THE HIGH COURT

[2025] IEHC 17

Record No. 2024/6528HP

BETWEEN

GIANINA KUI

PLAINTIFF

AND

JOHN NOLAN and ANN O'REILLY

DEFENDANTS

JUDGMENT of Mr Justice Liam Kennedy delivered on the 21st day ofJanuary 2025

1. These proceedings concern a partnership dispute regarding a dental practice in Tallaght ("the Practice") now named the Aylesbury Clinic ("the Clinic"). The Parties are the three partners, with the Plaintiff having a 50% interest and the Defendants (a married couple) holding the other 50%. The First Defendant is the managing partner. Relationships have deteriorated between the Parties, and the rift widened following the Plaintiff's rejection of an offer by a third party, MiDentalCare, to buy the Practice, an offer which the Defendants favoured. The Defendants say that they suspended and then expelled the Plaintiff as a partner. The Plaintiff disputes the Defendants' entitlements to take such steps and the motivation for and the manner and legitimacy of those actions.

2. The Plaintiff successfully resisted the Defendants' first attempt to deny her access to the Clinic, but was later, more permanently, denied access. She seeks interlocutory relief pending trial, namely access to the Clinic and the Practice's records to continue to treat her patients - including vulnerable patients - and to restrain the Defendants from disposing of the Practice pending trial. This judgment solely determines the orders required pending trial. It does not determine the merits of any substantive claims, counterclaims or defences.

3. Following a short service application on 11 November 2024, affidavits were exchanged, and the application was listed for 5 December 2024. On that occasion, according to the Plaintiffs, counsel for the Defendants were unprepared to have the matter heard and proposed the exchange of submissions. Sanfey J. directed the exchange of submissions in advance of a hearing on 20 December 2024. In doing so (and presumably with a view to excluding reliefs which would need to await the determination of the proceedings), Sanfey J. also suggested that the interlocutory reliefs be narrowed, and the Plaintiff duly narrowed the interlocutory reliefs to, in brief, orders: (i) restraining the Defendants from excluding the Plaintiff from the Clinic; (ii) directing the Defendants to allow access to patient and other records required by the Plaintiff to carry on her dental practice; (iii) restraining the Defendants from purporting to sell the Practice.

4. It is undisputed, at least for this application, that:

a. The Plaintiff and the First Defendant are qualified dental surgeons. The Second Defendant is a dental nurse. The three parties entered into the partnership agreement ("the Agreement") for the purposes of commencing the Practice with effect from 1 January 2019 with the Clinic serving as its premises. They leased the Clinic for 10 years and the lease dated 8th November 2019 identified each of them as tenants and signatories.

b. The Defendants were not as actively involved in the Practice as originally envisaged. Its growth was impacted by, inter alia, the COVID lockdown, and their active involvement in terms of treating patients seems to have ended entirely or almost entirely in early 2020 (in the case of the Second Defendant) and in 2022 or 2023 (in the case of the First Defendant) with the Plaintiff apparently running the Clinic and the Practice largely singlehandedly in terms of treatment of patients until her "expulsion" in October 2024.

c. Differences developed between the parties concerning the finances, development and operation of the Practice. They explored the possibility of the Plaintiff buying out the Defendants, but no agreement was reached. They also explored the possible sale of the whole Practice to a MiDentalCare, but the Plaintiff rejected the eventual offer and those negotiations ended shortly before the events which triggered the current application.

d. Both sides say that the other is in breach of the Agreement in various respects. Following the collapse of the negotiations for the sale of the Practice, the Defendants purported to suspend and then expel the Plaintiff as a partner and to exclude her from the Clinic.

The Indorsement of Claim

5. The most important reliefs sought by the Plaintiff in the Indorsement of Claim can be summarised as follows; (a) Declarations that the Defendants remain bound by the Agreement and that the Plaintiff remains a partner; (b) Orders restraining the Defendants from breaching the Agreement, excluding the Plaintiff from the Clinic or representing to any persons that the Plaintiff is no longer a partner and/or entitled to practice dentistry at the Clinic and/or that the Partnership has been dissolved; or selling Partnership assets and/or the Clinic; (c) Orders directing the Defendants to allow access to patient and other records and to account in respect

of all matters concerning the Partnership; (d) Orders prohibiting the Defendants from advising patients to seek treatment with alternative practitioners (save in emergencies) or from destroying patient and other Partnership records; (e) Orders, if necessary, directing; the dissolution of the Partnership (under the Partnership Act 1890, s. 35); accounts, valuations, and enquiry; and damages for breach of contract, breach of duty, negligent infliction of economic loss and reputational damage.

The Correspondence

6. The following is the key correspondence between the Parties or their representatives:

a. By letter dated 16 August 2024 the Defendant's solicitors wrote to the Plaintiff referring to her rejection of the offer of €300,000 for the Practice from MiDentalCare and stated that her *"ongoing failure to comply with* [her] *duties and obligations to the Partnership"* could no longer continue. While noting that MiDentalCare's offer had been withdrawn it also noted that they remained interested in purchasing the Practice and that the Defendants were continuing to engage with them if the Plaintiff was to immediately accept the offer, stating that "*No further delays by you will be tolerated*". The letter concluded with an ultimatum that unless the Plaintiff cooperated in the sales process and took all necessary steps to complete the sale and dissolve the Partnership, the Defendants had instructions to commence proceedings within 7 days in which they would

> *"seek to recover the loss suffered by our clients as a result of your inaction. We will also seek orders providing for the dissolution of the partnership…*
> *Our clients hope that you will comply with your duties to the Partnership by co-operating in the sale to MiCare and that proceedings will prove necessary" (sic)*

b. On 13 September 2024 a letter from the Defendant's solicitors to the Plaintiff alleged breaches of the Agreement by her, stating that:

"We are instructed by our clients that you have:

a) failed to transfer 50% of your gross fee income into the practice account,

b) failed to account for any of the monies obtained through the business of the Partnership,

c) failed to provide full information of all things affecting the Partnership,

d) failed and /or refused to engage with the creditors of the Partnership,

e) included details of Partners profits in year end accounts which were not paid,

f) failed to comply with all legislation, regulations professional standards (clause 12.1.3),

g) failed to show the utmost good faith to the other Partners in all transactions relating to the Partnership and to give a true account and full information of all things affecting the Partnership (clause 12.1.4),

h) failed in your accounting obligations to make accounts and records accessible to the other Pa1tners (clause 12.1.5),

i) failed to pay and discharge your present and future debts (clause 12.1.7),

j) failed to account for a profit derived from a business accepted in breach of the Partnership Agreement (clause 12.1.8),

k) engaged in a business other than the Business of dental practice (clause 13.1.1),

l) entered into an agreement which may risk the loss of€1,000, or for which the Partners may be responsible for (clause 13.1.3),

m) drawn on monies from accounts of the Partnership other than in accordance with the mandate (13.1.7),

n) committed serious or persistent breaches of the agreement (clause 21.1.1),

o) wilfully neglected your duties and obligations and responsibilities (clause 21.1.7),

p) engaged in conduct which in the reasonable opinion of the other Partners is likely to have a serious adverse effect on the Partnership or Business (clause 21.1.9).

In addition to the foregoing, our clients are most concerned that you have unilaterally elected to sublet a portion of [the Clinic] *to a third party for your*

personal gain and in breach of the Business Letting Agreement executed by the Partnership.

Furthermore, our clients understand that since their departure from the practice, you may be "employing" staff, unilaterally, to work for the Partnership, without their consent and in doing so, have not provided information to them on the qualifications, status, experience and tax position of those employees Our clients are also concerned that you are facilitating non-dental business to be performed in the Partnership.

As a result of the above mentioned breaches by you of the Partnership Agreement, we have advised our clients as to the legal remedies available to them to protect their position, which inter-alia may include: suspending you from the Partnership pursuant to clause 21.3; expelling you from the Pa1tnership pursuant to clause 21.1 or issuing High Court proceedings seeking Dissolution of the Partnership. In the latter eventuality, we rely on the contents of this letter to fix you with the substantial costs that will be incurred.

In order to avoid our clients taking any of the foregoing steps, we will require written confirmation from within 7 days of today's date that you will address and make good the failings set out above. If such confirmation is forthcoming, our clients will afford you a short period of time to address these matters. We trust you note the seriousness of the situation and await hearing from you/Solicitors on your behalf within the time period stated".

c. A Sunday, 6 October 2024 email from the Defendants to the Plaintiff purported to suspend her from the Partnership in the following terms:

"We refer to our Solicitors letter to you dated 13th September last and given you failed to reply, I wish to inform you that Ann and myself, in accordance with our entitlement under the Partnership Agreement have decided to suspend you from the Partnership …In light of this suspension we have changed the locks to the practice and informed patients that it will remain closed for a few days.

We will also, this evening, let Shirley and Deirbhile and Marta know that the practice will be closed. While on suspension please note that you are not to attend the practice and nor are you, under any circumstances to contact the patients. If you do seek to enter the premises we will immediately contact the Gardai who are aware of the position, that you are trespassing.
In the circumstances we would suggest that your solicitors contact ours to see if an amicable resolution of the dispute can be reached. If that does not happen we anticipate that the next step we will take will be to expel you from the Partnership altogether and thereby apply to the High Court for its dissolution. We sincerely hope this won't happen but the matter is now in your hands."

