The plaintiff denied that he ever asked Tara to sign blank cheques for the nursing home. The plaintiff continued to complain of the difficulties he had in getting material signed by Tara. The evidence she would give on this matter was put to him and he denied ever contacting her late at night or into the early hours on a weekend as she alleges saying "*That never happened*".[60] He confirmed that he opened a bank account

[58] P94, lines18-19, Transcript Day 2 – 14.52
[59] P22, lines 17-21, Transcript Day 3 – 11.27
[60] P109, line 12, Transcript Day 2 – 15.10

in his own name for the purpose of administering and operating the nursing home in 2010. The plaintiff was asked if he could identify any single item that actually caused him any loss that the defendants ultimately refused to sign. His response was:

"*No, except time, energy and hours and hours and weeks and weeks and nights and nights keeping HIQA on side not to close the nursing home. I count that as a physical loss, I didn't quantify it in terms of money*". [61]

71. The plaintiff denied that Tara had continued to visit the nursing home residents. He said that she stopped coming and that she no longer wished to become a nurse. He denied the interactions with him alleged by Tara Seepersad in her witness statement.

72. Evidence was given regarding the 2012 Settlement and how it came about and what changes were made from the earlier version. The plaintiff admitted that he got something from the changes in that he got to keep his 60% interest until August 2015. It was put to the plaintiff that the 2012 Settlement effectively guaranteed the payments identified to the defendants up to August 2015 (and indeed to 2017 for Karl's education) and the plaintiff agreed saying "*I was saying, yes, I was going to pay those amount of monies to them up to 2015, yes*."[62] However he then said "*In forming part of the profits, one has to anticipate is there going to be money there, is there going to be profits there. So all that was done in good faith. What subsequently happened put it outside of being able to be delivered on*."[63] He went on to say "I *accept I made an arrangement to pay them up until 2015. I accept I didn't make an arrangement if the funds weren't there I'd still pay them. No, how could I*?"[64] The plaintiff said in relation to the 2012 Settlement entered into in May 2012

[61] P90, lines 7-10, Transcript Day 3 -12.58
[62] P124, lines 13-14, Transcript Day 2- 15.30
[63] P125, lines 1-6, Transcript Day 2 – 15.31
[64] P125, lines 15-18, Transcript Day 2 – 15.31

that *"[A]t that time, I believed I could honour the payments*".[65] When asked by counsel as to whether in December 2012 the plaintiff decided he couldn't honour the payments, the plaintiff responded *"[T]hat's right*."[66]

73. When asked as to what had changed in that period of time in terms of the finances of the nursing home the plaintiff responded as follows: –

"*What changed in terms of the finances of the nursing home at that time was that its liquidity didn't improve; its profits weren't generated; and that a situation evolved where if I wrote those cheques, from a business point of view, I wouldn't have been able to pay wages, I wouldn't have been able to pay creditors and so forth*."[67] He later added that "*..I hadn't the funds because I'd already paid a substantial amount to the Defendants that was over and above the profits of the business*."[68]

74. The plaintiff confirmed that from 8 January 2010 onwards loan repayments were made by the nursing home for his Mercedes car in the amount of €1646.45 per month. Counsel for the defendants had indicated in his opening submissions that this figure roughly equated to the monthly mortgage repayments on the defendants' family home which the plaintiff ceased paying in December 2012.

75. The plaintiff was asked if he had considered the impact on the defendants if he ceased paying the educational fees. The plaintiff responded as follows: –

"*Well, the impact on their education when I stopped paying the fees, I would comment thus: I wasn't their father. I wasn't their only source of income. They had a father. They had income that he should have been supporting them with. So what I'm saying to you is if you're trying to suggest that I was the only income to them, they had also the opportunity to, as do all students, to take up work, as did probably your family,*

[65] P 126, line 9, Transcript Day 2 – 15.32
[66] P126, line 11, Transcript Day 2 – 15.33
[67] P126, lines 14-20, Transcript Day 2 – 15.33
[68] P128, lines 23-25, Transcript Day 2 -15.36

and help out during the period. They didn't sit back and say "Fine, we're going to get a cheque...". Also, they had and were in receipt of the cheque of the €200,000 that was given to them under the settlement in the UK. What happened to that money? [69]

76. The plaintiff was then referred to correspondence his solicitors had issued to the defendants' solicitors on 25 August 2022 when the defendants sought payment on account to cover their mortgage and other creditors, having been notified of the possibility of repossession of their family home. That correspondence is in the following terms: "*Unfortunately, your clients squandered their substantial inheritance and have delayed the conclusion of these proceedings at every turn. Had they not done so they might have avoided their current financial predicament. Our client will not be making any payment on account to your Clients. Any application to Court as threatened will be strenuously defended".* The plaintiff confirmed he had approved that letter.[70] The plaintiff also confirmed he recalled correspondence from the defendants' solicitors advising that the defendants were claiming that they could not pay ESB and other bills. The plaintiff said that he didn't find out what happened to the other money the defendants had inherited.

77. The plaintiff also confirmed in his evidence that the fees due to Mr David Pigot, (who was appointed as solicitor for the defendants in January 2009), were due to be paid by the nursing home.[71] The evidence was that those fees were not paid by the plaintiff to Mr Pigot who then sued the defendants for his fees and ultimately registered a judgment mortgage against them secured both on the nursing home and

[69] P134, lines 4-16, Transcript Day 2 -15.44
[70] P138, line 11, Transcript Day 2 – 15.49
[71] P13, line 15, Transcript Day 3 – 11.14

their family home in the approximate amount of €40,000. The plaintiff confirmed that he knew Mr Pigot sued the defendants in respect of those fees.[72]

78. It was put to the plaintiff that he had essentially drafted the terms contained in the 2009 Settlement and that his evidence otherwise was incorrect. He was shown documents from discovery that he had prepared setting out these terms dating from March 2009 and April 2009. That document also referenced a "*settlement 425,000*" which the document suggested the plaintiff would consider accepting from the defendants. The plaintiff denied in his evidence on day two that there was any such proposal at any time describing the suggestion as a "*fantasy*". When faced with this conflict of evidence the plaintiff accepted there was in fact a proposal at that point in time.[73] Discovery documentation prepared by the plaintiff dated 30 April 2009 stated "*This agreement to replace 425K settlement*…" It was suggested to the plaintiff that what had changed his mind on this proposal was the receipt of a cheque for €1,019,1888 from life insurers on 5 March 2009 admitting the claim on the mortgage policy for the nursing home which cleared the mortgage. The following exchange on the evidence occurred:

"*Q. And what I'm saying to you, Mr. Cahill, is, before that, you were going to take 425,000 to go; and, after that, when the mortgage was cleared, you decided that you were staying in the nursing home, isn't that right?*

A. Regarding the 425,000, had I been issued that and given that, I would have gone. Then it came about that we were going on to a situation that that wasn't going to happen. So I looked at the situation and I said, fine, okay, my only interest would be in the nursing home, not in the estate." [74]

[72] P16, line 9, Transcript Day 3 – 11.18
[73] P31, line 4, Transcript Day 3 - 11.36
[74] P32, lines 15-24, Transcript Day 3

79. This discovery documentation prepared by the plaintiff also included language to the effect that "s*olicitors told this is our agreement and get on with necessary document we give instructions they follow*" and "*it's our agreement not solicitors etc. No more waste of time*" "*Due diligence not necessary, costly and delaying agreed etc*". Counsel suggested this demonstrated that the plaintiff had not been truthful in his evidence that he had no hand, act or part in the 2009 Settlement. The plaintiff maintained his position that he wouldn't agree with that.[75]

80. The plaintiff accepted in his evidence that 2012 was the most profitable year the nursing home had had for some time and was more profitable than the previous years in which payments had been made to the defendants. He said that he had significantly contributed to the profits by doing so much work himself.

81. The plaintiff was questioned regarding the 2009 and 2010 calculation of drawings for the defendants. Some particular matters were accepted by him such as that he recharged to Karl Seepersad the sum of €400 which the plaintiff had paid for Karl's 18th birthday dinner and that he had recharged Desmond €260 in respect of sponsorship money the plaintiff had given him for a charity event. The plaintiff also accepted that he had permitted the sum of €25,000 to be used towards school/college accommodation in the earlier years but later determined that it was not to be available for use on accommodation but merely educational fees. The plaintiff confirmed he was accepting his expert's figure regarding the amount of the drawings made to the defendants.[76]

82. It was noted that the €12,000 per annum payable to Tara Seepersad appeared during 2010 to have been converted from salary to part of her drawings. Counsel enquired

[75] P36, line 13, Transcript Day 3 – 11.42
[76] P125, line 5, Transcript Day 3 – 14.41

as to why in May 2012, two years after converting her salary into drawings without telling her, the plaintiff entered into the 2012 Settlement which still stated that Tara would be paid €12,000 a year as salary. The following engagement took place:

"*Why didn't you say "That need to be written out, she hasn't been to work in two years"?*

A. No, because the Agreement still said the same provisions were for active participation in the nursing home.

Q. So you just felt that that agreement could stay in, but monies you were paying to Tara, you didn't tell her whether they were salary drawings or what they were, is that right?

A. She was aware of what they were.

Q. Okay, was it not your obligation to go "I'm no longer paying that salary, it needs to come out of the agreement"?

A. In the Agreement, it was obvious both to Tara and myself that the payment of that would be in relation to her active participation in the nursing home.

Q. She had to earn the money fully to get the 12,000, is that right?

A. She had to be actively involved working in the nursing home.

Q. You didn't explain that to her, though.

A. It was in the Agreement. I'm sure that that was explained.

Q. And you didn't say in 2012, "Well, sure, that hasn't been live for two years, it should be taken out of the agreement"?

A. No, I didn't."[77]

83. It was accepted by the plaintiff that while he ceased all payments in December 2012 to the defendants, nevertheless he attributed some further payments towards their drawings in 2013. The court enquired directly from the plaintiff as to whether the

[77] P51-52, Transcript Day 3 – 12.02

stopping of payments at the end of December 2012 involved the cancellation of direct debits or standing orders. The plaintiff confirmed that it did.[78] The court also enquired how the plaintiff proposed to fund the offer of €225,000 he had made to the defendants in December 2012/January 2013. The plaintiff confirmed "*I would have been able to fund it*".[79]

84. Evidence was also given regarding the timing of the plaintiff becoming aware of the divorce. It was clear that he was aware by 18 July 2008 given that he had corresponded directly with the county registrar in the terms previously outlined in this judgment. The plaintiff conceded that he was probably aware within a week of Brigid's death as evident from the following exchange: –

"*But you were aware within a week?*

A. *Oh, yes, yeah, at that time, yes, yeah.*

Q. *Okay, and did you tell the children at that point that there had been a divorce?*

A. *No, no, no.*

Q. *And why didn't you tell the children that there had been a divorce?*

A. *I can't actually say why I did or why I didn't. There was so much going on in trying to sort out the sad, tragic event, getting the late Brigid Seepersad home, preparing all kinds of events and all the rest. My mind was in a blank how come a divorce was got and I didn't know about it. But I do know that one member of the family was in a position to ring her ex-husband to say that the divorce had come through. He knew before I did*." [80]

85. The plaintiff conceded that until the divorce was set aside Tara Seepersad was Brigid's next-of-kin and the registered operator of the nursing home.

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[78] P127, Transcript Day 3 - 14.43
[79] P127, line 25, Transcript Day 3 – 14.43
[80] P69, lines 16-29, Transcript Day 3 – 12.28

86. It was put to the plaintiff that long before the 2012 Settlement he was refusing to release funds to cover school and college fees for the defendants. The plaintiff responded: "*No, I can't really accept that. The school fees were an important issue in it and there may have been a situation where we asked for receipts or things like that, but, no.*" [81]

87. It was put to the plaintiff that the reason for the 2012 Settlement stemmed from the difficulties the defendants were already having at that point in receiving the payments promised to them under the earlier Settlement. The witness statement of Desmond Seepersad in particular was put to him which states that:

"We demanded that if we were to uphold the condition in the Settlement Agreement that stated we weren't to oppose Mr. Cahill's application to have our mother's divorce set aside, then he would have to uphold the conditions that applied to him and they would need to be clarified so as to prevent further problems arising from differing interpretations. Namely, that all school/college fees and drawings as agreed and intended in the Settlement Agreement would be paid properly without delay or interruption."

88. The plaintiff did not accept that there had been any difficulty with payments prior to that date. [82] Neither did he accept that the reason the defendants clarified the Settlement in 2012 was because of these difficulties.

89. The Plaintiff accepted that the defendants, as partners, would have an entitlement to contact the partnership accountant and would equally have authority to "*come to the nursing home and examine the books*". He conceded that he never asked them to

[81] P80, lines 7-10, Transcript Day 3
[82] P83, line 19, Transcript Day 3 – 12.46

come and inspect the books in the premises and that he had refused to allow them access to the partnership accountant[83].

The evidence of David Pigot

90. Mr David Pigot did not provide a witness statement. He confirmed that he had previously acted as solicitor for the defendants in relation to the setting aside of the decree of divorce and the subsequent negotiations of the Settlement. He confirmed that around early 2009 he had been approached by the plaintiff's solicitors, O'Connor Bergin, asking if he would help out because Mr Bergin "*needed to get a separate solicitor to represent the three Seepersads*". He confirmed that his office was in the same building as O'Connor Bergin.

91. Mr Pigot recalled his initial instruction "*..was about January 2009, because the Master had instructed I think O'Connor Bergin's lawyer to arrange for the three children to get separate representation because of the Applicant(sic) to set aside the decree of divorce, which Mr. Cahill had brought. And so that would have been around mid January 2009 that I first met up with them*."[84]

92. He said he thought the plaintiff's chances of succeeding in setting aside the divorce were "*pretty strong*".[85] He confirmed that there were various proposals advanced in 2009 but that from the outset the defendants were aware that the plaintiff wanted the nursing home property and was willing to divide it. He denied that he had ever advised the defendants that they would retain ownership of the nursing home premises[86]. He said the ownership of the Property was never discussed in relation to the 2012 Settlement.

[83] P94, line 29, Transcript Day 3- 14.04
[84] P131, lines 16-22, Transcript Day 3 -15.01
[85] P132, lines 26-28, Transcript Day 3 -15.03
[86] P137, line 9, Transcript Day 3 - 15.10

93. Mr Pigot confirmed that there had been "*an awful lot of correspondence*" in relation to various matters not being paid such as school fees, car insurance and living expenses. He said this was "*very difficult to deal with, because on one foot, they were saying "we want the settlement agreement set aside" and yet, they want to exercise the rights to enforce the Settlement Agreement*.". [87] He said they then had to re-negotiate and ended up with the 2012 Settlement and the divorce was later set aside by the High Court.

94. In relation to fees, Mr Pigot confirmed that he had sued the defendants for his fees. He said "*At the end of the day, whatever about what the Agreement says who should pay my fees, they're my clients, not the nursing home*."[88]

95. Mr Pigot agreed on cross examination that the amendments to the 2012 Settlement were motivated by making sure that the payments would continue while the defendants were young and to take account of their changed circumstances since the original 2009 Settlement. He believed that the payments were guaranteed "*as long as the nursing home is in existence*". [89]

The factual evidence adduced on behalf of the defendants

96. Five witnesses gave evidence for the defendants on factual matters, namely the three defendants, Ms Roisin Markey and the defendants' father, Hardeo Seepersad. Two other witness statements had been prepared but as these witnesses did not give oral testimony and there was no agreement to admit their statements, I have not considered their evidence as it was not properly before the court. Two experts gave evidence on behalf of the defendants, namely Mr Jim Stafford and Mr Conor Murphy.

[87] P145, line 19-24, Transcript Day 3 - 15.25
[88] P146, lines 12-14, Transcript Day 3 – 15.26
[89] P149, line 9, Transcript Day 3 – 15.29

The evidence of Ms Roisin Markey

97. Ms Roisin Markey gave evidence, which corroborated the evidence of Tara Seepersad, that following Brigid's death Tara was regularly phoned by the plaintiff very late at night and often had to leave venues she was at with Ms Markey to meet the plaintiff to sign documents or cheques.