It is notable that, a few hours after it was sent, the First Defendant forwarded the "suspension" email, to various recipients, including the Second Defendant, their solicitor, the CEO of MiDentalCare and the individual who had previously been retained by the partnership to negotiate the sale to MiDentalCare. (As is noted above, the recent escalation between the parties followed the Plaintiff's rejection of MiDentalCare's offer to buy the Practice, an offer that the Defendants favoured).

d. A 14 October 2024 email from the First Defendant's solicitor to the Plaintiff referred to her previous "suspension" and stated that:

"… following your failure to adhere to that suspension, our clients today have expelled you from the Partnership.
The purpose of this letter is to put you on notice that should you for any reason seek again to ignore the decision taken, in this instance to expel you, and look to re-enter the clinic to practice, we will later on this week bring an Injunction application to the High Court seeking an Order to bar you from the clinics premises, which application will be on notice to the Dental Council.
We will use this and our previous letter to ground the said application in addition to fixing you with the substantial legal costs that will be incurred.
Separately, we have been instructed by our clients to bring a further Court application to Dissolve the Partnership and those proceedings will be served upon you in early course…"

e. On 14 October 2024 the Plaintiff's solicitors sent two letters to the Defendants' solicitor, demanding access to the Clinic and its records and complaining of the reputational and other impact on the Plaintiff.

f. On 18 October 2024, Defendants' solicitor responded by email, denying her allegations and confirming that their clients would continue to exclude the Plaintiff from the Clinic. The letter offered short term arrangements to allow her to treat certain patients (but it was clear from this and other correspondence that this would be on a conditional and restricted basis).

g. On 1 November 2024 the CEO of MiDentalCare, Mr O'Rourke messaged a Clinic staff member in the following terms:

> *"I hope you are well, I got your number off Dr John Nolan and I just wanted to reach out to you to introduce myself as CEO of the MiDental Care Group who are working with John and Ann to reopen the Aylesbury Clinic from next Monday.*
> *I'd welcome the opportunity of having a quick call with you later today, weekend or early next week, whatever works best for you.*
> *We'd look forward to having you work with us going forward and I'd like to talk that through with you in confidence.*
> *John knows I am contacting you.*
> *Best regards*
> *John Webb-O'Rourke"*

h. On 4 November 2024, the Plaintiff's solicitors wrote to the Defendants' solicitors requesting various confirmations, including that the Defendants had not entered into terms with another party for the sale of the Practice.

i. Around 4 November 2024, the Plaintiff received a text message from a patient which stated that she had received a telephone call from the clinic receptionist in which she was informed that the Plaintiff *"has left the clinic and no longer*

works there" and that *"the surgery has now been taken over by 'Micare Dental'"*(sic).

j. By letter dated 5 November 2024 the Defendants' solicitors replied to the Plaintiff's solicitors stating that the previous day's letter was the first occasion on which the Plaintiff had disputed the legality of her exclusion. They noted that they did not act for Mr. O'Rourke nor MiDentalCareand r eplied to the confirmations sought in the following terms:

"1. Our Clients have not entered into terms with Mr. O 'Rourke or any the party regarding the sale of the practice/Partnership,
2. Our Clients did not authorise or have knowledge of content uploaded on the MiDentalCare website,
3. Our Clients will ask Mr. O'Rourke to remove any reference to Aylesbury Clinic from the MiDentalCare website.
As for your clients entitlement to her share of the Partnership Assets, that remains intact until the Partnership is dissolved by way of Court Order or agreement between the parties".

k. The Plaintiff's solicitors' letter dated 7 November 2024 rejected the Defendants' solicitors' position:

"Your clients [who have not set foot in the premises or done a day's work in the partnership or contributed a penny in outgoings in 2.5 years and 4 years respectively] claim to have expelled the majority partner with no kind of due process or regard to the law. You can take it our client does not concur with this view. In fact, your client has, for some time, been actively working in another practice in competition with the practice of the partnership and contrary to the terms of the partnership deed.
Your client unlawfully sought to lock our client out of her own premises. She took action and the Gardai and the landlord assisted her in regaining access. Not satisfied with this unlawful activity, your clients then locked our client out and installed a security guard to eject her from the premises at which point she sought legal advice and we engaged with you. The candour with which

your client's acknowledge this egregious behaviour through your correspondence does them credit.

Your letter fails to deal with the matter of our client gaining access to the premises and the welfare of the patients. Separately we believe that your clients are not being entirely candid in stating that they are not in an agreement with a third party…

Our client suspects that your client has entered into terms with another entity and that party has access to the records belonging to our client's patients. We cannot wait another day for our dent to access her premises and resume caring far her patients. Please request your clients to allow our client into her premises without further delay in default of which we intend to make an application to Court without further notice to you".

l. By letter dated 7 November 2024[7] the solicitors for the Defendants replied, setting out their account of the dispute, and inter alia stated:

"We remain surprised at the content of your letter particularly in circumstances where the engagement by your client has been minimal. The threatened unparticularised 'application to Court' remains unclear from your letter. It is also not clear why your client elected to delay and refuse to engage in any meaningful way before threatening the application to Court.

Insofar as the application to Court is for injunctive relief, we would respectively note that given the lack of engagement from your client to date and the serious issues raised which have gone unanswered, the fact that your client was suspended then expelled from the Partnership without dispute, the fact that your client elected to delay in bringing the said application, that a Court is unlikely to force a Partnership to reinstate an expelled partner, and that damages would be an adequate remedy, we ask that this letter be provided to the Court.

Finally, and strictly without prejudice to our Clients' position, but in an effort to negate the need to use valuable Court time, our Clients would be prepared to engage your client as a consultant to the Partnership, subject to certain confirmations, until such time as a full account and valuation of the

Partnership is determined. If your client is open to such an arrangement, we can furnish you with a draft agreement tomorrow, with a commencement date of next Monday."

The Agreement dated 6 February 2019

7. In summary, the Agreement provided, inter alia:

a. for the Clinic as its principal place of business.

b. for capital of €100,000, 50% from the Plaintiff and 50% from the Defendants.

c. for the First Defendant to be responsible for the Partnership's day to day management as Managing Partner.

d. for the definition of all partnership property as including the premises (i.e. the leasehold in the Clinic) and confidential information (clause 26) which belong to the partners in the agreed proportions, specifying at clause 5.2 that any partnership property vested in the individual partners' names shall be held by them on trust for all the partners.

e. for the profits and losses to be shared in the agreed proportions (clause 6.1).

f. that 50% of each partner's gross fee income would be put into the practice account and, after the discharge of partnership expenses would constitute partnership profit. (clause 6.2). The other 50% remains the partner's property.

g. for the reduction of the profit share of any partner absent from the Business for extended periods due to illness or injury. (clauses 6.4 and 6.5)

h. for partners' capital accounts and drawings (clauses 7 and 8).

i. The preparation of partnership accounts, maintenance of proper books of account at the Clinic (and their available for inspection) and the obligation to promptly record full all receipts and payments in them (clause 9).

j. that: (i) partnership bank accounts can only be opened with the partners' prior written authority and in the partnership's name; (ii) any payment must be

authorised by two partners; (iii) all monies received by or on behalf of the partnership shall be paid promptly into a partnership account. (clause 10)

k. that all partners must, at all times; (i) use their best skills and endeavours to promote and carry on the business for the benefit of the partnership, and conduct themselves in a proper and responsible manner; (ii) devote the whole of their time and attention to the proper performance of their duties; (iii) comply with all legislation, regulations, professional standards and other provisions as may govern the conduct of the business; (iv) show the utmost good faith to the other partners in all transactions relating to the partnership and give them a true account of, and full information about, all things affecting the partnership; (v) keep securely at their office proper accounts and records as the partners may reasonably require and ensure that all partners have reasonable access to them and may take copies of them; (vi) …punctually pay and discharge their present and future debts; and (vii) account to the partnership for any profit derived from a business, office or appointment accepted by him in breach of this agreement, or any personal benefit derived from the business, the use of the name, partnership property or business connections of the partnership. (clause 12)

l. for various restrictions on the partners and their activities (clause 13).

m. that; (i) partners' meetings should be held (at the premises) at least four times a year; (ii) notice specifying the place, day and time of the meeting and containing a statement of the matters to be discussed at the meeting, must be served on all partners by the managing partner; (iii) save for emergencies, at least 7 clear days' notice of a meeting must be given to all partners; (iv) The managing partner shall be the chairman of all Partnership meetings but shall

not have a casting vote; (v) The quorum for a meeting is three partners; Where the quorum is not present within 60 minutes, the meeting shall stand adjourned to the same venue and time seven days later. At any such adjourned meeting the quorum shall be two partners; (vi) minutes shall be prepared of all meetings and shall be approved and signed by the meeting chairman as evidence of the proceedings; (vii) where a matter requires the decision of the partners under this agreement, such matter shall be determined by the partners by unanimous vote. (clause 15)

n. for partners' obligations to indemnify the other partners for any breach of the Agreement and the entitlement to be refunded certain expenses. (clause 16)

o. for holiday entitlements (clause 17).

p. For the "expulsion" or "suspension" of partners providing in relevant part that:

"21.1 The Partners may expel any Partner, by giving him written notice if he: Commits any serious breach or persistent breaches of this agreement;

...

Fails to pay any money owing by him to the Partnership within 21 days of a written request for payment from the Partners;

Fails to account for, or pay over or refund any money received and belonging to the Partnership within 21 days after being so required by notice from the Partners;

...

Wilfully neglects, refuses or omits to perform his duties, obligations and responsibilities under this agreement;

Absents himself from the Business without good cause or the prior written consent of the Partners for a period exceeding 35 Business Days in a period twelve-months; or

q. *Is guilty of conduct which, in the reasonable opinion of the Partners, is likely to have a serious adverse effect on the Partnership or the Business.*

Notice under clause 21 shall be given within 35 days of the Managing Partner becoming (or if the defaulting Partner is the Managing Partner the other

Partners becoming) aware of the circumstances giving rise to the right to serve such notice. Immediately on service of that notice in accordance with this agreement, that Partner shall cease to be a Partner and the date of such service shall be his Leaving Date.

Before service of such notice on a Partner, the other Partners may suspend him for such period not exceeding 65 days and on such basis as they may determine in their absolute discretion provided that a Partner's entitlement to, and liability for, Net Profit and Losses under clause 6 shall not be affected by any absence owing to "suspension" under this clause". (clause 21)

r. For financial arrangements when a partner leaves the partnership (clause 22).

s. That a partner wishing to sell their interest in the partnership must first offer it to the other partners. (clause 23)

t. for partners' duties in respect of confidential information (which is partnership property) and their obligation not to disclose such information (clause 26).

u. provides that:

"Each party hereto hereby acknowledges that he has been advised to seek independent legal and accountancy advice on the terms of this Agreement prior to its execution and has determined not to do so or has done so. Each party hereby acknowledges that Crowley Millar Solicitors have been requested by all parties hereto to draft this agreement." (clause 29)

The Affidavits

8. Although I have considered the affidavits in their entirety I do not propose to summarise points which are now common ground or extraneous for present purposes (such as events on the occasion of the "lockout") or which relate to disputed issues which are insufficiently substantiated for present purposes (such as the supposed instruction to suppliers to delete or prevent the Plaintiff from accessing records or the terms of the Defendants' communications with the HSE).

9. The Plaintiff's grounding affidavit offered an undertaking in the usual terms and:

a. Claimed that she worked diligently and profitably since the launch of the partnership, building up a large base of patients, providing regular and ongoing dental care for five years, complying with provisions of the Agreement which required each partner to use their best skills and endeavours to promote and carry on the Business for the Partnership's benefit, and to devote the whole of their time and attention to their duties.

b. Criticised the defendants' contributions claiming that they consistently failed to abide by their duties and obligations, in that:

   i. it was understood that when the practice grew busier, the First Defendant would reduce his other commitments in favour of the Partnership. Clause 12.1.2 of the Partnership Agreement reflected that understanding but he failed to prioritise the Clinic, rarely working more than a day a week in it. The Second Defendant only worked part-time in the practice until early 2020 when she ceased entirely.

   ii. The Plaintiff generated gross fees of €1,982,462 for the Practice from 2020 to 2023 but the First Defendant generated €148,744 for the same period, less than 8% of the Plaintiff's contribution. Furthermore, the First Defendant did not lodge not all his fees to the Practice accounts, with no payment after 5 April 2022, despite his continuing to generate some fees at the Clinic in 2022 and 2023.

c. Claimed that because the First Defendant could not be relied upon to co-sign cheques, the Plaintiff was forced to; (i) open supplier accounts in her own name to keep the Practice running; (ii) Personally discharge rent, and other

Partnership outgoings since May 2022, the other partners failing to make any payments to cover their share of expenses and running costs.

d. Said that the Defendants became increasingly hostile due to the plaintiff's refusal to consent to the MiDentalCare's offer to buy the practice, culminating in her exclusion from the Clinic, that the Defendants were unilaterally seeking to sell the Practice and its assets and that their solicitors' 13 September 2024 letter was a vexatious attempt to pressurise her into consenting to such a sale.

e. Gave her account of her initial exclusion from the Clinic on Monday 7 October 2024 and her re-entry for the purpose of the continued treatment of her patients. In short, locks were changed (as intimated in an email sent by the Defendants the night before), preventing her from entering the Clinic although she had patients scheduled for treatment. She stayed at the Clinic to tell such patients that their appointments would have to be rescheduled. Once she regained access with a locksmith's aid, she resumed seeing patients, but the First Defendant accused her of trespassing and called the authorities which she found disturbing, intimidating and traumatic. The Defendants' actions were affecting her patients' welfare and access to treatment.

f. Whilst seeing patients at the Clinic, the Plaintiff noted that an individual, apparently a prospective purchaser of the Practice, had gained access to the Clinic and was taking photographs of its interior. He seemed to be present on the basis of an understanding with the Defendants as to the sale of the practice.

g. On 14 October 2024 the Defendants engaged a security guard to bar the Plaintiff from the Clinic and from seeing patients with appointments.

h. The First Defendant emailed Partnership staff informing them that the plaintiff had been *"expelled"* and was not permitted on the premises. Since then, she

had been unable to access the Clinic or treat her patients, and had not been informed of arrangements for their treatment. She was particularly concerned about vulnerable patients and other patients due for treatment or requiring urgent treatment (and she gave a number of examples).

i. Said that; (i) the Defendants had no basis to unilaterally remove her as a partner, as she denies breaching the Agreement; (ii) her exclusion was prejudicial and dangerous to patient health and safety, compromising the interests of patients and of the Practice. The Defendants' behaviour was dangerous, destructive and in breach of ethical protocols for patient welfare; (iii) she has no way to communicate with her patients, some of whom may require urgent dental treatment, appointments or reassurance. She was also concerned at the reputational damage due to the Defendants' actions and her ongoing exclusion from the Clinic.

j. She was concerned that the Defendants may have purported to sell the practice to MiDentalCare and she referenced the 1 November 2024 message to the Plaintiff's dental nurse from MiDentalCare's CEO (suggesting that they would be running the practice) and the MiDentalCare website which showed the Clinic's address under the legend, *"Location of 3rd Clinic coming soon"*.

10. The Plaintiff's supplemental affidavit exhibited further correspondence including an email from a Clinic patient who had been informed by the Clinic that the Plaintiff had left the Clinic and no longer works there, and that it had been taken over by "*Micare Dental*".

11. The First Defendant's first replying affidavit, inter alia:

a. Referenced the Plaintiff's "misapprehension" that she remained a partner. asserting that the Plaintiff had adequate warning and was duly expelled (without giving details or explaining how that process accorded with the

Agreement) and that the Partnership was seeking to determine the proportionate share owed to or by the Plaintiff as required under the Agreement but that the Plaintiff had not been forthcoming with financial documentation which is delaying this calculation.

b. did not respond in detail to the Plaintiff's allegations, broadly asserting that the Plaintiffs' affidavits were "replete with errors and telling omissions" and that the Plaintiff had not previously raised her concerns or alleged that he was in breach of the Agreement.

c. referred to the Defendants' without prejudice offer, following the Plaintiff's *"expulsion"* to engage her *"as a consultant to the Partnership, subject to certain confirmations, until such time as a full account and valuation of the Partnership is determined."*

d. Denies that the Defendants had entered into an agreement to sell the Partnership (but did not reveal whether there had been negotiations to that end or the nature of the Partnership's dealings with MiDentalCare) and stated that the Defendants made arrangements to ensure that all patients requiring treatment were accommodated.

e. Said that the relationship irreconcilably broke down some time ago, and asserted grievances against the Plaintiff without giving meaningful detail, many of which do appear irrelevant to the current issues as they were not relied upon to justify the "expulsion".

f. Rejected the Plaintiff's allegations including as to his failures to devote his time to the Clinic or to pay his share of its expenses, saying that:

> *"The agreement I had with the Plaintiff was that as the practice got busier, I would work more sessions. Unfortunately, this did not materialise as the practice became quieter, which to a large extent was attributable to*

Covid. Towards the end of 2021, the Plaintiff admitted to me that she had been withholding monies from the practice, circa €37,000.00 which she promised to repay on or before the end of February 2022. Those monies were not repaid by that deadline and consequent upon that failure, I withheld paying monies that were due to the Partnership".

g. denies the Plaintiff's claims as to the fees she was generating:

"…there was some financial difficulties in the practice. Several creditors contacted me directly in relation to arrears or unpaid invoices, including most recently:
Arrears owed to the landlord who by e-mail dated 13 January 2024, wrote to the Plaintiff and me highlighting rent arrears for both August and November 2023, and
Outstanding invoices to a creditor who wrote by e-mail dated 5 April 2024 to the Plaintiff and me regarding outstanding invoices.
I say that the practice has a joint and several bank debt of €115,000 with arrears of €6,000".