The evidence of Tara Seepersad

98. Tara Seepersad prepared a very detailed witness statement dated 16 November 2022 which was adopted as her evidence in chief. In her oral testimony she could not recall exactly when she became aware of the divorce, but she believed it was sometime in 2008. Her witness statement exhibited correspondence sent by the plaintiff to the county registrar dated 18 July 2008, being six days following Brigid's death. In those circumstances it is clear that the plaintiff became aware of the divorce very shortly following Brigid's death, but Tara's witness statement confirmed that the plaintiff "*kept that secret at the time*".[90] She confirmed that she had no independent legal advice before she signed the affidavit which she believed was used by the plaintiff to apply to the Circuit Court to set aside the divorce in October 2008. She said:

"*This affidavit is from October '08, six weeks after I buried my Mum. I was brought—I was told by John Cahill to get in the car and we were going to Dublin. I was not given an explanation. I was brought to O'Connor & Bergin Solicitors, who I had never rang or knew existed or heard of. I was brought into their offices and I was shown this affidavit and told to sign it.*"[91]

[90] Para 9, Tara Seepersad Witness Statement
[91] P9, lines 2-9, Transcript Day 5 – 11.18

99. Her witness statement states that she was "*put under intense pressure to sign this affidavit*" with no explanation of what it was for. She said the plaintiff would attempt to use the affidavit later to try to get the divorce set aside.[92] The affidavit of Tara Seepersad was sworn on 8 October 2008. The Circuit Court refused the plaintiff's application to set aside the divorce on 21 October 2008. The perfected Order does not refer to the affidavit of Tara Seepersad as having been considered. The Master of the High Court appears however to have been dissatisfied with the affidavit in 2009, specifically enquiring if Tara had had independent legal advice. On hearing that she had not had such advice the Master ordered that this be secured for the defendants.[93]

100. She described how in late 2008 and "*definitely the first half in 2009*" she met the plaintiff at a local petrol station on her own to sign documents and "*to listen to what he wanted for the settlement agreement*".[94] She confirmed that in 2009 and for part of 2010 she was the sole signatory on the nursing home bank account (as her mother's next of kin). This remained the position until 2010 when the plaintiff opened a bank account in the sole trading name of the nursing home, and he had complete control of that account- no longer needing Tara's signature. She said she recalled an offer made by the plaintiff to purchase the nursing home for €700,000 on 19 February 2009 but this was rejected by the defendants. She said that in her discussions with the plaintiff in his car at the petrol station her state of mind was "*..fear, stress, grieving, uncertainty, not understanding what was going on, not understanding these Settlement Agreements, fear of being homeless, not paying the*

[92] Para 14, Tara Seepersad Witness Statement
[93] Para 15, Tara Seepersad Witness Statement
[94] P11, lines 11-12, Transcript Day 5 -11.22

mortgage, the nursing home being closed down—my brothers were 15 and 17, or 18 and 16 -- and just total fear."[95]

101. When questioned as to what was the primary issue the defendants had with the 2010 Settlement in 2012 Tara gave the following answer: "*That it wasn't being stuck to by Mr. Cahill. That we were always begging for college fees to be released. When they were released, they were released late. Our Mum, four years later, still had no gravestone. We were promised over and over again that that would be sorted. We were unhappy about the whole thing and we wanted clarity on what seemed like a document that was worthless*"[96]

102. Evidence was also given regarding the monies the defendants had received from their mother's estate which was in the amount of €110,142.59 and was received by Tara Seepersad on 28 February 2013[97]. It was spent over an 18-month period. €27,172 was spent on the mortgage for 18 months. €22,500 was spent on solicitor's fees, €6862 on utility payments (gas, oil and heat); €990 to revenue and €875 on car insurance. The balance was spent on living expenses for each of the defendants at €958 per person per month for 18 months. She said that the Ulster Bank account of approximately €17,000 was used up in legal fees in the administration of her mother's estate.

103. In relation to the salary payment to Tara Seepersad of €12,000 per annum, she confirmed in evidence she was never told she had to do anything different than what she had been doing at the date of the Settlement in order to receive this payment. She said "*I was told to do exactly what I was doing*" [98]– which was visiting residents, baking for them and spending time talking to them. She said the work

[95] P14, lines 25-29, Transcript Day 5 - 11.27
[96] P15, lines 23-29, Transcript Day 5
[97] P85, line 19, Transcript Day 5 – 14.49
[98] P20, line 28, Transcript Day 5 – 11.41

programme was one that the plaintiff had given her for the purpose of work experience on a plc Level 6 nursing course she started in Drogheda Institute of Further Education in September 2008, and was not in any way linked to the salary payment in the Settlement. She left that nursing course in December 2008. She said she spent a lot of time at the nursing home with residents in 2009 as she was not in full time education until September of that year when she started back on the course, she was originally doing namely social studies in Dublin Business School. She said she tried to avoid meeting the plaintiff at the nursing home and she said he was aggressive when she or her brothers turned up. She said that ultimately, she stopped visiting the nursing home because the plaintiff "*sent a letter through his solicitors to tell us to stop visiting the nursing home*".[99] She said she was never told at any point that her drawings were amended to include the promised salary payment to her of €12,000.[100]

104. Tara Seepersad was asked about the defendants' living conditions since payments to them had stopped in December 2012. She confirmed that she remained living in the family home with her two brothers and her son and does so to this date. She gave evidence that they had been unable to repair the house which now had many leaks/burst pipes and unusable rooms. She said "*The living conditions that we are in and have been in are, I would say, horrific. Freezing cold where you can see your breath when you speak in the house. I have to sleep in the same bed as my son, with our day clothes on and our pyjamas on and numerous duvets*."[101] Photographs handed into court clearly show there are items of basic repair that need to be attended to. All defendants gave evidence that there is no hot water in their home.

[99] P21, lines 27-28, Transcript Day 5 – 11.43
[100] P24, line 24, Transcript Day 5 – 11.49
[101] P23, lines 16-21. Transcript Day 5

105. Tara Seepersad confirmed that she had asked Mr Squires for documents but did not receive them. She confirmed that Mr Stafford had told her she could make a legal complaint if she was not receiving partnership documentation. She said she did not attach any documents to the complaint, but she did refer to tax returns.

106. When the payments stopped in December 2012, Tara Seepersad was in her fourth year in social studies. She was due to finish her level 8 degree in Social Science in 2013. Her intention was to then do a Masters in Social Work and this was referenced in the 2012 Settlement. She did not finish her degree as her fees were not paid. She now works as a childcare worker.[102] She works limited hours due to her inability to afford her own childcare costs outside those hours her son is in school.[103] She left with a level 7 qualification in social studies based on the studies she had actually completed at that stage. She described her state of mind at that point as: "*Confused as to how they could have been stopped when we had only signed the Agreement for the third time months prior. Ehm, worried that we were going to lose our family home. Worried that we'd have no income. Worried we all obviously had to stop college straightaway. Just worried for our future and for simple things like heating our home—everything. Everything. Extreme stress and just another thing that we had to deal with as a result of John Cahill."*[104]

107. On cross-examination she was asked why she hadn't done anything about the payments being stopped in 2012 and in particular why she had not engaged with the plaintiff's offers in 2013 or since that date. It appears that the defendants did not continue to engage Mr Pigot's legal services, and it took some time for their current solicitors to be instructed. On re-examination Tara confirmed that she had some

[102] Para 62, Tara Seepersad Witness Statement
[103] Para 77, Tara Seepersad Witness Statement
[104] P27, lines 20-28, Transcript Day 5

health issues during that period. While there was much debate with counsel for the plaintiff regarding whether the defendants had in fact requested payments to be resumed, I am satisfied on the evidence that they did make such requests. I am further satisfied that those requests did not result in the resumption of payments by the plaintiff, and I have no basis to believe that had more requests been made this would have altered the position regarding payment. In his evidence on the same question Des Seepersad said "*We were desperate because he made us desperate but we knew that that was an absurd offer and that in order to calculate what wasn't an absurd offer, he would never give us the information we needed*."[105] In her witness statement Tara Seepersad said that "*we were not willing to be bullied by Mr Cahill again even if we had to live on virtually nothing*".[106]

108. Tara Seepersad was questioned regarding her instructions to Mr Stafford. She was asked if she knew that Mr Stafford was going to meet the plaintiff to try and broker a deal on her behalf. She replied: "*I think, to the best of my recollection, I knew he was trying to meet John Cahill to get information so he could value our claim*."[107] When pressed further as to whether the defendants had given authority to Mr Stafford to negotiate on their behalf, she replied "*I'm not sure*".[108] She confirmed that Mr Stafford had drafted the letter of complaint against Mr Squires in relation to his failure to provide the information she requested. [109] Tara Seepersad was questioned regarding the second complaint she made against Mr Squires which alleged collusion between Mr Squires and the plaintiff to defraud the defendants and the Revenue by failing to get approval from the defendants for the annual partnership

[105] P23, lines 25-28, Transcript Day 6 -11.32
[106] Para 41, Tara Seepersad Witness Statement
[107] P101, lines 27-29, Transcript Day 5 -15.19
[108] P102, line 17, Transcript Day 5 – 15.21
[109] P106, line 4, Transcript Day 5 -15.29.

tax returns. She confirmed this was also drafted by Mr Stafford.[110] Mr Stafford does not make any allegation of collusion or fraud in the report that he prepared for the court.

The evidence of Desmond Seepersad

109. Desmond Seepersad also produced a detailed witness statement dated 16 November 2022 which he adopted as his evidence in chief. In his oral testimony Desmond Seepersad said he believed he learned about the divorce from Mr Pigot at a meeting in his offices in January/February 2009.[111] He said the plaintiff never mentioned it to him. He said that "*the funeral was in 2008, John was still letting on as if there had been no divorce*".[112]

110. The difficulties with having educational fees paid prior to May 2012 were referred to in evidence by Desmond. He said "*We'd be starting college in September of whatever year, it could have been '10 or '11, or even - obviously it was worse in '12 - but you'd starting having not paid your fees. So you wouldn't be registered. You couldn't sign into like the college system where, you know, your homework is assigned and all this stuff. You'd be called into offices for: 'Like what is the story with your fees?' They would be wondering are you ever going to pay them. Obviously, you can't take your exams if you don't pay them, so we were on to him the whole time*."[113]

111. Desmond took a year off after completing his leaving cert in June 2009. He gave evidence of working at the nursing home during that year doing cleaning/painting and some gardening work. He started college in September 2010.

[110] P106, line 22, Transcript Day 5
[111] P5, lines 18-19, Transcript Day 6 - 11.03
[112] P11, lines 24-25, Transcript Day 6 -11.13
[113] P9, lines 1-8, Transcript Day 6 -11.08

112. The defendants accepted they had received drawings in the amount of €234,813.70. (excluding Tara's salary)[114]

113. In December 2012 Des was 20 years old and in the first term of his third year of a five year college degree in engineering in UCD. He finished that third year, then dropped out of college the next year "*to get a job, to get money*". He secured a minimum wage job in a factory for 2013/2014 and went back to college in September 2014 using his savings. He completed that year but was unable to complete the final year due to lack of funds. He said: "*I finished that year '14/'15 but it was the same problem all over again. I got to the end of '15 with no money and so I was thinking: 'Do I drop out again and go work for a year and then come back?' and the final year is more expensive than all of the previous years, so it was just - I knew, like having done it once already, I knew it wouldn't be possible for the last year, so I left it at that. I just left."*[115] He said he was unable to take up many jobs because he had no car and couldn't drive. He took a job in Dubai teaching English. He came home the following year in 2016 and was then unemployed for three years. He started his own business making outdoor garden equipment in 2019 but said that the business was not profitable. He conceded on cross-examination that he has a level 8 degree in engineering[116]

114. It was put to Desmond on cross-examination that, with the receipt by Tara of €110,000 in February 2013, there would have been enough money available for him to pay his fees and complete his course. He replied that:

"*So to pay our mortgage and live in our house required €72,000 a year. There was no money for college included in that €72,000. So at this point you are saying we had*

[114] P16, line 27, Transcript Day 6 – 11.21
[115] P20, lines 6-13, Transcript Day 6 - 11.27
[116] P32, line 9, Transcript Day 6 – 11.46

€51,000, which was not enough to go to college, so we didn't go to college, none of us did but we dragged €51,000 out for something like 18 months, when according to Mr. Cahill's own figures it should have cost something like €80,000, 1.5 times 48, so €75,000. It should have cost €75,000 by his own calculations. But it actually cost - we scrimped and spread it out that it cost €51,000." [117]

115. All the defendants believe that together they could run the nursing home and expressed the wish to do so.

116. Desmond said "*Mr. Cahill has used these proceedings and I think he admitted as much himself, correct me if I am wrong, that he never wanted to come to Court. That he took proceedings against us with the intention of using them as a bargaining tool, not in those words but that was my understanding of the evidence he gave; that he wanted to settle but at the same time he took proceedings against us. It was a means to an end and this wasn't the end. Last week he was asked had he read the witness statements and he said no.*

On the Friday before the Court started, there was an application to have it adjourned. I don't think he ever wanted to be here, despite the fact that it is his case and he took the proceedings. He's the Plaintiff. He wanted - he didn't want to negotiate a settlement. He wanted it his way or no way and he used these proceedings and his power over the finances of the nursing home to drown us in debt from legal fees, accountancy fees, late payment to Revenue, mortgage interest. It was all a means to an end. Maybe it's not clear to everyone else but it is very clear to me."[118]

117. In his witness statement Desmond Seepersad, referring to his living conditions and experience since his mother's death stated that "*I did not choose this life and I do not*

[117] P45, lines 17-28, Transcript Day 6 – 12.10
[118] P28, lines 8-29, Transcript Day 6

want it. It was forced upon my by Mr Cahill. He abused his position of power over me at the time of my mother's horrifyingly tragic death and then starved me of my share of the income from my mother's nursing home. The psychological trauma he has inflicted upon me for the last 14 years can never be undone".[119]

The evidence of Karl Seepersad

118. Karl Seepersad also provided a detailed witness statement to the court which he adopted as his evidence in chief. This statement and his oral testimony set out the difficulties he encountered after his mother's death. Those difficulties do not need to be set out in detail in this judgment but it is very clear that his general health and educational advancement were adversely affected by the trauma he experienced following her death and by his engagement with the plaintiff. He believed the plaintiff treated him differently to his siblings. He referred to his witness statement which stated:

"Mr. Cahill treated my siblings and me differently. While he released some of their money to them, he did not do this for me and just because Mr. Cahill so decided. Everything was a struggle for me, purchasing cars, car insurance, education, everything. What we were meant to get under the agreements he withheld. Of course Cahill knew that by doing so he could promote disagreement between us and as everyone knows divide and conquer is often a tactic. For as long as he needed Tara on board with him because she was next of- kin- she got paid twice as much from our funds than we did, but as soon as he was in possession of what he craved he soon stopped all payments." [120]

[119] Para 71, Desmond Seepersad Witness Statement.
[120] P63, lines 15-27, Transcript Day 6 – 12.41 – and para 10, Karl Seepersad Witness Statement

119. Karl confirmed that for his 18th birthday dinner "*Mr Cahill made a big spectacle of insisting that he'd pay for everyone… Having settled the bill in public in the pretence of honouring everyone who was present, he then charged me for the birthday party meal by putting it into the drawing under "Karl"…. I did indeed end up paying for my own 18th birthday dinner and everyone else's*.."[121]

120. Karl strongly refuted the version of events given by the plaintiff in evidence regarding his visit to the nursing home in January 2012 which led to the correspondence on 2 February 2012 confirming that should the defendants "*wish to call to the nursing home they should contact the manager so proper procedures can be put in place.*" Following that correspondence Mr Pigot advised Karl that he "*should stay away from the Nursing Home altogether notwithstanding you own just over 13% of the Nursing Home*".[122] The other defendants gave evidence that they understood that the letter dated 2 February 2012 also referred to them, as indeed it does from the face of that letter.

121. When asked what issues he had with the Settlement as at May 2012, Karl confirmed that "*Oh, well at that point my car was not paid for. My insurance was not paid for. My like motoring expenses were not paid, they were guaranteed to be paid. I would say that we were there to have the agreement enforced. Also, I didn't like the idea of, and I still don't, of John Cahill setting aside my mum's divorce, to me it's a sickening idea. I did ask David Pigot about like what - why does he want to do that? and David Pigot shrugged his shoulders. Obviously, I know now why. But, you know, that idea is just sickening to me, to do that to a dead women whose last wish was to be rid of that person from her life*."[123]

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[121] Para 13, Karl Seepersad Witness Statement
[122] Letter dated 6 February 2012 D.R. Pigot & Co to Karl Seepersad.
[123] P68, lines 8-19, Transcript Day 6 – 12.49

122. Karl complained that a car owned by his mother had been sold by the plaintiff without any entitlement for him to do so. He also set out the difficulties he encountered in having his educational fees paid and that no fees were paid to him since December 2012 despite the terms of the 2012 Settlement which entitled him to such fees up to 2017.

The evidence of Hardeo Seepersad

123. Hardeo Seepersad provided a witness statement dated 21 November 2022 which he adopted as his evidence in chief. I do not need to set out his evidence in detail for the purposes of this judgment. His witness statement however recounts that when he attended Bridget's mother's funeral in 2017 "*It broke my heart to see Bridget's grave still without a headstone almost 10 years after her death. Even though Mr Cahill took full financial control over Bridget's nursing home business Mr Cahill refused for over a decade to release my children's share of the finances for a headstone to be purchased for poor Bridget's grave… In 2022, when I was in a financial position to be able to do it, I personally arranged for a headstone to be erected with the assistance of one of Bridget's brothers*."[124]

The expert evidence

124. Both sides retained experts to give evidence on financial matters -including a calculation of the drawings made by the respective parties from the partnership and opinions on the quantification of the entitlements of the parties as partners, assuming certain interpretations of the 2012 Settlement (and earlier versions). The plaintiff retained Mr Walsh as his accounting expert. The defendants retained Mr Stafford as their accounting expert. The defendants also retained Mr Conor Murphy as an expert recruitment consultant and I will deal with his evidence later. While Mr Walsh and

[124] Paragraphs 17 and 18 of Hardeo Seepersad Witness Statement.

Mr Stafford met with each other in advance of this trial, it was clear at the hearing that they had not achieved the level of dialogue or agreement on the issues that would normally arise between experts by, for example, the production of a joint expert report for the court. However, between the time the evidence concluded and the submissions on the evidence by counsel, the experts continued their dialogue and they produced a joint experts statement dated 9 June 2023 (the "**Joint Expert Report**") which has been of assistance to this court. This exercise was not an opportunity for either Mr Walsh or Mr Stafford to supplement their evidence. Rather it was a mechanism to see whether any agreement could be reached between them to narrow the issues required to be decided by the court. In those circumstances I am not proposing to outline in detail the evidence given by the experts orally at the hearing other than where I believe this is necessary. I will focus instead on the Joint Expert Report as I believe it is a more useful source of information for this court.

125. I will also in this section detail the significant objection that was raised by the plaintiff in relation to the independence of Mr Stafford and how this court should treat his evidence. Objection was also taken to the evidence of Mr Murphy but in much less trenchant terms.

The expert evidence of Mr Walsh

126. Mr Walsh confirmed he had been instructed as an expert by the plaintiff on 7 October 2022 (approximately two months prior to the commencement of the trial). He prepared a report dated 28 November 2022 on the basis of material provided to him which he confirmed included the pleadings, discovery affidavits and documents, financial statements of the nursing home for the financial years ending 31 December 2010 to 2020, the management accounts for the nursing home for the financial years 2006 to 2013 and for the year ended 31 December 2021 and the six months to the

end of June 2022. He also received what he described as sundry financial information and documentation such as calculations and materials provided directly by the plaintiff in response to various queries that arose in discussions between the experts. He confirmed he had been provided with the Settlement, the witness statements and that he had also sourced publicly available information, for example in relation to the Irish property market for nursing homes.

127. Mr Walsh confirmed that he was generally satisfied with the financial statements for the years 2010 to 2020 which had been prepared by Mr Neil Squires. He said:

"*The financial statements, to me, appeared in order.*

I have identified certain adjustments to profit in my report but outside of those, I had no difficulty with what the financial statements contained. They had the usual information in terms of profit, loss and the balance sheet and they appeared in order to me".[125]

128. He also confirmed that he had worked off management accounts for the year 2021 and the first half of 2022 as the financial statements had not been finalised for those periods. He believed the management accounts were in order. He said they were "*spreadsheet-based*" and not derived from an integrated accounting system, but he was able to derive the information needed from them. He said that often in trying to value a business he would receive additional information such as performance reports (such as occupancy rates in a hotel), which he did not appear to have been provided with in this case.

129. Mr Walsh confirmed that the accounting system used by the plaintiff was to use Excel spreadsheets rather than a dedicated accounting software package. Mr Walsh outlined that this limitation meant that he could not, for example, see the nominal ledger, which is all of the transactions of the accounting system. Nor was there an

[125] P18, lines 10-15, Transcript Day 4 – 11.27

ability to generate certain reports that could usually be generated from an accounting software package. Mr Walsh expressed his general satisfaction with the completeness of the information on the Excel spreadsheets saying: "*I didn't find any reason, other than those matters outlined in my report, to say that the information was less than complete or misleading or in anyway untoward*".[126] Mr Walsh was unable however to reconcile some of the Excel figures back to source information such as invoices, which had not been separately retained by the plaintiff.

130. Mr Walsh confirmed that the usual interaction between experts had not occurred in the present case, namely that each expert would first prepare their own report, then exchange reports with each other and there would be time for each expert to seek further information or take further instructions from their clients before the experts would then meet each other and prepare a joint report setting out areas of agreement and disagreement. By contrast, in the present case, Mr Walsh said he was contacted by Mr Stafford shortly after being retained and before he had begun his work. The experts met and Mr Walsh noted in his evidence that "*unlike the normal experts meetings where each of us would have understood and arrived at a position in respect of the issues, the vast majority of my meetings with Mr. Stafford were his requests for information, much of which information was information I required as well to do my work*[127]."

131. Mr Walsh said that he became "*a conduit to getting both of us certain information from the plaintiff*". He said "*.. while it was a meeting of experts and that we were the experts that were engaged by each side, it wasn't the typical meeting of experts that I would describe and that I would regularly participate in, in that I suppose, we*

[126] P22, lines 15-17, Transcript Day 4 – 11.34
[127] P26, lines 4-9, Transcript Day 4 – 11.39

weren't debating issues in order to come together because we hadn't yet, or I certainly hadn't arrived at a position to know whether I'd disagree with Mr. Stafford or not."[128]

132. He confirmed that he was ultimately instructed not to have further engagement with Mr Stafford.[129]

133. In relation to third party loans repaid from the defendant's drawings, Mr Walsh said he understood these loans arose in connection with purchasing the nursing home or perhaps replacing other finance that had been provided for that purpose. He said that in relation to those- payments towards the purchase of the nursing home, "*they would have been indebtedness of the late Brigid Seepersad and my understanding is that the beneficiaries of the late Brigid Seepersad are the Defendants. So I suppose one and the same group in terms of who would benefit from those payments*." *…If it was a liability of the estate, then the beneficiary of paying off a liability of the estate is the beneficiary or beneficiaries in this case, obviously*."[130] Mr Walsh was asked whether, given that these payments were not payments under the Settlement but were payments that the nursing home had to make, it could be said that they were payments on behalf of the business and both parties should get the benefit of them. His answer was:

"No, bearing in mind that this business was then being owned and operated by a partnership, so it's not a limited company where the shareholders changed. I mean, the ownership structure changed here. It was originally Brigid Seepersad, it then was her estate for a period of time and then it became the partnership of the Plaintiff and the Defendants. So if a payment was made from the business post September 2009 for the benefit of the estate, then the ultimate beneficiary of that

[128] P26, lines 14-22, Transcript Day 4 – 11.40
[129] P27, line 4, Transcript Day 4
[130] P32, line 18 – P33, line 2, Transcript Day 4 – 11.52

payment is the beneficiaries of the estate."[131]

It was established in evidence that these debts were not listed as debts in Brigid Seepersad's Inland Revenue Affidavit.

134. Regarding Tara's salary Mr Walsh noted that "*So the dispute concerns, Judge, whether it is to be treated as a cost of the business or a distribution of profits*."[132] If it was a salary (proper) it would have been a cost of the business. On cross-examination Mr Walsh was asked if the plaintiff had given him instructions that the plaintiff had redesignated this payment from salary to drawings after 2009. Mr Walsh stated "*No, I don't recall that he did*"[133].

135. Mr Walsh said the following in relation to the increased salary payment taken by the plaintiff over the course of the period from 2012 .

"*…this appeared to me to be an incidental matter which perhaps hadn't been given as much consideration as it might, in that the agreement provided for €5,000 per month. I don't know that it particularised that this was a fixed indefinite amount. I think it was as simple as that it would be €5,000 per month and it seemed to me that if it had been perhaps given some further consideration, the parties might have agreed as to increases over time that it didn't seem to be unreasonable that someone in Mr. Cahill's position would receive a salary increase over time so I suppose bearing in mind that the initial agreement was reached in 2009, which is around 13 years ago now. I am not aware of any position that wouldn't receive an increase, be it salary or stipend or honorarium, over that length of a period. And then I carried out a comparative exercise with the Director of Nursing, who is the most senior employee within the business, to ascertain what her increases were over that period*

[131] P33, lines 10-19, Transcript Day 4
[132] P36, lines 11-13, Transcript Day 4 - 11.59
[133] P112, line 29, Transcript Day 4

to benchmark, if you like, the increases that the Plaintiff had received, and while they didn't match up in terms of timing, I mirrored, if you like, the increases that is the Director of Nursing had received and I think the figure that I arrived at then was higher than what the Plaintiff has received if he had taken or if he had received the same increases in salary as the Director of Nursing at the same time." [134]

136. He agreed however that it would be a matter for the court as to the interpretation of the Settlement on this point.[135] Mr Walsh also confirmed on cross-examination that he was not familiar with section 24(6) of the 1890 Act to the effect that a partner was not entitled to pay himself remuneration for acting in the partnership business without the agreement of his partners.[136]

137. Mr Walsh said in relation to the interest claimed on the unpaid mortgage that "… *in this case it didn't appear that there was any effort to mitigate that loss in respect of the additional interest. So, I suppose, if the loan had been serviced, then that additional interest wouldn't have risen.*" [137] There was some argument as to whether this interest claimed had been properly particularised by the defendants. Counsel for the defendants confirmed that it was pleaded that the plaintiff didn't pay the mortgage and damages were sought for breach of contract. He argued that the claim for interest on the unpaid mortgage was clearly comprised within those particulars of damage.

138. In terms of dealing with any discrepancy between overpayments to the plaintiff and underpayments to the defendants it was Mr Walsh's view that: "*How the matter would be resolved in terms of the Defendants, I think there is only one way of resolving that, and that is that they would receive payment. In terms of the Plaintiff,*

[134] P41, lines 1-24, Transcript Day 4
[135] P42, lines 7-8, Transcript Day 4
[136] P113, line 5, Transcript Day 4
[137] P44, lines 13-17, Transcript Day 4

he could either contribute the money now or simply not take his profit share for a period, such period that would be equalised."[138]

139. In relation to the value of the nursing home Mr Walsh confirmed it could be valued on an earnings basis or on a net assets basis. He said that from his research "*small nursing homes are of very limited viability*".[139] He could find no comparative transactions- only closures. The income of the nursing home was largely dictated by payments under the Fair Deal Scheme. There was the possibility that an additional four beds might be added but no further space beyond that. Mr Walsh noted that the nursing home occupies the Property rent free and without any encumbrance in terms of a mortgage, whereas a purchaser would have to purchase the building and would have to factor in what they would be willing to pay for a mortgage or rent. Mr Walsh gave evidence of adjusted profit after EBITDA of €42,333. He said he had applied a multiplier of 4 to that adjusted profit figure explaining this was "*a standard multiplier to apply in any case*"[140] which could then be adjusted upward or downward based on comparable transactions. He then arrived at a valuation to which he applied a 25% discount to reflect the small size of the business. This resulted in a valuation of the business of €126,999, excluding the value of the Property itself. However, Mr Walsh went on to say that while this was a calculation, in reality he didn't believe there was a market for the nursing home business and therefore he attributed a nil value to the business on an earnings basis.[141]

140. Mr Walsh estimated per bed revenue of €60,000 per annum and said that this figure would have to be discounted slightly as there would not be 100% occupancy 100% of the time. It would only be possible for the nursing home to increase its revenue by

[138] P60, lines 1-5, Transcript Day 4 – 12.43
[139] P62, lines 20-21, Transcript Day 4 - 12.46
[140] P69, line 26, Transcript Day 4 - 12.59
[141] P73, line 8, Transcript Day 4 – 14.04

either adding beds or achieving an increase in the annual fee. A reduction in costs would also contribute to an increase in profit.

141. Mr Walsh also valued the business on a net asset basis and he calculated the net assets as at 30 June 2022 to be €1,182,671, which he described as ".. *broadly speaking, if the assets were to be disposed of and the liabilities of the business paid, that is what would remain.*".[142] He noted that the value of the Property with fixtures and fittings was recorded in the books of the nursing home at €1,017,500. There was also cash of €320,000.

142. He outlined for the court the issues that would face a receiver if one were to be appointed saying as follows: – "*So, as I understand it, Judge, the two main issues that would face a receiver would be, first of all, the HIQA registration in terms of being registered to operate the nursing home. …a receiver would have to be and the situation would have to be acceptable to HIQA. So it may be the case that HIQA would not be agreeable to a receiver running a nursing home, even on a run-off or winddown type basis that the HSE may in fact take control of the nursing home. ..- And also it occurs to me that insurance would be a very significant issue from my own experience, Judge, in insolvency appointments whereby it is very difficult to get insurance for any sort of a trading activity, not to mind one as heavily regulated as nursing homes, and in many cases it simply is not possible for a receiver or a liquidator to get insurance and trades have had to cease as a result of that, that may otherwise have continued to be sold as a going concern, because a receiver simply won't trade any business without adequate insurance and in such case as insurance can be obtained, it's usually at a very significant premium compared to a business as- usual- premium, even if it's only insurance for a vacant property, it's usually*

[142] P73, lines 16-19, Transcript Day 4

very expensive."[143] He also referred to redundancy costs which he estimated at €150,000 and the position regarding residents as well as the associated costs of receivership. He said that "*So a receiver would need to have a good handle at the outset that this business should be continued as a going concern in order to achieve the best outcome. And if their sense is that it might not or would not, then it would be unlikely that they would continue to trade it on the basis that it may achieve a premium over the base value of the property and the underlying assets*"[144]

143. Mr Walsh gave the following evidence in relation to his engagement with Mr Stafford. They had three or four meetings which were stated to be held "without prejudice". He said: "*..it occurred to me that we are not doing what we normally would be doing here, we're just having "without prejudice" discussions, i.e. designed to come to a resolution in terms of a matter that is in dispute, what we are actually doing is gathering information and documentation for the purposes of doing our work. And I put it to Mr. Stafford that, in fact, if we remained on a "without prejudice" basis, neither of us could use the information that each other were providing and that that wasn't really what we were engaged in at this time. What we were engaged in at this time was gathering evidence to produce our report so that in fact our discussions weren't without prejudice and shouldn't be regarded as such, and he agreed".*[145]

144. Mr Walsh said that in the course of discussions with Mr Stafford, Mr Stafford had made a comment (in the context of there not being funds available to deal with liabilities) that the plaintiff lived in a house that was unencumbered. It was put to Mr

[143] P76, lines 10-29 and P77, lines 1-12, Transcript Day 4
[144] P80, lines 26-29 and P81, lines 1-4, Transcript Day 4 – 2.16
[145] P82, lines 1-19, Transcript Day 4

Walsh on cross-examination that this comment was made after Mr Walsh had indicated the plaintiff was bankrupt. Mr Walsh denied making any such statement.

145. He also confirmed that he (Mr Walsh) had been copied on email correspondence sent by Mr Stafford to Chartered Accountants Ireland ("**CAI**") enquiring whether Mr Stafford had an obligation to bring matters to their attention given that Tara Seepersad had made a complaint against Squires & Co. The letter also asked whether there was "*any obligation on Mr Declan Walsh to bring such further facts or matters to your attention in respect of Squires & Co. and Vistra*."

146. Mr Walsh said: "*I thought this was an extraordinary email. I had not discussed this matter with Mr. Stafford*". [146] Mr Walsh on cross-examination accepted that in general terms it was legitimate for partners to complain if an accountant for the partnership was not giving them information.[147]

147. Mr Walsh, on being asked about the finances for 2012 when payments ceased confirmed "*I'm not aware of anything that caused a massive financial difficulty in 2012*." [148] He accepted that the nursing home continued to make profits in the years following 2012 but said he did not examine the cash flow for any of those periods. He confirmed he did not believe there was any default on the April 2010 loan to the nursing home at any stage. On cross-examination the following exchange occurred, referring to the payments made to the defendants in 2009, 2010 and 2011:

"*Yes, if it is paid out, then the cash existed to pay it, yes.*

Q. Have you any reason to believe that changed in 2012?

A. I don't". [149]

[146] P85, lines 15-16, Transcript Day 4 – 14.24
[147] P88, line 6, Transcript Day 4
[148] P93, lines 24-25, Transcript Day 4 – 14.35
[149] P108, lines 10-13, Transcript Day 4 – 14.54

148. It was put to Mr Walsh on cross-examination that he had not in fact vouched a considerable part of the drawings which the plaintiff alleged he had paid to the defendants but that he had simply relied on spreadsheets provided by the plaintiff which Mr Walsh had not appended to his report. Nor had he appended the computation of the defendants' alleged drawings of €393,222. The exchange continued:

"*Did you raise any issue in relation to that figure at all?*

A. I raised the issue that the Defendants clearly didn't accept a material portion...(INTERJECTION).

Q. No, did you raise any issue - you're here saying

Mr. Cahill has given you this figure of €393,222. As an expert witness coming to Court, you've accepted that figure. Did you raise any issues with that figure? It's yes or no; you either had a conversation with

Mr. Cahill about them or you didn't.

A. I don't recall raising any other than to vouch the portion of which the Defendants didn't agree.

Q. So the balance of that figure is simply the figure Mr. Cahill gave you?

A. A portion of which he has subsequently vouched."[150] (this appears to be €9,084).

149. Mr Walsh confirmed that he had received a similar form of schedule from the plaintiff in relation to the plaintiff's own drawings and acknowledged that this schedule was not appended to his report. He said "*I wish I had had a lot more time to append a lot more to my report*". In relation to the figure provided by the plaintiff for his own drawings the following exchange is relevant:

"*So you've carried out no vouching exercise on his drawings at all then; you've just*

[150] P100, lines 5-19, Transcript Day 4

been given a figure of €589,000?

A. That's correct.

Q. So you're not in a position to give any evidence as to whether that's properly classified as drawings or whether - that there are payments that should be classified as drawings that should be in that €589,000, you're not in a position to give that evidence at all, are you?