h. says that

"based on the financial accounts presented by the Plaintiff's bookkeeper for the 18 months up to June 2024, which were prepared to assist the sale of the practice, there is at a minimum €162,373.21 owed by the Plaintiff to the Partnership".

i. refers at para. 22 to sending a warning letter despite having received no response to the Defendants' solicitors' letter of 16 August 2024 (which had complained and threatened legal proceedings because the Plaintiff had failed to agree to the MiDentalCare offer to buy the practice) and notes that the Warning Letter gave the Plaintiff seven days to confirm that she would address and make good the failings failing which the partners might suspend or expel the Plaintiff or issue proceedings.

j. says that, since there was no response to the Warning Letter, the Partners:

"had no choice but to take action and chose to suspend the Plaintiff. This was done in accordance with the Partnership Agreement by e-mail dated 6 October 2024 (the 'Suspension Email')."

k. Criticises the Plaintiff for failing to respond to the "Suspension" Email and states that she only raised concerns about patients in her first affidavit.

l. Says that the Defendants subsequently took further legal advice:

"whereupon we reluctantly agreed that week, that we would have to take steps to expel the Plaintiff from the Partnership, which would include us taking back possession of the practice".

m. Says that on Saturday the 13 October he took steps to prevent a further attempt by the Plaintiff to re-enter the premises and by e-mail dated 14 October 2024 his solicitors wrote to the Plaintiff:

"to notify her of her immediate "expulsion" from the Partnership. That letter threatened legal action should the Plaintiff return to the clinic and suggested she contact her solicitor if he is still acting for her".

n. Notes that the Plaintiff's solicitor's letter following the "expulsion" did not take issue with the "suspension" or "expulsion" or explain the Plaintiff's lack or engagement or assert a breach of the Agreement by the Defendants.

o. Refers to the Defendants' offer to allow the Plaintiff short term access to the clinic for a one week period to deal with urgent appointments.

p. Notes that although the Plenary Summons seeks reliefs such as an Order to account, the Defendants had already confirmed to the Plaintiff that they agree

"that an account should be taken to facilitate the determination of the proportionate share owed to or owed by the Plaintiff as required under the Partnership Agreement".

12. The Plaintiff's replying affidavit:

a. Responds to the First Named Defendant's criticism that she failed to respond to correspondence by noting that she had received multiple communications:

"...from the Defendants over a prolonged period either making allegations against me or threatening legal action. This said correspondence never resulted in any further outcome, so it had become habit for me to ignore same, and to carry out my duties in the dental practice to the best of my ability. As per my first affidavit, matters came to a head when the First Named Defendant sought to change the locks, and engage a security guard to keep me from the dental practice.

I say and believe that my purported "suspension" and "expulsion" were not validly enacted, and therefore any argument that either I am a former partner, or do not hold an interest in the said partnership, is also invalid I note that the First Named Defendant has given what he purports to be a history of alleged breaches of the Partnership Agreement, and the actions that were undertaken as a response to these alleged breaches, from Paragraphs 20 to 35 of his affidavit. Notwithstanding that these breaches are denied in full, in spite of giving a lengthy list of the actions taken by the First Named Defendant, at no point is it stated that, as per 15.2.6 and 15.2.7 of the said partnership agreement, a quorate meeting of the partnership took place. I say that in the absence of this essential proof, it cannot be held that I have been legitimately expelled or suspended from the partnership, as any alleged "suspension" or "expulsion" was not done in a quorate manner. I further say that my actions in attempting to continue working at the practice after the alleged "suspension" or "expulsion" clearly demonstrate that I did not consider them to be validly enacted, as averred by the First Named Defendant".

b. Denied delay or acquiescence, saying that she was compelled to bring these proceedings hastily as she:

"...had received information that the Defendants were seeking to sell the practice out from under me, and appear to be utilising what can only be described as a sham "expulsion" to both force the sale and also to exclude me from the monies from this sale.".

c. Stated that the forced sale of the practice she had spent the last 5 years working hard at would do her irretrievable damage in a manner that would not

be adequately met by damages and that the current position was causing ongoing harm to her livelihood, her mental health, and her good name.

13. The First Defendant's final replying affidavit takes issue with the Plaintiff's replying affidavit, repeating previous averments. The most significant averments were:

a. His criticism of the Plaintiff's challenge to the validity of the "expulsion" – saying that her objection should have been raised earlier but in any event:

"I am advised that this opportunistic attempt by the Plaintiff to belatedly rely upon Clause 15 is entirely misconceived. That Clause is entitled 'Meetings and voting' and makes no reference to 'suspension' and expulsion. Such matters are provided for in Clause 21, entitled 'Expulsion' and the Partners correctly applied Clause 21 to first suspend, and then expel, the Plaintiff. In fact, the unanswered Warning Letter of 13 September 2024 specifically mentioned this Clause. Should this be the basis for the injunctive relief, I am advised that there is simply no fair or bona fide issue to be tried".

b. His dismissal of the Plaintiff's references to information from third parties, suggesting that the defendants were seeking to sell the Practice, saying that such parties did not act on behalf of the Partners and had no authority to do so.

c. His criticism of the fact that the grounding affidavit was sworn before the expiration of the deadline provided in the letter before action, noting that that letter was responded to prior to the expiration of the deadline and all but one of the confirmations sought were provided.

d. His justification for the email from the CEO of MiDentalCare , disagreeing with the way the Plaintiff characterised it and saying that it was factual "*where the Defendants in the interests of maintaining a viable practice, have retained the services of* Mi[Dental]Care *on a temporary basis, thus ensuring continuity of service".*

e. Again accuses the Plaintiff of having delayed and acquiesced in seeking relief, and refusing to engage with correspondence.

f. Denies there is a fair or bona fide issue to be tried *"currently"* and asserts that damages are an adequate remedy between commercial parties.

Legal Principles

14. Although there was only one important dispute between the parties as regards the legal principles, it is as well to note the key authorities which the parties relied upon. The key principles were helpfully restated by O'Donnell J. in *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd,* [2020] 2 I.R. 1, [2019] IESC 65, *("Merck")*:

> *"(1) First, the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted;*
> *(2) The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. In many cases, the straightforward application of the American Cyanimid and Campus Oil approach will yield the correct outcome. However, the qualification of that approach should be kept in mind. Even then, if the claim is of a nature that could be tried, the court, in considering the balance of convenience or balance of justice, should do so with an awareness that cases may not go to trial, and that the presence or absence of an injunction may be a significant tactical benefit;*
>
> *(3) If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice;*
>
> *(4) The most important element in that balance is, in most cases, the question of adequacy of damages;*

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

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

(7) While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial;
(8) While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined." (para. 65).

15. Simons J. recently summarised the principles in *Start Mortgages Designated Activity Company v Kavanagh* [2024] IEHC 125 *("Kavanagh")* at [19-22]:

"19.…In brief, a court hearing an application for an interlocutory injunction should first consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief pending the trial could be granted. The court must consider whether the plaintiff has established that there is a "serious issue" to be tried (sometimes referred to as an "arguable case" or as a "fair issue" to be tried). If so, the court should then proceed to consider how matters should best be regulated pending the trial. This involves consideration of the balance of justice (sometimes referred to as the "balance of convenience").

20. The preferable approach is to consider the adequacy of damages as part of the balance of justice, rather than as a separate step in a three-stage test. It is not simply a question of asking whether damages are an adequate remedy. An interlocutory injunction should not be granted merely because the plaintiff can tick the relevant boxes of arguable case, inadequacy of damages, and ability to provide an undertaking as to damages. By the same token, an interlocutory injunction should not be refused merely because damages may be awarded at trial.

21. If the balance of justice is finely balanced, then it might be appropriate for the court to consider, even on a preliminary basis, the relative strengths and merits of each party's case as it may appear at the interlocutory stage. This will be necessarily dependent upon the proceedings presenting a legal issue upon which the court could confidently express a view, and also dependent upon any facts relevant to the disposition of that issue being supported by credible evidence (Ryan v. Dengrove DAC [2021] IECA38).

22. The threshold to be met by the plaintiff will be more exacting in circumstances where mandatory relief is being sought by way of an interlocutory injunction. Rather than simply demonstrate a serious issue to be tried, it will be necessary for the plaintiff to establish a strong case that they are likely to succeed at the hearing of the action (Maha Lingam v. Health Service Executive [2005] IESC 89)."

16. In *O'Gara v Ulster Bank DAC* [2019] IEHC 213 ("*O'Gara"*), Barniville J. stated

"… a plaintiff who seeks to establish a fair question or serious issue to be tried does not have to discharge a particularly heavy burden... That does not, however, mean that it is not a threshold which must be met. It may be helpful to view the threshold in terms of requiring a plaintiff who seeks an interlocutory injunction to demonstrate that there is a question or issue which would withstand an application to dismiss under the inherent jurisdiction of the court (as observed by Haughton J. in Wingview) or under O. 19, r. 28 RSC as disclosing no reasonable cause of action or as being frivolous or vexatious. The threshold is of that order and so unless the case is unstateable, it is generally not a difficult threshold to meet." (para. 42).