A. No, I'm not. "[151]

The expert evidence of Mr Stafford

150. There are a number of complaints advanced against the defendants' expert witness, Mr Stafford. Those complaints relate not to his expertise, but rather to his independence and his behaviour. It is alleged that he has acted as an advocate for the defendants in these proceedings. It is alleged that he initiated and entered into settlement negotiations to try and settle the case. It is alleged that he precipitated (and indeed drafted) a complaint of professional misconduct against the partnership accountant, Mr Neil Squires, who is also the son-in-law of the plaintiff, and that he caused one of the defendants to make a complaint to CAI alleging professional misconduct against Mr Squires for failing to provide information to Mr Stafford. It is alleged that these complaints utilised documents which were provided to the defendants on discovery and that, by doing so, Mr Stafford breached the implied undertaking to the court by using discovered documents for a collateral purpose unrelated to the proceedings. It is stated that the professional conduct complaint alleged collusion and fraud on the part of the plaintiff and Mr Squires against both the defendants and the Revenue Commissioners. It is also alleged that Mr Stafford

[151] P129, lines 7-17, Transcript Day 4 -15.24

has himself threatened to make a complaint to CAI and that he invited the plaintiff's expert to do the same.

151. These objections were flagged with the court at the outset of the evidence in this case. Ultimately I ruled that Mr Stafford should give his evidence in the ordinary course and be cross examined on it (including as to his independence), but that I was taking this course of action entirely without prejudice as to how I would treat Mr Stafford's evidence (both as to weight and/or admissibility), having heard the evidence which he tendered and the evidence of the complaint concerning his independence.

152. Mr Stafford commenced his evidence on day six of the trial. He confirmed that he was first contacted directly by Desmond Seepersad by email on 11 April 2022. Mr Stafford agreed to provide a valuation report and stated that partnership disputes were one of his specialities. He confirmed that in June 2022 he called the plaintiff *"[A]fter getting clearance through the respective firms of solicitors*".[152] He said that call lasted approximately one hour, and he explained to the plaintiff that he needed to calculate maintainable earnings for the nursing home. After that call he followed up with a text to the plaintiff. He said the plaintiff was insistent that all engagement be on a without prejudice basis.

153. Mr Stafford confirmed that he had discussed the possibility of negotiations with the plaintiff and the possibility of going into a mediation process. Mr Stafford confirmed he needed information before that could happen and he said the plaintiff told him he had got enough information. Mr Stafford reviewed the discovery material and contacted the plaintiff again to confirm that he needed more relevant up-to-date information to calculate maintainable earnings. He said that the plaintiff told him he

[152] P122, line 24, Transcript Day 6 – 15.32

was not going to give him that because the defendants had enough information.

When Mr Stafford was asked by counsel as to whether he had overstepped the mark as an expert by contacting the plaintiff directly, Mr Stafford replied as follows: –

"*I think my view on this, judge, is that I start off this process, you know, being retained as an independent expert. The other side at this stage had not appointed an independent expert. I had no choice but to call Mr. Cahill because - and even then, he still refused to appoint an independent expert. So- in the first phone call I had with Mr. Cahill in the middle of June, it was a 65minute phone call and, you know, I've been trained on how to interview people, how to get information from people. So I know to ask -open ended questions, all the basic interviewing techniques. So I had Mr. Cahill do all the talking, okay, because I wanted to get as much information from that phone call as I could. And Mr. Cahill, you know, he heightened my senses that, you know, he wanted to settle this. And I said, "Well, listen, if you want to settle, you know, we need to get into mediation, okay and, to do that, we need to get a valuation, so we need to agree and negotiate a valuation as a first step." And he came back seven days later and said that, you know, you know, more or less, "-I want to do it my way, if you can't do it my way, we're not going to negotiate." So no negotiations took place*."[153]

154. Referring to how he had approached the requirement for objectivity, Mr Stafford said that he had prepared his report for the court on a "*totally objective basis"* relying on bank statements. He said that he "*expunged my mind, all my personal views and opinions that I had of the plaintiff, John Cahill, but that I also had of the defendants*….".[154]

[153] P42, lines 26-29 and P43, lines 1-19, Transcript Day 7 – 11.56
[154] P45, lines 9-12, Transcript Day 7 – 11.59

155. Mr Stafford confirmed that he had contacted the partnership accountant, Mr Squires. He said that his senses were heightened immediately when he received an email headed "without prejudice" from Mr Squires. Mr Stafford said, "*I got absolutely no information from Mr Squires*".[155] Mr Stafford said that Tara had written looking for a copy of the engagement letters that Mr Squires had been retained under in 2013 but Mr Squires refused to provide this. Mr Stafford said that this was "*very unusual because there is no reason why he should have refused*".[156] Mr Stafford requested that same documentation when he was engaged. Mr Stafford said he advised Tara to seek the documentation again and to tell Mr Squires she would submit a complaint to CAI if he did not provide it. He then said "*Low and behold within seven days the engagement letters arrived. I think that illustrated that Neil Squires would respond to possible complaints to Chartered Accountants Ireland, as he should do*." [157] Mr Stafford said he advised Tara that she should take a similar approach to seek accounts for 2015, 2016 and 2017. He confirmed that he "*set out… exactly what information I needed*" and that *"[A]t the end of the e-mail I put in that if I don't have this information by a certain date I will make a formal complaint to Charter (sic) Accountants Ireland*." [158]

156. When questioned further Mr Stafford stated:

"*I think it is very important to be clear on this, this was Tara Seepersad's complaint, she was the client, it wasn't my complaint. It is Tara Seepersad's complaint to Chartered Accountants Ireland that the accountant to her partnership was not releasing information to her. So it was her complaint. I put into type her complaint, her words if you like*".

[155] P125, line 28, Transcript Day 6 – 15.37
[156] P126, lines 9-11, Transcript Day 6
[157] P126, lines 23-27, Transcript Day 6
[158] P128, lines 8-11, Transcript Day 6 – 15.41

157. Mr Stafford said that he finally got accounts for 2015, 2016 and 2017 and got additional information through Mr Walsh. Mr Stafford said that he examined the records provided to him and that he had "*serious questions*" including with regard to the commencement date of the partnership and how the plaintiff had accounted for the €150,000 bonus to him included in the Settlement.

158. In relation to the third party payments, Mr Stafford said that the accounting treatment was that they seemed to be creditors of the estate although he had no knowledge of who got the money or the background to the loans. He said his instructions were that the defendants never authorised those payments to be allocated against their drawing accounts.

159. Mr Stafford was particularly critical of the fact that the partnership accounts had no split of the partner's capital accounts or current accounts or drawings. This certainly appears to have been a significant shortcoming in what one would normally expect for a partnership account and it will likely require a more detailed exercise to be carried out in order to ascertain the correct detail for each partner's capital account.

160. On cross-examination, Mr Stafford confirmed that he was aware of a prohibition on experts acting as advocates for their clients. [159] He also confirmed that he had not received a letter of instruction from the defendants but had signed an engagement letter with the defendants directly. He said that his initial instruction was just to prepare a valuation of the business but that "*as we got in to it*" he identified other issues and received oral instructions from the defendants' solicitors to look at transactions and make a report on them. It was put to Mr Stafford that he had effectively been given "*free rein*" to investigate matters and that he had made unsolicited direct contact with the plaintiff for the purpose of getting information

[159] P49, line 16, Transcript Day 7-12.06

from him in relation to the proceedings. Mr Stafford persisted with his response that he had no choice but to call the plaintiff directly as the plaintiff had not appointed an expert and "*otherwise I would have made no progress*".[160]

161. Mr Stafford said that the discussions regarding possible settlement "*evolved during the conversation*". He said that he did not recall saying he had a mandate to settle the case although he admitted he "*could have said that term*".[161] He admitted he said to the plaintiff "*that if he was interested in settling, that we could bridge that gap and see if it could be settled*".[162] Mr Stafford later gave evidence that he had told the plaintiff that he (Mr Stafford) had authority to negotiate on behalf of the defendants.[163] He admitted that he had asked the plaintiff did he have the wherewithal to buy out the defendants and he said that the plaintiff was "*insulted by my question*", although Mr Stafford felt this was a legitimate question for the court to know.[164].

162. Mr Stafford said that he believed Mr Squires was not independent and that he had "*a severe conflict of interest*."[165] which he later described as "*trying to protect his wife and trying to protect his father-in-law*" [166]. He stressed however that in his report he passed no judgment as to what Mr Squires did or did not do. He admitted that he had suggested a complaint against Mr Squires as an option to Tara Seepersad and that he had "*formulated the complaint in that I told her what information I needed from Neil Squires*".[167] He said no complaint would have been advanced to CAI if Mr Squires had responded within the time allocated, which he did not. Mr Stafford said he

[160] P56, line 8, Transcript Day 7 - 12.17
[161] P57, line 27, Transcript Day 7- 12.19
[162] P57, lines 12-13, Transcript Day 7 – 12.19
[163] P59, line 26, Transcript Day 7 – 12.23
[164] P59, line 1, Transcript Day 7 – 12.21
[165] P73, line 13, Transcript Day 7- 12.45
[166] P78, line 13-14, Transcript Day 7
[167] P76, line 23-24, Transcript Day 7 – 12.51

expected the request would be complied with and that it was "*extraordinary, in my view, unprecedented*"[168] that it was not. He denied that this complaint was to gain a litigation advantage. He confirmed that he "*typed the complaint*" to CAI, sent in Tara's name but later insisted that it was Tara's complaint. Mr Stafford said "*I put into words what she felt, whereas my report to the court, Judge, is objective, okay, because it has to be objective*."[169]

163. When questioned about the implied undertaking regarding the use to which discovery documents could be put, Mr Stafford stated "*You learn something new every day. I didn't know that discovered documents could not be used, or that there was an issue in using discovered documents in other matters. Ehm, I hadn't even considered it*".[170] He said that Tara had already had some accounts and in his view was entitled to the other accounts. He suggested there might also be a "*public issue*" and said that he would justify his conduct "*100%*".[171]

164. Mr Stafford confirmed that he had identified a claim for lost earnings as a result of the premature ending of the defendants' education and that he requested Mr Murray of Azon Recruitment to prepare a report in respect of that claim. Mr Stafford stated that this was an "*imponderable claim*"[172]. He said *"[T]hat element of my report is probably not objective, okay, in that it's very difficult to quantify*".[173]

Legal submissions on the admissibility of Mr Stafford's evidence

165. The plaintiff submits that Mr Stafford's evidence is entirely inadmissible. Counsel for the plaintiff relied on a number of legal authorities in support of this argument, including the decision of O'Donnell J (as he then was) in *Emerald Meats Limited v*

[168] P79, line 3-4, Transcript Day 7 – 12.55
[169] P102, lines 1-2, Transcript Day 7 – 14.30
[170] P93, lines 13-17, Transcript Day 7 -14.15
[171] P96, line 28, Transcript Day 7 – 14.21
[172] P116, line 8, Transcript Day 7- 14.56
[173] P116, lines 11-13, Transcript Day 7

Minister for Agriculture [2012] IESC 48 where (at para 28) he said "…. *expert witnesses owe a duty to the Court to provide their own independent assessment. It is only because of their expertise and assumed independence that they are entitled to offer opinion evidence on matters central to the court's determination".*

166. The most recent detailed analysis of the duty of experts and the admissibility of expert evidence can be found in the decision of the Court of Appeal in *Duffy v McGee* [2022] IECA 254. Mr Justice Collins quoting from Hodgkinson & James, *Expert Evidence: Law and Practice* (5th ed; 2020) set out what he confirmed (at para 22) is the "*clear law*" in this jurisdiction as follows:

(1) "*Expert evidence presented to the court should be and should be seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.*

(2) *An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise. An expert witness should never assume the role of advocate*".

167. Collins J noted at paragraph 24 that *"[F]ar too frequently, expert witnesses appear to fundamentally misunderstand their role and wrongly regard themselves as advocates for the cause of the party by whom they have been retained. It may be said that this is an established part of litigation culture in this jurisdiction. If so, the culture is unacceptable and it needs to change*". He went on to agree with Noonan J's judgment in the same case that as a matter of principle, lack of objectivity, impartiality and independence may, and in an appropriate case will, go to the admissibility of expert evidence and not merely to the weight to be given to such evidence.

168. Counsel for the plaintiff argued that Mr Stafford's account of his initial phone call with the plaintiff was entirely distorted and false. Counsel argued that in his direct evidence Mr Stafford misleadingly stated that he merely discussed the possibility of negotiations or mediation with the plaintiff but said that no negotiations took place. However, on cross examination Mr Stafford admitted that:

(1) He directly contacted the plaintiff in order to seek to initiate negotiations;

(2) He told the plaintiff that he had a mandate to settle the case on behalf of the defendants;

(3) He suggested to the plaintiff that they might be able to bridge the gap and settle the case;

(4) He told the plaintiff – "*we shouldn't be paying lawyers or wasting money on lawyers or mediation. We can settle this case and I'll have it done in six weeks*"[174];

(5) He enquired if the plaintiff had the money to purchase the defendants' interest.

169. The plaintiff submits that the attempt by Mr Stafford to invite settlement of the dispute directly with the plaintiff outside the litigation was entirely improper and inconsistent with his duty as an independent expert if he wished to continue in that role.

170. Mr Stafford did continue to act as an independent expert, while at the same time taking further steps which the plaintiff submits rendered Mr Stafford's role as an expert witness entirely untenable. Reliance in that regard is placed on the following matters identified by the plaintiff:

(a) Mr Stafford advised the defendants to make a complaint of professional misconduct against the partnership accountant, Mr Squires and his firm, in order

[174] P58, lines 1-4, Transcript Day 7

to bring pressure to bear upon him to furnish information. The timing of this complaint overlapped with the defendants' solicitors seeking precisely the same information the subject of the complaint. The plaintiff's solicitors requested that all enquiries should be through solicitors. Mr Stafford was the driving force behind the complaints, although he sought in his evidence to attribute the complaint as one made solely by Tara Seepersad.

(b) Mr Stafford speculated in his evidence that the reason his complaint did not "*flush out*" Mr Squires was because Mr Squires had a conflict of interest and was trying to protect his wife and trying to protect the plaintiff, his father-in-law. He elaborated as follows: - "*I now know why Mr Squires wouldn't want to give me his correspondence file, because he would have to disclose the 2013 PAYE under- declaration and explain why he hadn't updated or amended the accounts for it and why he hadn't submitted, notified Revenue, all that saga of stuff, okay. So I now know why Neil Squires didn't cooperate, okay, because he was protecting himself and protecting his father-in-law and his wife*"[175]

(c) Mr Stafford used documents provided on discovery for the collateral purpose of making a complaint of professional conduct against a third party colleague in breach of the implied (and express) undertakings not to use the discovery material for any collateral purpose without the leave of the court. Mr Stafford appeared to be unaware of this implied undertaking in his evidence.

(d) Mr Stafford articulated a further complaint to CAI in which he claimed that the plaintiff, Liadh Cahill and Mr Squires colluded in defrauding the defendants and the Revenue. This was described by counsel for the plaintiff as perhaps the most spectacular act of Mr Stafford because the allegation of misconduct could not

[175] P79, lines 17-25, Transcript Day 7,

have been more serious and must have been intended to cause the maximum harm and fallout in what Mr Stafford perceived to be the other camp.

(e) Mr Stafford made allegations of conflict of interest against the plaintiff's solicitors regarding their completion of the inland revenue affidavit.

(f) Mr Stafford abused his position at the meeting of experts ordered by the court by using the occasion to indirectly but tacitly threaten the plaintiff that his family home was at risk.

(g) Mr Stafford instructed a former employee to compile a report to justify a claim for loss of opportunity that the plaintiff alleges was personally concocted by Mr Stafford.

(h) Mr Stafford made use of prejudicial language in his expert report such as referring to "improper payments", "striking features" and placing words in inverted commas.

(i) Mr Stafford interpreted all unexplained matters in favour of the defendants.

(j) Mr Stafford overreached into legal matters such as alleging that the partnership accountant failed in his duty of care to the defendants.

(k) Mr Stafford made comments and subjective observations on the plaintiff's witness statement.

171. Counsel for the plaintiff says that these matters could not be described as minor transgressions. The plaintiff submits that each and all of them are significant departures from the fundamental requirements of objectivity, impartiality and independence required of an expert and should lead to Mr Stafford's evidence being ruled inadmissible.

172. Counsel for the defendants disputes the plaintiff's characterisation of Mr Stafford's actions. He says that the need to contact the plaintiff directly was explained clearly

by Mr Stafford in his evidence, namely that Mr Stafford had to obtain additional information which could only be obtained from the plaintiff because the plaintiff had not instructed an expert witness at that time. Mr Stafford denies having overstepped the mark as an expert in his exchanges with the plaintiff explaining that his only point of contact at the time was the plaintiff. Mr Stafford was not initially aware of the familial relationship between Mr Squires and the plaintiff. When the requested information he sought was not forthcoming Mr Stafford formulated a complaint to CAI, which was both his own and Mr Squires' professional association, and he put Mr Squires on notice thereof. Mr Stafford did so solely for the procurement of information to which the defendants had a proprietary right and which was necessary for the preparation of Mr Stafford's expert report. It is denied that any litigation advantage was sought or obtained by this step.

173. Counsel for the defendants dispute that there was discovery documentation included in or relied upon in the complaint to CAI. The defendants argue that in fact and in law there was no undertaking in place or effective in relation to the documentation and information relied upon by Mr Stafford and/or the defendants in making their complaints. Rather, all such documentation had been provided voluntarily in open correspondence over the preceding years of these proceedings. The defendants were entitled to use their own documents as they saw fit, including to complain about the performance of their accountant. They say the steps taken must be viewed in light of the consistent and continuing failure of the plaintiff to provide documentation to the defendants which they were clearly entitled to as partners, and which had been continually requested by them and only provided eventually when Mr Stafford was instructed. They say it was this information deficit, the impending trial date and the risk of further injustice which prompted Mr Stafford's suggestion to Tara Seepersad

to complain to CAI regarding Mr Squires. The sole purpose of the complaints was to procure access to financial records and documents ostensibly held by the plaintiff on behalf of the partnership and the defendants and which were absolutely necessary, and remain necessary, for the purpose of this litigation. Referring to the decision of Simons J in *Re Independent News v Companies Act* [2020] IEHC 384 the defendants noted the judge's comments at para 75 in the following terms "… *the objective of the implied undertaking not to use discovered documents for collateral purposes is to protect the confidence and privacy of those who have had to make discovery of documents under compulsion"*. Counsel for the defendants submits that for an implied undertaking to arise, production disclosure or discovery of disputed documents must have been compulsory by court order or by an obligation owed to the court. They say no such documents were relied upon in the complaints made.

174. Mr Stafford insists his report is an objective report based on bank statements and says that he makes no judgment beyond identifying the payments as improper payments. He insists he has approached his role as an independent objective accountant and says his report is based on hard financial data grounded on bank statements eventually provided to him. He pointed to the basic accountancy deficiencies which the plaintiff's own expert acknowledged. He said the plaintiff's expert had admitted not having examined cash flows from any of the accounting years and that the documents used to vouch many payments were self-selected by the plaintiff. Counsel for the defendants says that it was legitimate and important for Mr Stafford to comment on these shortcomings.

The court's decision regarding the admissibility of Mr Stafford's expert evidence

175. As I have already indicated, I believe the criticisms raised by the plaintiff regarding Mr Stafford's behaviour have merit, in the context of Mr Strafford acting as an

independent expert. In all their dealings with the court and in the matter on which they are instructed, an expert must display the independence and objectivity which has been stressed repeatedly by the courts over many years. I do not believe that Mr Stafford has done so in this case.

176. Mr Stafford sought to justify the objectivity of his report on the grounds that it was based on an analysis of bank statements which, in his words, "*do not tell lies*".[176] Mr Stafford said he had been involved in over 200 disputes and had never been instructed by the solicitors acting for one party not to contact the accountant to the company, or the partnership. Mr Stafford was clearly frustrated by his inability to obtain certain documents and he said that as a result he was in "*a total cul-de-sac*". He believed he "*was being obstructed on every front*".[177] However, there was a process ongoing at that stage for information to be exchanged between solicitors. While this may not have been as efficient as Mr Stafford would have wished, it was inappropriate for him, as an independent expert witness, to become involved in a parallel process directly with the defendants to suggest and formulate professional complaints against Mr Squires. This is even more so in the present case where the complaint alleged fraud and collusion by Mr Squires and was not simply confined to a complaint that accounts were not being provided to the partners. Mr Stafford admitted that this complaint of dishonesty/professional misconduct was a serious one describing it as "*a high level complaint*".[178]

177. Mr Stafford was, no doubt, moved by the defendants 'situation and he believed he could assist them. However understandable that may be however, Mr Stafford could not be an expert witness and at the same time be, as I believe he was, an advocate for

[176] P45, line 20, Transcript Day 7
[177] P67, line 14, Transcript Day 7 – 12.37
[178] P100, line 3, Transcript Day 7 – 14.26

the defendants. This duality of roles is entirely inappropriate for an expert witness whose duty is to the court. His approach was flawed from the outset – Mr Stafford was not properly briefed as an expert; he inappropriately contacted the plaintiff directly and sought to settle this dispute on behalf of the defendants; he advised the defendants directly and he assisted them in making complaints (alleging fraud and collusion) to regulatory bodies, and indeed issued correspondence in his own name to CAI copying the plaintiff's expert witness.

178. I do not accept for all these reasons that Mr Stafford's report can properly be viewed by this court as independent or objective.

179. Mr Stafford sought to separate the report from his behaviour and "*innuendos of fraud*" made in complaints by stressing how he put his mind into a different place when preparing his report and in cleansing the report of reference to any such matters (although I note that his report does include his comments, for example, on the plaintiff "*intentionally"* engaging in non-payment of tax and producing misleading accounts). While he may genuinely have tried to so separate matters, I do not accept that he could. His behaviour went so far outside the bounds of what is required and expected of expert witnesses that in my view this court can attribute no weight to his report and I must hold that his report is inadmissible as evidence. I have been greatly assisted by the Joint Expert Report which I refer to in some detail later in this judgment. Noting that Mr Stafford obviously had input into that Joint Expert Report, I nevertheless believe that in the interests of justice I must have regard to it in full. This court may agree with certain conclusions reached by Mr Stafford on aspects of the financial evidence in this case, but that is on the basis of this court's own assessment of the evidence and not based on Mr Stafford's report or evidence.

180. Given the stated level of his experience as an expert, it is most surprising that Mr Stafford was unaware of the limitation on using discovery documents solely for the purpose of the litigation in which they were obtained and not for any collateral purpose. I accept however that there is no evidence that any compulsorily discovered documents were relied upon or used by him for the purpose of the complaints to Chartered Accountants Ireland and so I make no finding of any breach of implied undertaking by him. Insofar as the plaintiff may have sought an express undertaking on the use of documents that he was obliged to provide to the defendants as partners, I find that the plaintiff could not so restrict the defendants' use of those documents.

The expert evidence of Conor Murphy

181. Mr Conor Murphy, a recruitment consultant, gave expert evidence on behalf of the defendants in line with his expert report dated 22 November 2022. While the key evidence he gave is outlined below, the court found his evidence to be based almost entirely upon a simple comparison between publicly available salary scales and the defendants' actual earnings for the periods 2013-2022.

182. Tara Seepersad's earnings were compared with those of a qualified social worker in the HSE. Mr Murphy's evidence was that from 2015 to 2022 Tara would have earned €333,501 in that period as against her actual earnings of €126,428 (leaving a differential of €207,073). Mr Murphy's report estimated annual fees of €5200 per year for a college course and €5835 for each of two years to complete a Masters.

183. The same exercise was completed for Desmond Seepersad based on the salary of a graduate engineer (using general salaries quoted in an Engineers Ireland report) with a potential start date of January 2016. This suggested a total salary of €278,487 would have been achieved as at October 2022 and this was compared with

Desmond's actual salary of €110,000 in that period (leaving a differential of €168,487).

184. Mr Murphy gave evidence that Karl Seepersad had advised him that he aspired to be a staff nurse in a nursing home and he therefore calculated his loss of earnings by reference to that HSE pay scale. A particular difficulty with this comparison is of course that Karl gave no evidence to the court that he wished to pursue a career in nursing, nor had he taken any steps to do so by the time the plaintiff ceased payments. Furthermore, Mr Murphy's analysis assumed Karl would have qualified in 2013 having commenced college in 2009. This did not in fact happen for reasons other than the withdrawal of payments by the plaintiff and therefore it does not appear to this court that this assumption can be applied in this case. Evidence was given that Karl's earnings between 2013 and 2022 amounted to €56,396. It was estimated that fees to do a college course for nursing for four years would be in the sum of approximately €10,000.

185. On cross-examination, Mr Murphy admitted that he had not received CVs from any of the defendants and that he specialised in recruitment to financial positions. He also confirmed that he had previously worked with Mr Stafford and that he had received an email from him which included the following instruction to Mr Murphy: "*This is where you come in; compute what salary they would have earned since and going forward. Compute what the current jobs would earn going forward. Send your report to me and I will compute their losses to date, provided they send me details of their income to dated(sic) and their losses going forward".*

186. Mr Murphy was asked if he was aware that a person with a level 8 degree/diploma in Applied Social Studies could apply to work as a social worker and that there was no requirement to have a Masters degree. It appears however a Masters degree may be

necessary before a person can be paid as a "professionally qualified social worker". It was put to Mr Murphy that Tara had a suitable qualification and could have become a social worker with Tusla in 2015 had she wished to do so (albeit on a slightly lower salary as she did not have a Masters degree). The court notes however that in fact Tara does not have a level 8 qualification as she did not complete the fourth year of her degree. Her qualification is therefore at a level 7 which does not appear sufficient, without further study, to apply for a job as a social worker.

187. It was put to Mr Murphy that he had done the same thing for Desmond Seepersad who has an engineering degree although not a Masters degree. The court notes that Desmond gave evidence of being offered jobs but being unable to take them up as he did not have suitable transport and could not then drive. Karl did not complete his leaving certificate but did a FETAC course in social studies in Drogheda. .

Legal submissions on Mr Murphy's expert evidence

188. Counsel for the plaintiff raised an issue regarding Mr Murphy's expertise to act as an expert witness in this case. He noted that the report provided by Mr Murphy contained no details of his qualifications or experience as a recruitment consultant. Neither was this information asked of Mr Murphy in his examination in chief. Counsel for the plaintiff also noted that the association between Mr Murphy and Mr Stafford had not been disclosed in Mr Murphy's report. This association was both that Mr Murphy was a former employee of Mr Stafford and that it was Mr Stafford who had instructed Mr Murphy and requested him to prepare his report and the terms in which he should do so. Counsel submitted that Mr Stafford directed Mr Murphy on what to do.

189. Counsel for the plaintiff submitted that in cross-examination it became apparent that Mr Murphy had no qualifications, experience or expertise in the recruitment of care

workers, engineers or nurses. He had been working in recruitment for less than a year. He professed to specialise in recruiting for senior financial positions. When asked what he knew about social working his response was "*Ehm, not much*". [179]

190. Counsel for the plaintiff also submitted that there was no evidential basis for the claims articulated by Mr Murphy and that none of the defendants gave evidence to the court to substantiate such claims. A more general and broader claim by counsel for the plaintiff was that such a loss of opportunity claim for the defendants was not a pleaded loss. I will return to that latter argument later in this judgment.

191. I am satisfied that very limited weight should be attributed to Mr Murphy's expert report. The primary reason for this is simply Mr Murphy's lack of expertise in the area in respect of which he purported to give expert testimony. Furthermore, I believe that the approach taken in his expert report was highly simplistic and for that reason is of no particular value to the court. Mr Murphy did not request a CV from any of the defendants. He was unfamiliar with their qualifications and educational history. His assumptions in particular regarding Karl Seepersad cannot be supported based on the factual situation which pertained to him. I am also concerned that Mr Murphy was not properly instructed as an independent expert and that he appears to have approached the task of preparing his expert report under the direction of Mr Stafford, rather than independently. The range of losses quoted by Mr Murphy do not appear to factor in any taxation implications- even if the numbers he quotes were properly claimable. Unfortunately, Mr Murphy's report appears to have incorrectly and unhelpfully heightened the defendants' expectations regarding the quantum of a possible loss of opportunity/earnings claim.

[179] P130, line 21, Transcript Day 7

The Joint Expert Report and this court's determination on disputed items

192. Notwithstanding my decision regarding the inadmissibility of Mr Stafford's own expert report, I have had regard to the Joint Expert Report prepared by Mr Stafford and Mr Walsh dated 9 June 2023. In that Joint Expert Report an agreed position has been reached in respect of certain matters which has had a material effect on the quantification of the losses claimed in these proceedings. The Joint Expert Report helpfully sets out those aspects which have been agreed and sets out the experts' respective positions on the aspects on which their opinions differ. The Joint Expert Report deals with (1) the defendants' drawings; (2) the plaintiff's drawings and (3) other miscellaneous matters. I will now consider each of these headings in turn.

The Defendants' drawings

193. This section of the Joint Expert Report deals with the drawings extracted from the partnership business by the defendants from the commencement of the partnership in September 2009 until 2013 (although no payments were made to the defendants after December 2012).

194. The plaintiff's expert is of the opinion that the sum of €333,356.72 ought to be recorded as the defendant's direct drawings. He also believes that a further sum of €61,740.60 should be recorded as the defendant's drawings bringing total drawings for the relevant period to €395,097.32. The additional €61,740.60 comprises payments alleged to have been made on the defendants' behalf to third party creditors of the estate of Bridget Seepersad after 21 September 2009. €45,300 of this sum was paid during 2013. The plaintiff's expert is of the view that those sums paid by the nursing home in respect of these debts should be treated as the defendants' drawings in circumstances where he says the defendants are the sole beneficiaries of the estate and therefore benefit from payments of estate liabilities on a euro for euro

basis. It is agreed that the sums in question were loans obtained by Brigid Seepersad from third parties introduced to her by the plaintiff and used entirely to part fund the acquisition of the nursing home in 2005.

195. The defendant's expert believes the defendant's drawings for the relevant period totalled €234,813.70 – although it appears the defendants later accepted or recalled payments of €274,607.93. In addition, the defendants' expert agrees that payments of €12,963 in respect of the loan to finance the purchase of a vehicle by Tara Seepersad and which were treated as motor and travel expenses in the partnership accounts should be added back to the partnership profits and reallocated towards her drawings.

196. The court has been provided with additional information regarding the gap between the respective experts as to the quantum of the defendants' drawings. Having reviewed that vouching information attached at Appendices 1-3 to the Joint Expert Report I determine as follows:

(1) I believe the sum of €22,906.33 in respect of payments identified in Appendix 1 by way of cheque numbers, date, payee and annotation should be attributed to the defendants' drawings.

(2) I do not believe that the payments made by the nursing home to creditors of the estate of Bridget Seepersad should be categorised as the defendants' drawings. These monies were provided to acquire the nursing home. Following the Settlement, the defendants owned 45% of the nursing home and the plaintiff owned the remaining 55% (indeed the plaintiff had a 60% interest until 8 August 2015 pursuant to the 2012 Settlement). I see no basis in those circumstances on which 100% of the loan repayments would be attributable to the defendants' drawings**.** The repayment of these loans benefited the owners of the Property to

the extent of their percentage ownership. I believe the repayments ought to be treated as a business expense thus reducing the profit share to all parties. If it were necessary however to apportion the repayments to partnership drawings, then this would have to be on the basis of a 45/55 (or 40/60 as appropriate) split reflecting the respective ownership interests of the plaintiff and the defendants in the Property when the Property loans were repaid**.**

(3) Given that the defendants accept they received drawings of €274,607.93 and adding to that figure the sum of €22,906.33 which I believe has been satisfactorily vouched by the plaintiff, I determine that the defendants, drawings amount to **€297,514.26** (on the assumption that the loan repayments are not to be taken from partner drawings.) If the third party loan repayments are to be allocated to partner drawings then those should be apportioned in accordance with the respective percentage ownership of the parties at the date of payment.

The plaintiff's drawings

197. The plaintiff's expert included the sum of €589,166 in his report for the plaintiff's drawings over the period September 2009 to 31 December 2021. Following further engagement between the experts, the level of the plaintiff's drawings prior to any adjustment for the matters outlined below was agreed at €603,167.

198. The matters concerning the plaintiff's drawings which are in dispute between the parties are as follows. I set out my determination on each matter as it arises: –

(a) **The salary paid to the plaintiff**. The 2009 Settlement states at clause 12 that the plaintiff "*shall receive a salary of €5000 per month for his ongoing work in the nursing home"*. This wording was repeated in the later Settlement. A salary of €5000 per month is equivalent to an annual salary of €60,000. It is not in dispute that the plaintiff received a salary in excess of this amount in certain

years since 2009. In 2015 he received a salary of €64,000 rising each year thereafter to a salary of €90,000 in 2021. On the basis of a straightforward calculation the plaintiff has, to 31 December 2022, received €136,177 in excess of the fixed sum specified in the Settlement. The defendants submit that this sum should be added back to profits and regarded as a distribution to the plaintiff. The plaintiff's expert disagrees. He says that while the Settlement did not include a provision for salary increases, this appears to be a result of the matter being overlooked in circumstances where it would be highly unusual in business for an individual in a management role to expect to remain on the same salary *ad infinitum*. He says the level of salary increase received by the plaintiff was not unreasonable when benchmarked against that of the director of nursing. The plaintiff therefore argues that no adjustment is required to either the net profit of the business or to the parties' drawings. In my view there is no basis for the plaintiff to have increased his salary beyond that which was agreed in the Settlement. While this may not have been a commercially prudent term for the plaintiff, that does not justify him departing from it without the consent of his fellow partners. The Settlement must be interpreted according to its clear and unambiguous terms. It is also noteworthy that the plaintiff appears to have delegated a significant amount of his functions to his daughter Liadh who has been employed at an additional cost to the partnership since 2017. He is performing less functions than he did prior to that date. Accordingly, I determine that the plaintiff has been overpaid by €136,177 as at 31 December 2022. Insofar as he has continued to receive a salary in excess of €60,000 per annum from 1 January 2023 any excess also constitutes an

overpayment to him. Any overpayment must be added back to profits and regarded as a distribution to the plaintiff.