17. In *Okunade v Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 152 ("*Okunade"*), Clarke J held that:

" [72] The test of the balance of convenience is, of course, itself expressly directed to deciding where the least harm would be done by comparing of the consequences for the plaintiff in the event that an interlocutory injunction is refused but the plaintiff succeeds at trial with the consequences for the defendant in the event that an interlocutory injunction is granted but the plaintiff fails at trial.

[73] Finally, even that part of the test which suggests that maintaining the status quo might be determinative where all other factors are evenly balanced is in itself a recognition that, in order to interfere with the situation as it currently stands, the court requires a justification. Therefore the risk of injustice from not acting must be greater than that from acting in order that the court depart from the status quo." (paras. 72-73).

18. Hogan J. stated in *Albion Properties Ltd v Moonblast* Ltd [2011] 3 IR 563, [2011] IEHC 107 at para. 22 (*"Moonblast")*:

> *"It is true that the courts are very reluctant to grant a mandatory interlocutory injunction, save in the clearest of cases... Because the effect of such relief is generally to disturb the status quo ante, the granting of such an order is properly regarded as exceptional. It would normally not be granted unless it was more or less inevitable that the plaintiff would succeed at the trial of the action or, at least, where a strong prima facie case had been made out: see e.g. ICC Bank plc v. Verling [1995] 1 I.L.R.M. 123 at 130, per Lynch J.. In addition, the balance of convenience would have to favour the grant of such exceptional relief. In this respect, the test for relief is higher and more exacting than that which obtains under the conventional Campus Oil criteria (Campus Oil Ltd. v. Minister for Industry and Commerce (No.2) [1983] I.R. 88)."*

19. In *A.I.B. Plc v Diamond* [2012] 3 IR 549, Clarke J. found that

> *"... declining to enforce property rights on the basis that the party who has lost its property can be compensated in damages would amount to a form of implicit compulsory acquisition. If someone could take over my house and avoid an injunction on the basis that my house can readily be valued and he is in a position to pay compensation to that value (even together with any consequential losses), then it would follow that that person would be entitled, in substance, to compulsory acquire my house. The mere fact that it may, therefore, be possible to*

> *put a value on property rights lost does not, of itself, mean that damages are necessarily an adequate remedy for the party concerned is entitled to its property rights instead of their value."* (para. 96)

The definition of the Status Quo and its consequences

20. As the Defendants argued that the reliefs were mandatory and would change the status quo, requiring the Plaintiff to demonstrate a strong, rather than merely an arguable, case, it is necessary to consider the Court's approach to the preservation of the status quo. The importance of the status quo is well established, stretching back, for example, to the comment of O'Higgins CJ in *Campus Oil v Minister for Industry & Energy* [1983] IR 82 that:

> *"Interlocutory relief is granted to an applicant where what he complains of is continuing and is causing him harm or injury which may be irreparable in the sense that it may not be possible to compensate him fairly or properly by an award of damages. Such relief is given because a period must necessarily elapse before the action can come for trial and for the purpose of keeping matters in status quo until the hearing..."*

21. Kirwan in '*Injunctions: Law and Practice',*(3rd ed, 2020) *("Kirwan")* observed at [6-250] that

> *"Perhaps the way in which the courts have approached the status quo in practice helps explain its relevance; as Zuckerman points out, the courts (certainly in England) have never really taken the idea of the status quo at face value and applied it mechanically. Rather they have sought "to identify the most appropriate state of affairs deserving protection, whether or not it qualifies as an "existing state". McMenamin J. made a not dissimilar observation in the High Court in Whelan Frozen Foods Ltd v Dunnes Stores* ([2006] IEHC 171)*when he said that striving to maintain the status quo is 'by no means an immutable principle.' Similarly in Glaxo group Limited v Rowex Ltd.* (unreported, High Court, 19 May 2015) *Barrett J. observed that the maintenance of the status quo quotes is not a fixed rule."*

22. *Kirwan* notes at paras. [6-254] to [6-256] that whilst the status quo is normally regarded as the position prevailing immediately preceding the issuing of the proceedings, that

is not the only approach, *"certainly insofar as the English courts are concerned".* In particular, he observes a [6 – 255] that

> *"...it could be argued that the point at which the status quo should be determined is something of a movable feast depending on the circumstances of the case".*

23. As appears from para. 3 of O'Donnell J.'s judgment in *Merck,* the defendant's launch of its generic product prompted the launch of the patent infringement proceedings. At first instance and in the Court of Appeal, an interlocutory injunction was refused, primarily on the basis that damages would be an adequate remedy for the plaintiff but not the defendant. However, the Supreme Court concluded that the injunction should be granted. O'Donnell J. explained how the adequacy of damages should be considered as part of a balance of justice assessment and the decision is noted for his restatement of the governing principles (set out at para. 14 above). However, it is also important to note that the trial judge in *Merck* had regarded the status quo as the situation prevailing prior to the defendant's launch of its rival product, rather than the "post-launch" position which prevailed by the time the infringement proceedings issued. The Supreme Court and the Court of Appeal both proceeded on the basis of that finding. Having analysed the authorities, O'Donnell J. noted at para. 32 that where other matters appeared balanced:

> *"it was a counsel of prudence to take such measures as were calculated to preserve the status quo".*

24. At paras. 18 - 22 O'Donnell J. cited English judgments concerning the status quo in patent proceedings where allegedly infringing products had been launched without confirming the lawfulness of doing so (or "clearing the path"). He noted the decision of Jacob J. in *SmithKline Beecham plc v Apotex Europe Ltd*. [2002] EWHC 2556 (Pat.) (unreported, High Court of England and Wales, 28 November 2002) in which the Court was influenced by the defendant's failure to take such steps and he also noted that in *SmithKline Beecham v.*

Generics U.K. Ltd [2001] EWHC 563 (Pat.) ("*Generics*"), the same judge had described clearing the path as *"purely common sense":*

> *"If there may be an obstacle in your way, clear it out. To my mind this is a case where the retention of the status quo was a rational thing to do. It was something that could have been avoided by the defendants; they chose not to do it". The defendant had been, as he put it, eyeing the U.K. market for a long time. There was bound to be litigation unless the case was hopeless: both sides were aware of it, and he considered that if the defendant intended to introduce its product, it could avoid all the problems of an interlocutory injunction if it cleared the way first where litigation was bound to ensue. That was what the procedures for revocation and declaration for noninfringement were for. Accordingly, he granted the injunction".*

25. O'Donnell J. noted at paras. 19 - 22 the same approach in cases such as *Warner-Lambert Company L.L.C. v. Teva U.K. Ltd.* [2011] EWHC 1691 (Pat.), (unreported, High Court of England and Wales, Floyd J., 27 June 2011) and *Novartis A.G. v. Hospira U.K. Ltd.* [2013] EWCA Civ 583, [2014] 1 W.L.R. 1264. O'Donnell J. noted the relevance of a failure to *"clear the path"* in those patent cases before disrupting the status quo, citing *Generics:*

> *"Jacob J. articulated the need in the pharmaceutical industry for a generic manufacturer who makes plans to launch a generic medicine, to take steps to clear the obstacles facing its manufacture out of the way before it is launched. He said: 'You would have to be very naïve in the pharmaceutical industry to think that the patentee, with a product as important as this, would not, if it had anything other than a frivolous chance of success, take action.'"*

An injunction was granted in similar circumstances in *Teva Pharmaceutical Industries Ltd. v. Actavis U.K. Ltd. [2015] EWHC 2604 (Pat.), (Unreported, High Court of England and Wales, Arnold J., 9 September 2015).* As O'Donnell J. noted, Arnold J. concluded that:

> *"it was a counsel of prudence to preserve the status quo:-"In that connection, it seems to me that an important factor to take into account is Actavis' [sic] failure to undertake what is a familiarly known as 'clearing the path'".*

O'Donnell J. also considered a similar decision in *Warner-Lambert Company L.L.C. v. Sandoz GmbH* [2015] EWHC 3153 (Pat.), (unreported, High Court of England and Wales, 4 November 2015) where the court concluded that the relief should be granted because, inter

alia of the strong case for preservation of the status quo. On the particular facts of *Merck*, O'Donnell J. observed at para. 61 that the High Court and the Court of Appeal should have accorded more weight to Merck's status as the holder of a Supplementary Protection Certificate (which, if applicable and valid, extended the relevant patent protection period):

> *"Another way of valuing this factor is that it represents the status quo ante. In this case, there was no unreasonable delay in the commencement of the proceedings, and the status quo must therefore be taken to be the position which existed prior to Clonmel's launch. Finally, the same factor comes into play if consideration is given to the question of clearing the way".*

26. Although the Supreme Court differed from the Court of Appeal majority in respect of the balance of justice/adequacy of damages, all three Courts appeared *ad idem* as to the status quo. Whelan J. explored the issue in particular attention in her Court of Appeal judgment. She had noted the principles applicable to applications for interlocutory injunctions, noting at para. 90 the observation of Clarke J. in *Okunade* (at para. 73) that:

> *"…even that part of the test which suggests that maintaining the status quo might be determinative where all other factors are evenly balanced is in itself a recognition that, in order to interfere with the situation as it currently stands, the court requires a justification. Therefore the risk of injustice from not acting must be greater than that from acting in order that the court depart from the status quo".*

27. Whelan J carefully analysed what was meant by the status quo and the related point as to whether the Applicant was seeking mandatory or prohibitory relief:

> *"**The status quo***
>
> *121. There is a dispute in the instant case as to what constitutes the status quo. An essential aim of an interlocutory injunction is to preserve the status quo existing between the parties until the trial of the issues in dispute can take place. The rationale behind the grant of an interlocutory injunction is primarily the need to protect the rights of a plaintiff by preserving the circumstances which exist at the time he institutes proceedings to prevent him suffering irreparable prejudice by reason of the delay which must necessarily occur between the institution of the within proceedings and the trial of the action. The more time that has passed since the status quo was*

changed, the more likely it is that the result of the change will be considered the new status quo.

O'Higgins C.J. in Campus Oil stated at p. 105:
"Such relief is given because a period must necessarily elapsed before the action could come to trial and for the purpose of keeping matters in status quo until the hearing."

The respondent contends that the status quo involves a continued distribution of the generic pharmaceutical product by them as that represented the position which obtained at the date of the within proceedings.

In Garden Cottage Foods Ltd v. Milk Marketing Board [1984] A.C. 130 at p. 140, Lord Diplock discussed the meaning of 'status quo' :
'The status quo is the existing state of affairs; but since states of affairs do not remain static this raises the query: existing when? In my opinion, the relevant status quo to which reference was made in American Cyanamid is the state of affairs existing during the period immediately preceding the issue of the writ claiming the permanent injunction or, if there be unreasonable delay between the issue of the writ and the motion for an interlocutory injunction, the period immediately preceding the motion. The duration of that period since the state of affairs last changed must be more than minimal, having regard to the total length of the relationship between the parties in respect of which the injunction is granted; otherwise the state of affairs before the last change would be the relevant status quo.'
However, it is for the trial judge to determine what constitutes the status quo in any given case rather than adhering slavishly to pre determined formulae lacking the legal resilience that is a pre-requisite for a strict legal principle.

Whether the injunction being sought is mandatory in nature
The respondent contends that in substance the interlocutory relief being sought by the appellant is mandatory in nature. To comply with such an injunction, it is argued, Clonmel will have to take positive steps to remove its product from the market, take it down from the shelves and withdraw it from circulation and from being marketed inter alia on the websites of various pharmacies. The granting of a mandatory

injunction on an interlocutory application Clonmel contends is rare and exceptional though of course not unknown.

...

However, I am satisfied that in substance the interlocutory relief being sought by the appellant is prohibitory and not mandatory in nature".

Partnership Law

28. The parties did not make submissions in respect of the partnership law issues which may arise in these proceedings. While a detailed exposition and determination of any such issues must await the trial, some consideration of the issues is appropriate in the context of the application. While I do not propose to discuss these issues in the depth they may merit at trial, I consider it is appropriate to note one significant (albeit ancient) authority along with the pertinent discussion in the leading Irish text, *Twomey on Partnership* (2nd ed, 2019) *("Twomey")* at, *inter alia*, paras. [13.16], [13.20], [13.23], [13.25], [23.83], [23.87] to [23.92].

29. In an 1853 case, *Blisset v Daniel* (1853) 10 Hare 493 ("*Blisset*"), a partnership deed provided for a power of expulsion by the holders of at least two thirds of the partnership shares, without any requirement to show cause or to have a meeting or give notice to the partner. The Court accepted that – on the construction of the particular deed – the power of expulsion might be exercised by the two thirds majority and without cause. Even then, the expulsion was quashed because the power had not been exercised in good faith for the benefit of the partnership as a whole rather than for the majority interest - it could not be exercised for the exclusive benefit of the continuing partners. In *Blisset* the Plaintiff had effectively vetoed a proposal to make the senior partner's novice son the managing partner. He was entitled to do so and the Court concluded that the two thirds majority was not entitled to invoke their powers of expulsion in response because the expulsion power must be exercised in good faith for the benefit of the partnership as a whole. It remains to be seen whether an

Irish judge would accept *Blisset* as authority for the proposition that a partner could be expelled in such circumstances in the absence of notice or of a meeting. However, Irish Courts would certainly agree with its conclusion that powers of expulsion must be exercised for legitimate purposes and in good faith. The law has developed significantly since 1853 and the Courts' approach to these issues (both in terms of the construction of the particular expulsion clause in the particular context, the requirements of good faith and, where applicable, the entitlement to notice and a fair hearing and to the balance of justice) may well go rather further than *Blisset.* Furthermore, the issues may be very different when dealing with a professional partnership (on which individuals depend for their livelihood and professional reputation) as opposed to a transactional investment partnership in which the stakes are exclusively economic. In professional partnership contexts it seems to me that "Braganza duties" are even more likely to be engaged, and this is arguably entirely consistent not only with *Blisset* but also with the express terms of the Agreement. I would also endorse *Twomey's* comment at [13.16] that partnership powers must be exercised in accordance with the partners' overriding fiduciary duty to their co-partners and that partners will be in breach of their fiduciary duty if they do not exercise their rights for a bona fide purpose and in a bona fide manner:

> *"Thus, the partners who form the majority in relation to a particular decision must give all the other partners the opportunity of being heard and an agreement by the majority, in advance of hearing the minority opinion, to ignore those views would be a breach of this duty of good faith".*

Twomey also notes that the minority should not be merely obstructive, as they may be overruled "*after reasonable discussion*".

30. Under Irish law, the effect of s.25 of the 1890 Partnership Act is that no partner can be expelled (irrespective of the size of the other partners' majority) unless a power to do so

has been expressly conferred by agreement between the partners. As para. [23.83] of the author observes:

> *"The absence of a right under general partnership law to expel a partner is an important reason for having a written partnership agreement expressing that right, since no matter how unprofessional, negligent or belligerent a partner becomes, the other partners are not entitled to expel him from the firm in the absence of such a right. The desire of the partners in a firm to expel their co-partner (in the absence of a right to expel) may lead to a general dissolution of that firm. This is because the only recourse for the 'innocent' partners is to apply to court under s 35 of the 1890 Act for a general dissolution..."*

31. In this case clause 25 does provide for a power of expulsion, but the authorities show that such powers will be stringently construed. Citing *Blisset, Twomey* suggests at para. [23.88] that, if the wording of the clause is sufficiently wide, there may be no requirement to give reasons for a partner expulsion if there is an express right to expel a partner without cause but that the power must still be exercised bona fide. As regards the former proposition in *Blisset* (that no partnership meeting or notice to the partner may be required), I have already noted my doubt as to whether a modern Irish judge would reach the same conclusion. I also anticipate practical issues with showing the bona fide exercise of powers without giving reason or allowing the individual the chance to make their case before the power was exercised. As for the need to exercise such powers bona fide, *Twomey* notes that:

> *"the partners wished to get rid of Blisset, not because it was in the firm's interest, but for the ulterior motive that he objected to one of the other partners, Vaughan, being appointed as a manager in the firm. Vaughan had issued an ultimatum to the other partners that if Blisset remained, he would leave and thereby prevailed on the partners to expel Blisset. Before doing so, the other partners persuaded Blisset to sign the firm's accounts, and in this way the continuing partners would acquire Blisset's share at a reasonable value. In these circumstances, it was held that the expulsion of Blisset was void".*

32. I agree with that conclusion. Without deciding the point, I can see the wisdom of *Twomey's* observation at para [23.89 – 23.90] that:

> *"Although there is no Irish authority on the issue of whether a partner who is to be expelled pursuant to an express power of expulsion should be a given a fair hearing before the exercise of such a power, prudence would indicate that the other partners should do so in order to strengthen the expelling partners' hand in the event of the expulsion being subsequently challenged. This is particularly so where the partner in question is earning his livelihood through the partnership, which will often be the case".(*emphasis added)

33. *Twomey*'s last comment is important, and aligns with the view which I have expressed above, that a long term professional partnership involving the partners' livelihoods and reputations is more likely to trigger equitable and Braganza principles than might be the case with a more ephemeral purely transactional economic partnership and I consider that such an approach would be consistent with the Court's approach in *O'Sullivan v. Health Service Executive* [2023] IESC 11 (although that was not a partnership case, it does demonstrate that *"Braganza duties"* may arise in legal relationships other than traditional employment contracts).