(b) **Underpayment of PAYE/PRSI/USC**. It is acknowledged by the parties that an underpayment of PAYE/PRSI/USC by the nursing home totalling €31,440 arises in respect of payments to 2 staff members during 2013. As a full investigation as to the extent of any liabilities arising prior to or since 2013 has not been undertaken by the plaintiff, the extent of any further underpayments is unknown. The plaintiff has offered an indemnity to the defendants in respect of the relevant tax liabilities of the nursing home (but not the defendants' personal income tax liabilities). The plaintiff's expert is satisfied, on the basis of such an indemnity being provided, that no adjustment to net profits or the parties drawings is required. The defendant's expert has expressed the view that the proposed indemnity from the plaintiff has no value and estimates the level of unpaid PAYE/PRSI/USC before interest and penalties would be approximately €300,000 and with interest and penalties would be at least €600,000. The court has no information on which to verify this view. In circumstances where an indemnity is to be provided by the plaintiff to the defendants for the tax liabilities of the nursing home,and assuming any necessary security can be provided to substantiate that indemnity, I do not propose to make any adjustment to the plaintiff's drawings or to net profits under this heading.

(c) **Professional fee to regularise tax affairs**. The experts are agreed that the partnership's tax returns require to be amended. The defendants' expert has estimated professional fees of €80,000 plus VAT could be incurred. The plaintiff has instructed his expert that he will indemnify the defendants in respect of the professional fees associated with the resolution of the nursing

home's tax affairs. On the basis of such a suitable indemnity being provided by the plaintiff I do not believe that an adjustment to net profit or the parties drawings is required under this heading.

(d) **Interest payments to AIB on business loans.** In October 2010 the nursing home drew down loan facilities with AIB totalling €300,000, repayable over 10 years. The loans were recorded on the letter of sanction as being for the purpose of taking over existing loan facilities and paying tax and legal costs and towards renovations and upgrade of the nursing home. The loans were repaid in line with their terms and fully repaid as at October 2020. The defendants' expert believes that as a result of the plaintiff taking excessive drawings and paying himself an unauthorised salary, the partnership lost the opportunity to redeem these loans early. He says that the loans would have been repaid in full by 2016 but instead were not repaid until the end of October 2020 resulting in what he claims to be an additional amount of €35,633 interest payments which he claims ought to be repaid to the nursing home by the plaintiff. The plaintiff's expert disagrees. I am satisfied on the evidence that the loan facilities were required for cash flow purposes and were signed by all parties. The loans were repaid in line with their terms. There was no requirement to repay the loans earlier. I do not believe that any adjustment to net profits or drawings is required for the interest paid during the normal term of the loans.

(e) **Car loan payments**. The 2012 settlement provides at clause 16 that *"[T]he nursing home shall be responsible for the payment of the running and maintenance of all vehicles used by the Applicant and the Respondent*". The Applicant refers to each of the defendants. The Respondent refers to the

plaintiff. In the period post September 2009, the nursing home made payments totalling €79,152 in respect of the loan taken out by the plaintiff to fund the acquisition of a vehicle and to discharge excess indebtedness in respect of two vehicles which were traded in, totalling €11,500. There is a dispute between the parties as to the ownership of the vehicles traded in. The plaintiff states that one of them belonged to him. The defendants' expert believes the loan payments made by the partnership on the plaintiff's personal loan were incorrectly treated as motor and travel expenses in the accounts and the tax returns when they should have been recorded as the plaintiff's drawings. In total, the defendant's expert concludes that the sum of €111,371.79 ought to be added back to the partnership profits and treated as the plaintiff's drawings in respect of motor expenses. The plaintiff contends that clause 16 was intended to include payments in respect of loans or hire purchase payments for the acquisition of vehicles, which was a continuation of a practice that was already in place prior to Brigid's death. The plaintiff has confirmed that he is willing to indemnify the defendants for any liability to the Revenue Commissioners arising from this matter. The plaintiff's expert believes it is "plausible" that the parties intended that the business would pay for the costs of the plaintiff's vehicles. I am not satisfied that the Settlement terms extend to the acquisition or funding cost of vehicles. The relevant clause refers solely to the payment of "*the running and maintenance"* of those vehicles. Accordingly, insofar as the plaintiff has received the benefit of loan repayments on vehicles acquired by him, those payments must be treated as part of the plaintiff's drawings and an adjustment to net profit is required for those payments.

(f) **The plaintiff's car expense claims.** The plaintiff's expert believes that clause 16 of the Settlement justifies a distinction between the treatment of motor expenses paid on behalf of the plaintiff, as costs of the business, and those paid on behalf of the defendants (in fact only Tara's motor expenses were ever paid) as drawings, due to the fact that the plaintiff was working in the business throughout the period, while the defendants were not. I do not believe that this interpretation correctly arises from the provisions of clause 16. All parties were to be treated equally in respect of the payment of running and maintenance of vehicles used by them. In my view all parties who received such payments ought to account for them as part of their drawings. Accordingly, the plaintiff's drawings should be adjusted to account for the motor expenses paid by the nursing home for his vehicle(s) since 21 September 2009. If there are specific and vouched travel expenses that the plaintiff incurred solely for the purposes of the business, then these can be treated as business expenses and not attributed to his drawings. However, that will only apply where there are proper vouchers in existence – otherwise travel expenses will be treated the same for all partners and be deducted from their respective drawings.

(g) Food. There is a dispute regarding the charges to the partnership of €8,005 paid to the plaintiff for the years 2013 to 2021. The plaintiff alleges these payments related to *ad hoc* purchases of food for the nursing home residents and staff and business-related meals. In view of the relatively small amount involved, I do not believe that any adjustment to profits or the parties' drawings is required in respect of these expenses albeit that, of course, it would have been preferable for the plaintiff to maintain proper vouching documentation. The proposed indemnity by the plaintiff should ensure that the

defendants will not be impacted by any revenue related issues for these expenses, should they arise.

(h) **Maintenance.** There is no vouching documentation available for certain sums claimed in respect of maintenance for the years 2013 to 2021. The defendants' expert concludes that the sum of €13,257.47 ought to be added back to the partnership profits and treated as the plaintiff's drawings on the assumption that the maintenance relates to the plaintiff's home office rather than the nursing home. The plaintiff claims these payments comprise *ad hoc* repairs and maintenance expenses related to the nursing home and not to his private residence. I do not propose that there be any adjustment to profits or drawings in respect of these expenses. The proposed indemnity by the plaintiff should ensure that the defendants will not be impacted by any revenue related issues for these expenses, should they arise.

(i) **Taxi.** I have not been provided with figures regarding the taxi expenses claimed which the plaintiff states comprise predominantly payments for taxi journeys taken by staff and residents of the nursing home and a small number of journeys undertaken by the plaintiff for business-related purposes. I do not propose that there be any adjustment to profits or parties' drawings in respect of these expenses. However, the plaintiff quite clearly should have retained proper vouching documentation in relation to them. The proposed indemnity by the plaintiff should ensure that the defendants will not be impacted by any revenue related issues for these expenses, should they arise.

(j) **Dublin office.** The plaintiff claimed expenses totalling €35,222 for his Home Office for the years 2014 to 2021. There is no evidence that any similar payments were made to the plaintiff for the period 2009 to 2013. I agree with

the plaintiff's expert who concedes that the sum of €35,222 should be added back to the partnership profits and treated as the plaintiff's drawings in respect of these expenses.

(k) **VHI payments**. The experts are agreed that the sum of €8,005 charged by the plaintiff to the partnership for his VHI in the years 2020 and 2021 should be added back to the partnership profits and treated as the plaintiff's drawings. I also agree.

(l) **Other payments to the plaintiff**. 35 payments were identified by the defendants' expert over the period December 2014 to November 2022 in favour of the plaintiff totalling €76,981.39 which the defendants' expert believes ought to be added back to the partnership profits and treated as the plaintiff's drawings. The plaintiff has provided explanations for some of those payments including that they comprised salary advances to him which were offset against his 2023 salary, payments in respect of vouchers/gifts for staff and an annual Christmas party for residents of the nursing home and payments relating to motor expenses for the nursing home minibus and the plaintiff's car. The plaintiff's expert concludes that the sum of €26,800 ought to be added back to the partnership profits and treated as the plaintiff's drawings. I agree with that conclusion but would add the additional sum of €2914.99 relating to the plaintiff's personal motor expenses. The adjustment to profits and to the plaintiff's drawings accordingly under this heading should be €29,714.99. Any revenue related issues which may arise regarding those payments is a matter solely for the plaintiff and would be covered by the proposed tax indemnity.

(m) **Treatment of motor expenses**. As already indicated, I do not believe that the Settlement entitles the plaintiff to have the nursing home acquire a private

motor vehicle for his use but rather is confined to payment for the running and maintenance of such vehicles. In so far as monies have been expended to acquire a motor vehicle for the plaintiff, such sums must be added back to the partnership profits and treated as drawings by the plaintiff.

(n) **Legal and professional fees**. Having considered the respective arguments set out in the Joint Expert Report, I determine that the sum of €92,666.41 should be added back to profits and treated as the plaintiff's drawings being the legal fees incurred for the present case. This is on the basis that the plaintiff has paid €102,780.61 to professionals in respect of the present proceedings but has accounted for €10,114.20 of that amount already as drawings for him. The further fees incurred by the plaintiff relating to the setting aside of the decree of divorce have been calculated at €75,344. The plaintiff says these fees are high because the defendants sought to oppose\frustrate the application. It is suggested that some of these costs should therefore be shared. I do not agree. That application was entirely for the benefit of the plaintiff, and he agreed in the Settlement to bear his own costs in connection with the application to set aside the divorce (clause 9). I determine that the entire amount of legal fees incurred by him for the divorce application should be allocated to his drawings. I do not believe the defendants should be penalised for opposing the application in circumstances where there is evidence the terms of the Settlement were not being implemented by the plaintiff at that time. I agree that the Settlement provides that the nursing home will pay the legal costs incurred by O'Connor Bergin and Mr Pigot arising out of negotiations in concluding the Settlement terms. Accordingly, no adjustment is required for those payments. I note that the payments due to Mr Pigot on behalf of the

defendants were not paid by the nursing home (resulting in the registration of a judgment mortgage against the defendants' family home). I calculate that in respect of total legal and professional fees an additional sum of €168,010.41 should be added back to the partnership profits and treated as the plaintiff's drawings. The fees due to Mr Pigot should be paid by the nursing home and not deducted from the defendants'drawings.

(o) **Sponsorship payments**. The nursing home sponsored bridge tournaments for many years and expended the sum of €59,235 for this purpose over the period 2013 to 2020. The plaintiff claims this was a legitimate business expense and that the sponsorship resulted in two residents being secured for the nursing home. I am not satisfied that this sponsorship can correctly be described as a business expense wholly and exclusively incurred for the purpose of the business. Neither did the defendants, as co-partners, consent to or have any knowledge of this sponsorship. The decision to provide the sponsorship was one taken solely by the plaintiff, who is said to himself be a regular bridge player. In the circumstances I believe the partnership profits and the plaintiff's drawings should be adjusted for this sponsorship in the amount of €59,235.

(p) **Payments to Liadh Cahill**. Liadh Cahill is the plaintiff's daughter and has been employed by the nursing home since November 2017 at an initial salary of €37,700 which was increased to €44,283.38 in 2021. In addition, Ms Cahill is said to have received a material level of expenses since 2017 totalling €60,128.15 to the end of 2021 (for which no vouching or explanation has been provided to the court). The total cost of Ms Cahill's employment between 2017 and 2021 is €245,079.65. She remains employed by the nursing home and so there will be an additional period of time since December 2021 which will also

have to be considered. The defendants submit that Ms Cahill's role is a duplication of the plaintiff's role and, as such, an adjustment should be made to profits and the plaintiff's drawings in an amount equal to the total cost of her employment. The plaintiff's expert has prepared a memorandum on the respective roles of Ms Cahill and the plaintiff such that the plaintiff's expert believes there is no duplication between the roles of both parties, noting that Ms Cahill took over a portion of the duties previously carried out by the plaintiff. I believe that this small business is unlikely to be able to sustain both a CEO and a deputy CEO and indeed this is evident from the valuation exercise for the business. There is some degree of overlap in my view between the roles carried out by the plaintiff and his daughter, particularly in relation to compliance and external relations in the wider health care sector. The plaintiff is now however in his seventies and no doubt there is some basis to justify some additional resources for him in relation to the heavy administration workload for the nursing home. He is however continuing to draw his full agreed salary from the nursing home. He alone decided to bring in his daughter into the nursing home as an additional paid resource to cover the workload he was originally carrying out in the nursing home. In all the circumstances I am of the view that for the years 2018-2021 an allowance of a salary of €25,000 per annum should be allowed for Ms Cahill from the profits of the nursing home (prorated for the 2017 year). That figure should increase to €28,000 for each of the years 2022 and 2023. Employer PRSI should be added to those gross salaries. I have no explanation or basis to justify the high level of expenses paid to Ms Cahill and, save where they can be specifically vouched and classified solely as an expense wholly and necessarily incurred for the

business, they should be deducted in their entirety from the partnership profits and allocated to the plaintiff's drawings, together with any surplus salary over the amounts set out above. Insofar as there are any revenue issues associated with those expenses, same would be covered by the tax indemnity offered by the plaintiff.

(q) **Payments to Ruairi Cahill**. The plaintiff's son, Ruairi Cahill, has been employed by the nursing home since October 2014 at a salary of €12,000 per annum and he also receives expenses. It is not clear precisely what Mr Ruairi Cahill's role is. It appears that he carries out some IT services which would have to be sourced elsewhere by the nursing home if he were not carrying them out. There is agreement between the experts that some payment is justified for Mr Ruairi Cahill's services. In circumstances where an outsourced provider of IT support is likely to cost more than is currently paid to Mr Ruairi Cahill, I propose that no adjustment to profits or parties drawings is required in respect of his salary of €12,000 per annum. However, there is no evidence to justify the payment of any expenses to him (nor have they been quantified). Any expenses paid should be deducted from partnership profits and applied to the plaintiff's drawings, save where they can be specifically vouched and classified solely as an expense wholly and necessarily incurred for the business,

(r) **Further agreed matters.** The experts are agreed there should be no adjustment for payments to Ark Life (which relate to employee pension contributions) and there should be an adjustment for repayments on the plaintiff's personal loan in the amount of €1557. Furthermore, no adjustment is required in respect of the €150,000 recognition payment paid to the plaintiff pursuant to the terms of the Settlement. I agree.

Tara Seepersad salary

199. Tara Seepersad claims she is due a salary of €12,000 per annum under the terms of the Settlement. The relevant clause 13 in the Settlement confirms as follows: "*Tara Seepersad shall receive a salary of €12,000 per annum for her ongoing work in the nursing home*". This clause has featured in identical terms in every version of the Settlement. At the date of the 2009 Settlement when the clause was first agreed, Tara was a student. She was then the legal personal representative of her mother and the registered owner of the nursing home. I have no doubt, based on the evidence, that the plaintiff knew she was the key defendant to keep on side if the Settlement was to be agreed. When the Settlement stated that Tara "*shall*" receive a salary of €12,000 per annum for her "*ongoing work*" in the nursing home, Tara was not in fact working in any official capacity there. She gave evidence that she regularly visited the residents and understood that the promised salary was to be paid to her for continuing to do what she was doing at that time. The plaintiff, in his evidence, sought to argue that the payment of salary was conditional upon Tara actually working in the nursing home. Alternatively, he argued that the payment, albeit described as a salary, was in fact intended to be deducted from Tara's drawings and in that way treated differently to the plaintiff's own salary.

200. The same version of this clause appeared in the 2010 Settlement and, most importantly, in the 2012 Settlement. In February 2012 the plaintiff had, through his solicitors, instructed that none of the defendants was to attend the nursing home without his consent. By the time the 2012 Settlement was entered into in May 2012 the plaintiff knew that he had issued that instruction and that Tara was subject to it . However, he did not clarify that Tara would not receive her salary because she was not working in the nursing home (and indeed could not work or even attend there, at

his insistence). I believe this was a calculated decision by the plaintiff, knowing that if that clause was so amended, it was unlikely to be accepted. Instead, he let Tara sign the Settlement without making any clarification of what he now says was always intended.

201. There was also evidence given that in the initial period following the 2009 Settlement Tara's salary was not deducted from her drawings- supporting Tara's understanding that this payment was to be funded by the nursing home rather than by her personally through her drawings. At some point in 2010, and entirely unbeknownst to Tara, the plaintiff changed the accounting treatment of this payment to reflect that it was part of Tara's drawings. The plaintiff admitted in evidence that he did not tell Tara this. In all the circumstances, I am satisfied that the Settlement must be interpreted in that context and in accordance with its plain wording which referenced "*ongoing work*", meaning a continuation of what was already in place. Insofar as Tara ceased attending the nursing home, this was at the plaintiff's insistence and entirely unrelated to any behaviour by Tara. In those circumstances the plaintiff cannot benefit from that action by ceasing to have a liability to discharge the agreed salary to Tara. I determine that the Settlement entitled Tara to receive a salary payment of €12,000 per annum for the work she was doing in 2009 and which she continued to do until she was prevented by the plaintiff from doing so. This payment is due to her to date and should be deducted from the partnership profits. Insofar as any part of that salary has been attributed to Tara's drawings, those drawings should be adjusted accordingly.