Submissions

34. The Plaintiff submitted that:

a. The Defendants forced the Plaintiff out of the Clinic, aggressively preventing her from treating her patients, contrary to her property rights. However, they had no right to exclude a fellow partner, from the Clinic.

b. The Defendants do not exhibit documentation (such as minutes of Partnership meetings or other records) to evidence their assertions. Likewise, the First Defendant's second affidavit disagreed with the Plaintiff's reference to the Partnership deed's requirements in respect of the quorum for a partners'

meeting but had not identified any mechanism that might permit the Defendants to adopt the course which they pursued.

c. The "suspension" and "expulsion" were devices to facilitate the sale of the Practice, rather than to address its management. Nothing in the Agreement obliged the Plaintiff to sell her interest, but the "suspension" and "expulsion" were designed to force her to do so.

d. The Defendants only revealed in their second affidavit that they had engaged MiDentalCare to help run the Practice, having not disclosed that pertinent fact in previous correspondence or their first affidavit. The Defendants have still not adequately addressed the Plaintiff's concerns about the proposed sale which were reinforced by MiDentalCare's CEO's email to the Clinic receptionist, and by the MiDentalCare's website's reference to the practice under the legend *"Location of 3rd Clinic coming soon".* Although the website was amended after the Plaintiff drew attention to the issue, it continued to report that a third clinic would be opening soon. Although devoting four paragraphs (39 - 42) to rejecting the Plaintiff's concerns about *"The Alleged Sale"*, the First Defendant's first affidavit failed to disclose MiDentalCare's role. The extent of such involvement is evidenced by the fact that the "Suspension Email" was copied to its CEO. The First Defendant's second affidavit says that the Defendants have temporarily retained MiDentalCare's services in the interests of maintaining a viable practice and ensuring continuity of service. The Plaintiff noted the absence of any positive averment that the Defendants have complied with requirements such as data protection guidelines regarding the sharing of sensitive patient records with such a MiDentalCare and submitted that the Defendants had sought to conceal the

role of MiDentalCare by omission, and/or give misleading evidence as to its role in the Clinic.

e. Given its previous status as a potential purchaser of the Practice, by sharing the patient data and records with MiDentalCare even under the guise of a temporary service arrangement, MiDentalCare effectively has the goodwill and data of the practice and a sale would not be needed to transfer the practice. It could effectively be hollowed out.

f. With regard to the first *Merck* question, whether a permanent injunction could be achieved at trial, if she were to fully succeed at trial the Plaintiff would regain access to the premises and to her own patient records and the Practice records. The purported sale would either be set aside or fall away (Reliefs 3, 4 and 6). Accordingly, there is a fair question to be tried, meeting the threshold outlined by Barniville J in *O'Gara.*

g. As for the second limb of *Merck*, the Plaintiff is willing to see the matter go to trial in circumstances where she seeks to enforce her rights on the basis outlined on affidavit and in submissions.

h. The Balance of justice favours the injunction. The Defendants are utilising a sham "expulsion" to force a sale and to exclude the Plaintiff from her share of the proceeds – their oppressive acts were an abuse of the Agreement.

i. It is important to consider the patients' interests. The Plaintiff's first Affidavit referenced the vulnerable patients who needed to be treated by her. The Plaintiff is anxious to discharge her duty to all her patients.

j. The Defendants did not dispute the Plaintiff's averments that the Second Defendant only worked part time in the Practice and entirely ceased her involvement in 2020 and that the First Defendant rarely worked more than one

day a week, and was otherwise engaged in another practice. Since the Defendants were no longer attending the Clinic, they cannot be prejudiced by the Plaintiff's continued presence in the premises.

k. The Plaintiff is entitled to enter the premises and to access her patients' records. As the Defendants have averred that they have not agreed to sell the Partnership, the Balance of Convenience favours the injunctive reliefs.

l. Damages would not be an appropriate remedy (citing *Diamond*). The Plaintiff has worked diligently and profitably at the Clinic since January 2019, and has built up a large number of patients. She is a professional who takes her duty to her patients with the utmost seriousness. This goes beyond the financial situation - her third Affidavit notes that the ongoing harm to her livelihood, mental health, and good name. The Defendants should not be rewarded for oppressive behaviour in removing the Plaintiff from her workplace, as well as unilaterally removing her as a partner.

m. The Defendants repeatedly sought to complicate and delay the application.

n. While the Defendants asserted that the Plaintiff has not sought undertakings, it is equally true that no undertakings have been offered by the Defendants.

Defendant's Submissions

35. The Defendant's submissions were as follows:

a. The Plaintiff was belatedly seeking expansive and mandatory interlocutory injunctive relief but did not seek reinstatement as a Partner. Therefore, her request for unimpeded access to the Partnership premises and access to all patient files and records would require the Defendants to act unlawfully and breach their obligations, not least under data protection legislation.

b. The Parties were partners in a commercial partnership. The Plaintiff, failed to respond to correspondence until her solicitors' 17 October 2024 letter first suggested that the Defendants had engaged in *"destructive and precipitative behaviour"* and requested access to the Clinic and to patient records on humanitarian grounds to protect vulnerable patients. However, that letter did not take issue with the "suspension" or the "expulsion", nor did it explain the Plaintiff's lack of engagement or allege breaches by the Defendants. The Defendants' solicitors responded, offering access to the records for urgent appointments as an exceptional short-term measure, on the understanding that the Plaintiff, as an expelled partner, was not practising in the Partnership as a partner, but could treat patients on agreed terms. However, the Plaintiff demanded unrestricted access to the premises and its records.

c. The Plaintiff's solicitors' 4 November 2024 letter before action threatened to apply to the High Court for injunctive relief unless the Defendants provided certain confirmations by 6 November 2024 including (as number 4) that the Defendants would allow the Plaintiff full access to the Clinic. The Defendants' solicitors responded within the stipulated timeframe providing all confirmations except number 4 which was refused as the Plaintiff had been expelled from the Partnership and had not availed of an opportunity to return other than as a partner. Furthermore, all patients had been accommodated. That letter also confirmed the Plaintiff's entitlement to her share of Partnership Assets, in compliance with the Agreement. However, the Plaintiff swore her grounding affidavit before the stipulated deadline, implying that she had no intention of resolving the matter without recourse to the Court. Nor had

the Plaintiff sought any undertaking from the Defendants with regard to the specific reliefs now sought, rendering this application premature.

d. Citing *Albion Properties Ltd v Moonblast Ltd* [2011] IEHC 107 at para. 22, even if the Plaintiff succeeds at trial, a permanent injunction would not be granted in the terms sought. Granting such reliefs on a permanent basis would, in effect, force the parties to remain in Partnership, despite the collapse of the relationship, allow the Plaintiff, as a MiDentalCareCare, to have access to the files and records, and permanently prevent the Defendants from selling the Partnership. Unrestricted access on a permanent basis would cause untold damage to the Defendants due to the joint and several nature of a partnership, as well as its other obligations, including under GDPR.

e. The Plaintiff was not seeking immediate reinstatement as a partner, and seeks damages and the dissolution of the Partnership in the Plenary Summons. On that basis she would not be granted a permanent injunction if successful at trial, and relief should not be granted.

f. Citing *Curust Financial Services Ltd. v Loewe-Lack-Werk* [1994] 1 IR 450 and *Maha Lingam v. Health Service Executive* [2005] IESC 89) the Plaintiff was seeking mandatory orders and was thus required to demonstrate a strong case but had not done so.

g. The Plaintiff alleged non-compliance with clauses 15.2.6 and 15.2.7 of the Agreement but the "expulsion" clause is clause 21.

h. The balance of justice did not favour the reliefs sought as it is a commercial case. In the Agreement, the Plaintiff acknowledged she had been advised to obtain legal advice. The Agreement contains a mechanism to determine what is owed to or by an outgoing partner and this will be followed. The Defendants

have averred that damages would be an adequate remedy for the Plaintiff, whereas they will be prejudiced if they are forced to give the Plaintiff unfettered access to the Partnership and to patient files and records.

i. The balance of justice would be best served by preserving the Practice as it operates today as it continues to treat its patients. It is unclear how the Practice could function if the Court should provide the Plaintiff with unfettered access to the Partnership, its patient records and files. The relationship is irreconcilable, and the Court would be required to supervise the Practice.

Discussion

Preliminary Observations

36. It is not appropriate for me to determine the merits of the various claims, counterclaims and defences which the parties assert against each other. All such determinations must await the completion of pleadings, discovery, oral evidence and cross-examination, followed by full legal submissions. For current purposes, I need only determine if there is a sufficient issue to be tried and, if so, the Balance of Convenience/Justice (including the adequacy of damages).

Procedural Delay

37. No statement of claim has yet been delivered. The parties should have been advised by their legal teams that a pending interlocutory application does not suspend the requirements of the Rules of the Superior Courts. If a case requires an interlocutory application, it should continue to progress, independently and irrespective of the interlocutory application. There is rarely any acceptable reason to await the outcome of the application. Steps to progress the litigation (such as the exchange of pleadings, notices for particulars and requests for discovery and replies to such notices and requests) should generally proceed pending the resolution of the interlocutory application to avoid unnecessary delay in the

ultimate resolution of the litigation. In particular, plaintiffs should deliver their statement of claim either when the proceedings and the interlocutory application are served or at least within the period provided for pursuant to the Rules of the Superior Courts (unless an extension is obtained from the Court). Defendants should likewise serve their defence within the prescribed period.

38. The Supreme Court noted in *Charleton and Cotter v Scriven* [2019] IESC 28 that a party securing interlocutory relief must progress the claim thereafter, failing which the relief could be withdrawn. It seems to me that a failure to progress the claim in accordance with the Rules of the Superior Court while an injunction application is pending may also be relevant to the Court's determination in respect of that pending application. Any disregard of the Rules of the Superior Courts may influence the court's assessment as to the arguability of the parties' positions and may influence the Court's assessment of the applicable *Merck* criteria (including whether the plaintiff has established a fair question to be tried which will probably go to trial). Failure by either party to comply with the Rules of the Superior Courts or with directions may also be relevant to the balance of justice assessment.