The Defendants' claim for damages

202. In their defence and counterclaim dated 6 March 2015, the defendants plead they have suffered loss and damage due to breach of contract, misrepresentation and

breach of fiduciary duty on the part of the plaintiff. In his Reply dated 9 November 2015 the plaintiff denies that he breached the Settlement or that he had resiled from or repudiated the Settlement once he succeeded in setting aside the decree of divorce as alleged (clause 27). The Reply also denies that the plaintiff owed any fiduciary duty to the defendants or that he acted in breach of any fiduciary duty as alleged (paragraph 35). It is further denied that the defendants had suffered loss or damage as alleged or at all (paragraph 41).

203. The defendants claim in their defence (para 12) that the Settlement is an unconscionable bargain and that they would seek recission of same by way of counterclaim. The defendants also state they would seek recompense for the payments denied to them by the plaintiff. In the particulars provided at para 19 of their defence, the defendants confirmed that their family home has been put at risk of repossession due to missed mortgage payments; that the defendants have been under constant threats from debt collectors by phone and post; that the defendants cannot afford to heat the family home and have had a constant risk of being cut off from electricity supply; that the defendants are unable to maintain their family home which they were assured would be done; that the defendants have been unable to pay for dental/medical care, health insurance or home insurance; that the defendants have been unable to pay their college tuition and as a direct result have been prevented from completing their education and will incur increased costs in returning to education and that the defendants have been unable to purchase and maintain vehicles.

204. Paragraph 7 of the counterclaim confirms that the defendants have had difficulty in completing their education (this document is dated 6 March 2015). The counterclaim alleges a breach of fiduciary duty on the part of the plaintiff and contends that the

plaintiff was not entitled to register himself as the owner of three undivided one fifth shares of the Property on 20 November 2010 or otherwise.

205. In his Reply dated 9 November 2015 the plaintiff admits that he ceased making payments to the defendants but says he did so "*in circumstances where the defendants had been overpaid by approximately €69,000*." (Para 31).

206. It is my view that in the present case, the pleadings, on both sides, are less than satisfactory. The plaintiff's pleaded claim as at 2014 is for an order dissolving the partnership and for the appointment of a receiver. At trial however the plaintiff did not seek these reliefs (to which the defendants had said they would consent in 2015). Instead, the plaintiff now seeks an order allowing him to purchase the balance of the nursing home, being the defendants' interest in the partnership assets, on the basis of the court determined value. Insofar as the defendants are concerned, there was criticism made by the plaintiff's counsel that they had not in their pleadings claimed or particularised the losses they claimed in evidence. Counsel for the plaintiff says that misrepresentation is not pleaded by the defendants and that the plaintiff is facing a claim unexpectedly. He also argued that even if the defendants could establish a negligent misrepresentation on the part of the plaintiff, they suffered no loss as a result thereof in circumstances where they had no option but to enter the Settlement as to do otherwise would have left them far worse off as the plaintiff would in all likelihood have obtained a two thirds share in the entire estate of Brigid Seepersad. Counsel for the defendants disagrees.

207. Order 19 rule 5(2) of the Rules of the Superior Courts provides that "*In all cases alleging misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be set out in the pleadings*."

208. While acknowledging this to be the position, counsel for the defendants notes that due to the clandestine nature of such activity, in many cases a claimant may be unable to plead such a claim with a great degree of particularity in advance of discovery or expert input. A balance needs to be struck in pleadings between disallowing mere bald allegations of fraud and requiring particulars of fraud that are so detailed as to be impossible to provide before investigation. Counsel for the defendants say this is particularly relevant on the present facts where the plaintiff controlled all financial information and refused to provide it until shortly before the trial commenced. He says that the pleadings clearly define the issues between the parties such that the plaintiff could be in no doubt as to either the defence being offered and/or the counterclaim he had to meet. Counsel for the defendants says that the pleadings provide this level of detail and further particularise the misrepresentations in replies to particulars. He said the plaintiff did not seek any particulars in relation to quantum and that it was the defendants who brought an application for witness statements so that no party would be taken by surprise at trial.

209. Counsel for the defendants says this court may order that the defendants are entitled to damages against the plaintiff, but he acknowledges that it is complicated as to how best this is done. He says that if the court transfers the nursing home to the defendants or gives them the entirety of the proceeds of sale that will afford some compensation. However, the partnership liabilities still remain in place and may be significant.

210. Counsel for the defendants accepts that the court is required to engage in a counterfactual because the education payments were not made to the defendants. Acknowledging that the figures provided by Mr Murphy in evidence are based on

certain assumptions, the defendants' counsel says they nonetheless remain the only evidence available as to what the defendants might have been able to achieve had their educational payments continued in compliance with the Settlement. He says those pecuniary losses are not remote, stem directly from the breach of contract and the misrepresentations and go to the fundamental basis and purpose of the contract, which was to provide the defendants with security, which was guaranteed to them for a specified period in order to complete their education and meet their living expenses.

211. In that regard he relies upon the decision in *Watts v Morrow* [1991] 1 WLR 1421, where Bingham L. J. stated (at page 1445) as follows:

"*A contract breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party. This rule is not, I think, founded on the assumption that such reactions are not foreseeable, which they surely are or may be, but on considerations of policy. But the rule is not absolute. Where the very object of the contract is to provide pleasure, relaxation, peace of mind or freedom from molestation, damages will be awarded if the fruit of the contract is not provided or if the contrary result is procured instead. If the law did not cater for this exceptional category of case, it would be defective*".

212. The task of a court in awarding damages for breach of contract is to put the innocent party into as good a position as if the contract had been properly fulfilled. On the present facts that is not straightforward given the nature of the contracted payments, the importance of the timing of their payment and, in my view, their fundamental importance to the very rationale of the contract/Settlement. I am satisfied that the contract in this case was indeed an exceptional one and that the very object of the

contract/Settlement was to ensure that the defendants were educated and were provided with a stable future out of the profits of their own asset.

213. I do not need to determine whether there was a misrepresentation by the plaintiff. It is clear in my view that there was a breach of contract and a breach of fiduciary duty by the plaintiff, in particular when he decided to terminate all payments to the defendants in December 2012. That being so, what damages flow from such breach? Four general heads of damage were identified at trial.

214. The first heading was the non-payment of the salary of Tara Seepersad. I have already dealt with that matter and have determined that she had such an entitlement under the Settlement and that same should be paid to her out of nursing home profits and not her own drawings. That heading is therefore covered elsewhere.

215. The second heading relates to the upkeep of the defendants' family home. The plaintiff says no admissible evidence has been adduced to prove quantum in that regard. This upkeep would, in the ordinary course, have been covered by the contracted payment of €72,000 per annum which was to be paid by the plaintiff but was not from December 2012 onwards. The court was not provided with evidence of quantum in relation to this heading although there was evidence given about the necessity of repairs and the impact on the defendants of being unable to afford them. I believe it is entirely foreseeable that maintenance issues would arise with the family home in circumstances where, for a period of more than 10 years, no payments were made by the plaintiff, or no drawings released towards such maintenance. However, in light of the lack of evidence on quantum, I do not propose to award a specific sum referable to damages for this heading but will deal with it in more general terms as part of an overall compensatory award of general damages for the impact such living conditions had on the defendants.

216. The third heading relates to additional interest incurred on the mortgage for the defendant's family home due to their missed repayments. Counsel for the plaintiff says that this claim is not pleaded and that whatever evidence was given by the defendants' expert on it must be held to be inadmissible. He says that because the claim was not pleaded, the plaintiff did not seek discovery of it and the defendants did not themselves provide discovery of such documentation or offer it as documentation relating to the plaintiff's failure to comply with the terms of the Settlement. I fully accept that this court cannot decide issues that go beyond the pleadings. While the pleadings are not as clear on this point as they could have been, I nevertheless am of the view that the pleadings were sufficiently detailed to call out the non-payment of the mortgage and the risk faced by the defendants of their home being repossessed. There was evidence of communication between solicitors on this very point. Furthermore, the plaintiff knew of this issue as he himself had instructed AIB by letter dated 10 December 2012 to cancel the standing orders in place for each of the defendants, including the standing order to Tara which included the mortgage repayments on the family home. The fact that bank statements vouching this interest were not discovered arose it seems to me because neither side addressed a specific request for such material. The plaintiff also argues that the defendants did not mitigate their loss in this regard. This court was provided with evidence as to how the defendants used their remaining available funds to keep up with mortgage repayments until 2014. I do not believe there is sufficient evidence of a failure on their part to mitigate their loss in light of the funds available to them and the other financial obligations they had.

217. In my view this additional mortgage interest was a direct and entirely foreseeable consequence of the plaintiff's decision to terminate all payments to the defendants

including payments that were specifically earmarked to allow them to pay their mortgage. Even when he was notified that the defendants had gone into arrears and had defaulted on their mortgage, the contracted payments did not resume, nor even part of them. It is inevitable and widely understood that a party will incur additional interest charges as a result of a mortgage default. I determine therefore that the plaintiff must compensate the defendants for whatever additional interest they have incurred on their mortgage since the plaintiff ceased all mortgage payments on their behalf in December 2012. This interest is a direct and foreseeable loss which arose from the plaintiff's decision to cancel the payments earmarked for repayment of the defendants' mortgage. These sums can be easily verified by the plaintiff's expert who has already been provided with the relevant material as part of the expert exchange. As this loss arises due to the plaintiff's personal decision to cease payments and to maintain that position, in my view without justification, for in excess of 10 years, this sum in respect of additional mortgage interest is payable by the plaintiff personally by way of special damages.

218. The fourth heading of loss relates generally to the defendants' education and to the loss of opportunity that arose as a result of their education prematurely ending with the termination of payments by the plaintiff. While this is at one level an entirely understandable claim, it is a very difficult one for the court in this case. It is clear that there were specific payments promised to the defendants towards their education each year and that, from December 2012, those payments were not made. This impacted each of the defendants personally. The importance of these payments to the defendants is clear from the specific clarifications and amendments they secured to the 2012 Settlement. The plaintiff must have understood that ceasing these payments would jeopardise the defendants' education severely. Tara did not

complete her final year or the Masters she hoped to obtain. Desmond had to defer and then work for a year before returning to college, but he did not complete the Masters he hoped to obtain. Karl did not complete any university education. I have no doubt that this situation has impacted on the defendants' earning capacity to date and will perhaps into the future. However, it would be too simplistic to attribute all differential in earnings to the plaintiff's actions. For example, Desmond has a degree in engineering. This ought to have enabled him to secure employment as an engineer, even without his Masters qualification. Equally, Karl may not have been able to attend university, even if funds were available to him, without sitting his leaving certificate. I am not satisfied with the quality of the expert evidence that has been produced on behalf of the defendants for the reasons I have already set out. It also appears to me that the loss of opportunity claim has not been pleaded as would be required to put the plaintiff on notice of having to meet such a claim and to instruct his own expert evidence to meet it.

219. The defendants do however plead that they will incur increased costs in returning to education. While that is a different claim to a loss of opportunity claim, it is one that the plaintiff has been on notice of since the pleadings were exchanged. The monies which were to be paid to the defendants for education were to be attributed to their drawings. Therefore, the defendants still have those funds as part of their unpaid drawings/profits. It may be more difficult for them to return to education now in their early 30s, but it would be possible for them to do so if the funds were available to support them. I believe that the likelihood of increased educational costs (and the additional expenditure that may now be required to recommence education) can be dealt with by way of an award of special damages to the defendants. Bearing in mind the amount of additional education still to be undertaken by each defendant to take

them to where they envisaged they would get to under the Settlement (and assuming additional costs of €2,500 per annum), I direct that Tara and Desmond should each receive €5000 for their two unfinished years, (albeit that Desmond managed to complete one of those years at additional personal cost to himself), Karl should receive €10,000 to reflect that he lost the opportunity to study for 4 years and will now incur additional expense in achieving that opportunity as a mature student...

220. I am satisfied on the evidence that the defendants are also entitled to general damages in respect of the plaintiff's breach of contract (given the exceptional nature of this contract as one designed to protect their livelihood) and for breach of fiduciary duty, to compensate them for the pain and suffering such breaches have caused them over a period of eleven years. I award general damages to each defendant in the amount of €35,000.

221. In addition to such general damages, I have considered whether this is an appropriate case in which this court should award aggravated damages against the plaintiff for breach of the fiduciary duty owed to them by the plaintiff.

222. In *Conway v INTO* (1991 WJSC-SC 230) Finlay CJ identified aggravated damages as compensatory damages which were "*in part a recognition of the added hurt or insult to a plaintiff who has been wronged, and in part also a recognition of the cavalier or outrageous conduct of the defendant*". At page 317 of his judgment, Finlay CJ held that aggravated damages would be appropriate where the plaintiff's injury was increased by:

"(a) the manner in which the wrong was committed, involving such elements as oppressiveness, arrogance or outrage, or

(b) conduct of the wrongdoer after the commission of the wrong, such as a refusal to apologise or to ameliorate the harm done or the making of threats to repeat the wrong, or

(c) conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff, up to and including the trial of the action".

223. I note in this case that aggravated damages were not expressly pleaded. I do not believe however that this prevents a court from exercising its discretion to award aggravated damages in an appropriate case, particularly where the aggravating factors arose or continued beyond the filing of pleadings.

224. I believe on the facts established in evidence that there has been exceptional and wilful misconduct by the plaintiff in the commission of the tort of breach of his fiduciary duty to the defendants, owed to them both as his partners and his step-children. For that reason, it appears to me that an award of aggravated damages against him is appropriate in this case.

225. The evidence supports the exceptional nature of the circumstances in this case. The plaintiff made a clear and calculated decision, entirely in his own interests and against the interests of the defendants, to terminate payments to the defendants in December 2012. He may have thought at that time that such a situation would not persist for long but of course he allowed it to persist right up to trial and beyond. He did not provide in evidence any basis for his claim that the business could not sustain those payments after December 2012, nor do I believe this to be the case. The evidence shows that 2012 was a profitable year for the nursing home and that there have been profitable years ever since then. The plaintiff's own expert could find nothing to explain the termination of payments on an objective assessment of the finances. In this court's view, there was no change in financial circumstances

between May 2012 (when the 2012 Settlement was signed) and December 2012 (when payments were cancelled) which could objectively explain or justify the plaintiff's decision to terminate payments. The evidence does not support the contention that the defendants had been overpaid by that date. I do not accept the plaintiff's evidence in his witness statement at paragraph 10 that "*I would have been guilty of reckless trading and the nursing home would have been closed and as a consequence I had to cease payments"*.

226. I also do not accept that the defendants' earlier interference with the divorce proceedings in April/May 2012 could, in December 2012, have justified the termination of payments to the defendants under the 2012 Settlement.

227. It appears to me that the plaintiff was generally frustrated in having to deal with the defendants as partners and that this frustration peaked with the defendants' refusal to allow the plaintiff to use the nursing home as collateral for another nursing home project the plaintiff wished to embark upon. Contrary to his claims of impecuniosity, the plaintiff had the funding to buy out the defendants in December 2012 and indeed offered to do so (albeit at what would appear to have been a gross undervalue of their interests). He simply no longer wished to be in partnership with the defendants. By that time, he had secured the court order he needed in relation to the divorce proceedings, and thus he no longer required to keep the defendants on board as partners. Indeed, the email he wrote to AIB instructing the cancellation of the standing orders is written on headed paper of the nursing home which describes the "proprietor" of the nursing home as "John James Cahill". Of course, the plaintiff was not the proprietor of the nursing home, although he no doubt wished to be. I find on the evidence that the plaintiff was not justified in terminating payments to the

defendants in December 2012 and that this was a deliberate and calculated breach of the Settlement on his part.

228. I also find that this step was knowingly taken by the plaintiff in an attempt to force the defendants into accepting his buy-out offer. The plaintiff himself admitted that he thought this step "would bring matters to a head". The plaintiff had all the power in the relationship. He controlled the operation of the business, knowledge of the figures and the cash flow. He personally cancelled standing orders which he knew were intended to be relied upon by the defendants for their living expenses and education. He was, in his own words, an experienced businessman. They were grieving, vulnerable and inexperienced, just past their teenage years. When the defendants would not accept his offer, the plaintiff persisted in refusing to make payments to them, knowing he had no basis to do so and, in my view, with the intention of starving them of resources with which to defend themselves. This situation persisted right through the trial even though on his own admission the plaintiff owes money to the defendants. He sued them while at the same time refusing to release funds to them to instruct lawyers. When he refused to pay their legal fees in accordance with the Settlement this resulted in a judgment mortgage being registered against their family home by their previous solicitors. He knew the defendants were being sued but still refused to honour the Settlement in that regard. He continued to pursue these proceedings even after the defendants said they would agree to the winding up of the partnership and the sale of the Property by a receiver. This further illustrates that such a remedy is not what the plaintiff really sought to achieve by these proceedings, as indeed became evident at the trial.

229. The plaintiff was callous and cruel to the defendants, as well illustrated by his refusal to erect a headstone for their mother (although repeatedly representing he

would do so). I do not accept that this was an oversight on his part. He also, through his solicitors, accused the defendants in unjustified terms of "*squandering their inheritance*" while all the time refusing to pay them their share of the business. He made it clear that he would make no payments save on a settlement with them.

230. The plaintiff has operated the nursing home as though he were a sole trader without regard to his partnership obligations to the defendants. He has excluded the defendants from any meaningful involvement in the partnership business, at least since 2012 - de facto preventing them from attending the Property or working there; he has denied them access to partnership accounts and information; he failed to involve them in significant decisions such as the hiring of his own family members as senior management or the 50% increase in his own salary. He continues to refuse to distribute acknowledged profits to them in satisfaction of their partnership interests.

231. All of this behaviour has had a profound impact on the defendants, and I am satisfied this behaviour increased the injury to the defendants and meets the criteria for aggravated damages set out by the Supreme Court in *Conway*. The plaintiff left the then teenage defendants living alone in the family home only to cut them off from all income once he had secured the court order, he needed to lay claim to the nursing home. Their evidence was that they effectively lost their 20s, burdened with financial stress at a time when they should otherwise have been free to finish their education, enjoy their youth and live independently and with dignity.

232. I make an award of aggravated damages against the plaintiff in the amount of €15,000 for each defendant bringing the combined general damages in favour of each defendant to the sum of €50,000. This award (totalling €150,000) is payable by the plaintiff personally. This amount is payable together with the additional

mortgage interest arising from missed payments and the special damages awarded for the estimated increased costs to each defendant for completing their education as envisaged in the Settlement.

Additional matters arising from the pleadings

233. There were a number of additional matters canvassed in the pleadings which I will now deal with. There was an indication that the defendants would seek rescission of the Settlement. This point was not advanced with any force at the hearing. Even if it were, I do not believe that this is an appropriate case in which rescission should be granted. The Settlement has been relied upon by all parties and it is the basis on which this court makes its findings regarding the plaintiff's breach and the terms of the partnership. It would also simply not now be possible to restore the parties to a pre-Settlement position.

234. The defendants' pleadings also referred to the Settlement as being an unconscionable bargain and alleged that it was obtained under circumstances of undue influence. Again, these issues were not pursued with any force at the hearing. While I was most concerned at the engagement between the parties in the immediate aftermath of Brigid's death and the fact that the defendants then had no independent legal advice available to them, this position was remedied by direction of the High Court. I accept on the evidence that the defendants understood in general terms that if the plaintiff succeeded in setting aside the decree of divorce he would be entitled, as Brigid Seepersad's spouse at the time of her death, to a legal right share of two thirds of her estate. The Settlement(s) entered into were to compromise that claim bringing certainty to what each party could claim out of the estate. The defendants would have gotten everything had the plaintiff been unsuccessful in setting aside the

divorce. However, they would have gotten only one third of the entire estate had the plaintiff been successful.

235. In the circumstances of this benefit to the defendants and bearing in mind that the defendants had secured independent legal advice in advance of the 2009 Settlement, I do not believe there is a basis for this court to intervene to set aside the Settlement either as an unconscionable bargain or by reason of undue influence.

236. I find that the evidence does not support a contention that the Property itself was in some way outside the terms of the Settlement and that it would remain in the ownership of the defendants. While there was evidence of an earlier proposal involving a corporate structure for the nursing home which appears to have included an option for the land to remain in the defendants' names and to be rented to the nursing home, this proposal was not progressed and all versions of the signed Settlement in my view reflect that the Property is part of the nursing home business and together comprises the partnership assets. The defendants also assented to the vesting of the Property in the plaintiff, with the benefit of legal advice.

237. For the avoidance of doubt, I do not accept that the defendants were in breach of the Settlement. While they did object in April 2012 to the application to set aside the divorce (having agreed they would not do so), this step was taken by them in circumstances where there had already been a pattern of non-compliance by the plaintiff with his payment obligations to the defendants. The defendants feared that once the divorce was set aside, the plaintiff would no longer comply with the Settlement. The steps taken by the defendants in 2012 to secure further clarity on the terms of the Settlement must be seen in that context.

Syers Order

238. In the statement of claim delivered by the plaintiff on 23 December 2013 he sought an Order pursuant to section 35 of the 1890 Act that the partnership alleged to subsist between the parties be dissolved, an order appointing a Manager and/or Receiver over that partnership and orders determining the extent of the beneficial and/or legal interests of the parties in the property of that partnership, as well as an order directing the valuation of the business and assets of the partnership and for the sale of same with a distribution to the parties.

239. The defendants delivered a defence and counterclaim in March 2015 seeking damages and confirming they would consent to an order pursuant to section 35 of the 1890 Act, that the partnership would be dissolved, and its affairs and business wound up and distributed.

240. Having initially adopted a different position in the exchange of pleadings, Counsel for the plaintiff urged this court to consider exercising a jurisdiction to make what he described as a *Syers O*rder - which takes its name from the House of Lords decision of *Syers v Syers* [1876] 1 App Cas 174. In that case the court found there to be a partnership at will between two brothers in respect of a one eighth share of the profits from a music hall. The court noted that on dissolving a partnership of this kind the ordinary course would be for the court to direct a sale of the assets, and, if necessary, a sale of the concern as a going concern, and to give liberty for proposals to be made by either party to purchase it. In the circumstances of that case, the Lord Chancellor, Lord Cairns held (at page 183) that "..*looking at the nature of this business, and looking at the very small interest which was taken in it by the Respondent, it would certainly not be desirable in this case to have a sale, or to bring these premises to the hammer for the purpose of ascertaining what sum ought*

to be given for them. It is a case, therefore, in which, if a decree for a dissolution had been made in the first instance, I apprehend that the Court would have thought it right to authorise the owner of seven-eighths of the concern to lay proposals for a purchase before the Judge in Chambers".

241. Essentially, this Order is similar to the order this court might make in a shareholder dispute where the court has a statutory jurisdiction to order that either the majority purchase the minority's shares or the other way around. The preference for both parties appears to be that this court would order one party to purchase the other party's interest, rather than appoint a receiver. However, each side believe they should acquire the nursing home from the other.

242. Counsel for the plaintiff argued that the partnership in this case is not a typical partnership arrangement. It is not, for example, a professional partnership. In many ways it was described as an accidental partnership, or a partnership of necessity given how the partnership arose in the first place and the need to ensure the Property continued to be authorised as a nursing home. The parties did not come together voluntarily. There is a significant gap between them in terms of age and experience of running nursing homes. Counsel also argued that the nature of the Property makes it preferable that this court would grant a *Syers O*rder. The plaintiff says the business of the nursing home is quite restricted in terms of how it might be marketed and sold, or even wound down. If a receiver was to be appointed, he/she would have to take control of the nursing home and this in turn would require him/her to have to apply for registration to run the nursing home - an obstacle which in itself might prove to be an insurmountable hurdle, at least in the short-term.

243. Given that the asset is an operational nursing home, it is simply not feasible that the Property could simply be closed, or the business discontinued. Residents would have

to be protected and both the HSE and HIQA would need to become involved. There was also evidence that the current market for small nursing homes is almost non-existent and that larger purpose-built facilities are now far more prevalent in the Irish market. There is no guarantee therefore that a receiver, even if he/she could surmount the operational difficulties, would be able to dispose of the Property, certainly as a going concern. In addition, there is a serious risk that the costs associated with receivership would simply render the asset worthless to either side. Furthermore, if one were to wind down the business to sell the Property for an alternative use, the evidence was that estimated redundancy costs of approximately €150,000 would have to be paid on the wind-up of the business.

244. Although it does not appear to have been an order made in express terms in any previous reported Irish decision, I am satisfied that this court has jurisdiction to make a *Syers* Order if it is required to do justice between the parties and is appropriate in any given case.

245. The reluctance that is sometimes expressed by courts to exercise their discretion to make a *Syers* Order often involves a difficulty in valuation. That difficulty appears to be outweighed in the present case by the difficulties of trying to sell the Property either as a going concern or simply trying to sell it by winding down the nursing home and selling the Property for an alternative use.

246. Counsel for the defendants maintain that they have agreed and would continue to agree to the appointment of a receiver. This is because they want the partnership investigated due to what they perceive to be a significant information deficit and because if the Property is to be sold, they want that to happen without the plaintiff's involvement. However, even at the outset of the proceedings (and particularly so as the trial progressed) Counsel for the defendants confirmed that they "*are not wedded*

to the appointment of a receiver"[180] and realise there would be an enormous cost to a receivership. As the trial progressed, additional financial information came to light in discussions between the expert witnesses. Furthermore, the parties agreed on a single independent valuer to value the Property. There was therefore some movement achieved as a result in how the parties wished the court to deal with matters on a dissolution of the partnership.

247. Following the conclusion of the evidence, the Property was independently valued on 13 February 2023 on behalf of both parties by CBRE. This valuation related to the Property only, and not to the business. The Property on an "as is" basis trading as a nursing home was valued at €720,000 exclusive of VAT. An alternative valuation on the special assumption that vacant possession of the Property is readily available for a use other than a nursing home was estimated to be €620,000 exclusive of VAT. These figures are significantly less than the price paid by Brigid Seepersad for the nursing home in 2005 and indeed the gap is even more significant bearing in mind the sums expended on renovations in the interim period. This figure is also significantly less than the valuation ascribed to the Property in the partnership accounts. However, that is the current property valuation provided by independent valuers.

248. The question as to whether the underlying business itself has an additional value is far more difficult to quantify. Mr Walsh in his expert report calculates the valuation of the nursing home using the earnings valuation methodology and says this produces a theoretical value in the region of €130,000. However, he says that in light of the lack of a market for businesses of this nature, as highlighted by the level of closures of similar sized businesses, he does not consider the business (as distinct

[180] P92, line 4, Transcript Day 1 – 14.30

from the Property), to have a value and therefore he places a nil value on the business. Mr Walsh estimates that the realisable value of furniture, equipment and vehicles is €50,000. The defendants may dispute those latter valuations but there is no such evidence before me. It does however surprise me that a business which has been trading profitably for many years could be said to have no monetary value whatsoever.

Conclusion and next steps

249. In all the circumstances it appears that this court should be provided with an updated partnership statement of account amended to reflect the decisions of this Court on the disputed aspects of the Settlement. This will enable the court, and indeed the parties, to understand (a) the payments attributable to the defendants to date; (b) the extent of the adjustments required to the drawings account of each defendant; (c) the drawings attributable to the plaintiff to date: (d) the extent of the adjustments required to the drawings account of the plaintiff to reflect this judgment; (e) the revised profit of the partnership bearing in mind the adjustments ordered by this court and (e) the amount of profit share due to the parties individually.

250. The updated statement to the court should be based on the following determinations, the reasons for which are detailed in this judgment:

(a) I determine that the defendants' drawings amount to **€297,514.26** (on the assumption that the loan repayments are not to be taken from partner drawings but should be paid by the business.) If the third party loan repayments are to be allocated to partner drawings then those should be apportioned in accordance with the parties' respective percentage ownership of the Property at the time of payment.

(b) The plaintiff's drawings prior to any adjustment is agreed at €603,167. I agree with the experts that the plaintiff's drawings (and the profits) should be reduced to reflect the payments made to him for the Dublin office, his VHI and his personal loan. No adjustment is required for the payments to Ark Life or in relation to the plaintiff's bonus payment under the Settlement.

(c) I determine that the plaintiff has been overpaid by €136,177 as at 31 December 2022. Insofar as he has continued to receive a salary in excess of €60,000 per annum from 1 January 2023, any excess also constitutes an overpayment to him. Any overpayment must be added back to profits and regarded as a distribution to the plaintiff.

(d) In circumstances where a suitable indemnity is to be provided by the plaintiff to the defendants for the tax liabilities of the nursing home, I do not propose to make any adjustment to the plaintiff's drawings or to net profits for underpayment of PAYE/PRSI/USC or for professional fees to regulate tax affairs.

(e) I do not propose to make any adjustment to profits or the plaintiff's drawings in relation to interest payments to AIB on the partnership business loan.

(f) I do not propose to make any adjustment to profits or the plaintiff's drawings in relation to food, maintenance or taxi claims as set out in the Joint Expert Report.

(g) Insofar as the plaintiff has received the benefit of loan repayments on vehicles acquired by him, those payments must be treated as part of the plaintiff's drawings and an adjustment to net profit is required for those payments. All parties who received car expenses should account for them as part of their drawings. I do not believe that the Settlement entitles the plaintiff to have the

nursing home acquire a private motor vehicle for his use but rather is confined to payment for the running and maintenance of such vehicles.

(h) The adjustment to profits and to the plaintiff's drawings under the heading of other payments in the Joint Expert Report should be €29,714.99.

(i) In respect of legal and professional fees incurred by the plaintiff the sum of €168,010.41 should be added back to the partnership profits and treated as the plaintiff's drawings.

(j) The partnership profits and the plaintiff's drawings should be adjusted for the bridge sponsorship in the amount of €59,235.

(k) For the years 2018-2021 an allowance of a salary of €25,000 per annum should be allowed for Ms Cahill from the profits of the nursing home (prorated for the 2017 year). That figure should increase to €28,000 for each of the years 2022 and 2023. Employer PRSI should be added to those gross salaries. I have no explanation or basis to justify the high level of expenses paid to Ms Cahill and (save where they are vouched and were clearly incurred solely for the purposes of the partnership business), they should be deducted in their entirety from the partnership profits and allocated to the plaintiff's drawings, together with any surplus salary over the amounts set out above.

(l) No adjustment to profits or parties' drawings is required in respect of the salary for Ruairi Cahill of €12,000 per annum. However, there is no evidence to justify the payment of any expenses to him (nor have they been quantified). Any expenses paid to him should be deducted from partnership profits and applied to the plaintiff's drawings (save where they are vouched and were clearly incurred solely for the purposes of the partnership business).

(m) I determine that the Settlement entitled Tara to receive a salary payment of €12,000 per annum for the work she was doing in 2009 and which she continued to do until she was prevented by the plaintiff from doing so. This payment is due to her to date and should be deducted from the partnership profits. Insofar as any part of that salary has been attributed to Tara's drawings, her drawings should be adjusted accordingly.

251. The court also awards damages to the defendants against the plaintiff in the following amounts and for the reasons set out in detail in this judgment:

(1) Special damages in the amount of the additional mortgage interest incurred by the defendants to date due to the missed payments on their mortgage on the family home.

(2) Special damages to each defendant in the sum of €5,000 to each of Tara and Desmond and €10,000 to Karl in respect of the estimated additional costs each will incur in belatedly recommencing and completing their education.

(3) General damages of €35,000 to each defendant for pain and suffering arising from the plaintiff's breach of fiduciary duty owed to them and for breach of the exceptional contract in this case which was designed to provide for their security and maintenance, recognising the consequences of such breach over an extended period; and

(4) Aggravated damages of €15,000 to each defendant in recognition of the added hurt and insult caused to them and the plaintiff's conduct to date.

252. The Settlement provides that the nursing home will pay the legal costs incurred by Mr Pigot arising out of negotiations in concluding the Settlement terms. Accordingly, no adjustment is required for those payments, but such fees remain due and must be paid by the nursing home. In the event that any additional interest has

been incurred on those fees same must also be paid so that the judgment mortgages registered are discharged in full at no cost to the defendants.

253. For the reasons set out in this judgment, I do not accept that Mr Stafford's report can properly be viewed by this court as independent or objective. I hold that his report is accordingly inadmissible as evidence.

254. There is no evidence that any compulsorily discovered documents were relied upon or used by Mr Stafford for the purpose of the complaints to CAI and so I make no finding of any breach of implied undertaking by him.

255. I am satisfied that this court has jurisdiction to make a *Syers* Order if it is required to do justice between the parties and is appropriate in any given case.

256. Once the above revised partnership statement is collated, I will be in a position to determine whether to make a *Syers* Order on the dissolution of the partnership and, if so, in what terms.

257. Accepting that this exercise may take some time, I am proposing to list this matter for mention on 22 November 2023. In the event that further time is required to complete this exercise, or there are any matters arising from this judgment which require clarification, the parties will be free to raise such matters at that time. I give liberty to the parties to apply to me at an earlier date if there is any urgent aspect that needs to be addressed or clarified before the for mention date. I will afford the parties an opportunity to make further submissions to me in light of the revised partnership account if that is required and such further directions as are necessary can be dealt with on the for mention date.

258. This court has assumed that the plaintiff will, as he has offered to do, indemnify the defendants against any revenue liabilities of the partnership. This indemnity forms part of the court's reasoning in relation to certain disputed items as set out in this

judgment. I will however consider matters further before a final decision is made on the dissolution once the revised partnership statement is provided to me.

259. The parties and their advisers should take every opportunity to engage with each other prior to the for mention date in light of the findings of this court.