39. However, while such delays may be fatal to interlocutory applications in some circumstances, this particular application has progressed quickly to hearing since it was issued by the plaintiff and both parties' cases have been fully explained on affidavit. Accordingly, I do not think that the absence of a statement of claim should preclude my considering interlocutory relief on this occasion. However, parties and their advisors should appreciate that any disregard of the Rules of the Superior Courts while interlocutory applications are pending may, if the circumstances warrant, detract from their prospects on such applications. To minimise future delay, I informed the parties at the outset of the hearing the application that, irrespective of its outcome, I would give directions to expedite the proceedings to trial. The parties agreed directions accordingly.

40. Turning to the affidavits, although the First Defendant accuses the Plaintiff's affidavit of being *"replete with errors and telling omissions"* this criticism arguably applies with greater force to his own affidavits which take technical points (such as the plaintiff's delay in raising issues or the way she describes exhibits), without addressing the substance of issues raised other than by broad assertion and denial, unsupported by exhibits or concrete detail. As I note below, the Defendants could have been more forthcoming as to, inter alia; (a) the terms of communications with staff and patients; (b) the role of (and interactions with) Mi-Dental; and, most importantly, (c) the "expulsion" process.

41. As a further preliminary point, I note that the Defendants' correspondence and affidavits repeatedly refer to the two defendants as *"the partners"*. This may be seen as shrewd advocacy, underscoring their robust stance that the plaintiff is no longer a partner. However, the artificially repeated mantra might appear to presume the outcome on a central issue for judicial determination, namely whether or not the plaintiff does remain a partner. Furthermore, to the extent that such language implies that the defendants saw themselves (but not the Plaintiff) as "the partners" when making partnership decisions, such terminology could also suggest insufficient regard for the Plaintiff's rights and interests as a partner in the "suspension" and "expulsion" process and a similar disregard for the first defendant's obligation as managing partner to act in the interests of the Partnership and the partners as a whole. In any event, since the validity of the "expulsion" and "suspension" has yet to be determined, it would be preferable for deponents to use more neutral language so as not to pre-empt issues before the Court.

42. It is also important to note that the Agreement's express imposition of duties of good faith go to a key trial issue as to whether powers of suspension and expulsion were fairly and lawfully exercised in accordance with the procedures and for the purposes envisaged by the Agreement. The Plaintiff's objections are arguably reinforced by correspondence from the

Defendants and their solicitors, which, as I note below, seems to suggest on occasion that such powers may have been exercised by the Defendants in their own interests rather than in those of the Practice. For example, correspondence from the Defendants' solicitors (such as the letters of 5 & 7 November 2024) describes such letters as having been written on behalf of the solicitor's client *"John Nolan"* (or their clients, *"John Nolan and Ann O'Reilly")* suggesting that such letters were sent on behalf of individual partners (representing a 50% interest in the partnership). There is no suggestion that independent legal advice was obtained on behalf of the firm. Likewise, the defendants' solicitors' 7 November 2024 letter insisted that *"our client's position remains your client is no longer a partner",* again using language arguably implying an intention to invoke the Agreement's powers on a partisan basis, rather than in the Practice's best interests. Nor is it evident that the first defendant distinguished between his own interests and his duties as managing partner. However, I would not regard these points as determinative in isolation - these are issues for trial.

Operation of the Clinic between 2019 and 2024

43. The Plaintiff, unlike the Defendants, has been active at the Clinic on a full-time basis for the five years since it opened whereas the Defendants effectively *"departed"* the Clinic several years ago. This goes to several issues, including the arguability of the parties' respective positions, the breaches respectively alleged, the validity of the "suspension" or "expulsion" and the balance of justice. It appears that even in the early years, the First Defendant rarely ever worked more than one day a week in the Clinic, being otherwise engaged in another practice. He accepts that the parties envisaged that his involvement in the Practice would increase as the practice got busier, but says that this never happened due to Covid. While the arrangements were loose, both sides accept that it was envisaged that the First Defendant's involvement would increase. The terms of the Agreement (particularly

clauses 12.1.1 and 12.1.2 confirm such a commitment). (In view of the First Defendant's responsibilities under the Agreement as Managing Partner for the day-to-day operation of the Practice, the Plaintiff evidently does not accept that his minimal involvement was due to the practice not being busy due to Covid). He offers no explanation of his effort or commitment to ensure the growth of the Practice and to increase his contribution once lockdown ended.

44. Whether the Defendants' limited involvement in the Practice is due to events entirely outside their control, as they contend, or due to their failure to comply with their obligations, as the Plaintiff contends, the fact remains that the Plaintiff is the only partner who attended the Clinic on a day-to-day basis throughout the five-year period from its inception in 2019. Indeed, the Defendants' Solicitors' "Warning Letter" referred to their clients' previous *"departure from the practice",* so there is no suggestion that either Defendant remained actively involved at the Clinic at the time of the events which triggered these proceedings. To the contrary, they seem to have been determined to exit the partnership by then. On the limited evidence before me, it appears for present purposes that:

a. the First Defendant's fee earning contribution to the Practice was only ever a fraction of that achieved by the plaintiff and he has made no financial contribution since 5 April 2022 despite his having continued to generate professional fees at the Clinic (albeit on a limited basis) in 2022 and 2023.

b. Although the Defendants alleged breaches by the Plaintiff' in terms of accounting for income and expenditure, she says that those issues were due to the Defendants' disregard of their own responsibilities as to the Practice finances. The Defendants have produced no evidence to support their blanket denial of the Plaintiff's allegations as to the respective contributions. The First Defendant has not exhibited accounts, such as those required under clause 9, or other contemporaneous evidence to support these assertions.

Although the figures are disputed and the defendants claim that the plaintiff owes the partnership at least €162,000, the only accounting evidence before the Court, such as it is, is the statement from the Plaintiff's accountant confirming that her fee earning contribution during the 2020 - 2023 period was €1,982,462 as compared to €148,744 for the First Defendant.

c. The Agreement's standard provisions regarding partnership monies, accounts and books and records, payment of expenses and contributions, do not seem to have been consistently implemented by the partners (with the parties blaming each other). The Court has not been furnished with partnership accounts substantiating amounts due to or owed by each partner to the Practice.

45. Although the First Defendant disputes the Plaintiff's averments as to the parties' respective financial contributions to the Partnership, he does not confirm that the Defendants' attendance at the Clinic was more extensive than outlined by the Plaintiff or give details of their financial contribution. Furthermore, his rejection of the Plaintiff's figures for her own contribution is in generalised terms - he has not exhibited documents to support his position. In particular, and notwithstanding the explicit provisions of the Agreement in respect of the partnership accounts, no accounting evidence is furnished by the designated practice accountant. If such accounts are not available in accordance with the Agreement, their absence would appear to require explanation from the First Defendant as managing partner and would raise further questions as to the basis for the action against the Plaintiff.

GDPR

46. The Defendants object that because the Plaintiff is no longer a partner it would be a breach of client confidentiality or GDPR obligations to allow her access to patient records (despite the fact that she presumably created and maintained those records in the first place). They have not satisfied me that any genuine issue is likely to arise unless and until it is

established that the Plaintiff is no longer a partner (an issue which has yet to be adjudicated). Greater confidentiality and GDPR concerns (in addition to concerns under clause 26 of the Agreement) could arise depending on the nature and extent to which the Defendants have involved MiDentalCare with access to Partnership and patient records.

The Interpretation and Application of the Agreement

47. The contractual issues are complicated by the Agreement terms. It seems to be a standard "off the shelf" partnership agreement but, perhaps reflecting business inexperience on the part of the parties, there seems to have been minimal effort to tailor the Agreement to reflect the reality of two equal economic interests (treating the defendants as, effectively, a single bloc, which seems to have been the reality of the situation for the purposes of the Practice). The key lacunae in the Agreement –which, by virtue of their nature, may not be amenable to resolution by implied terms - arise in respect of the lack of clarity as to the relationship between clauses 15 and 21, the absence of effective provisions to fairly resolve disagreements between two blocs with equal economic interests (at least on paper) and, thirdly, the need to revisit the ownership and profit sharing arrangements in the event that, as proved to be the case, plans changed and, for reasons which are in issue, the Defendants were ultimately far less involved in the Clinic than had been anticipated.

48. In fairness, the latter point may arise from events subsequent to the Agreement which were not anticipated when it was entered into. To the extent that existing provisions such as clauses 6.4 and 6.5 were insufficient to deal with the issue, then it might have been prudent for the parties to formally renegotiate the Agreement when and if their plans changed. For example, if it became clear that, for whatever reason, certain parties would be less involved than envisaged, the parties could have agreed that those individuals' profit share would reduce accordingly, by analogy with the illness or injury provisions. Successful partnerships address such issues regularly over the life of a partnership (or have prescribed mechanisms to

do so fairly). However, no evidence has yet been adduced of any such express or implied change and the Court will not rewrite an agreement. Accordingly, all parties remain bound by the existing Agreement and its express and implied terms save to the extent that it can be established that they agreed to vary it (or that they have acquiesced in (or waived) any departure from its terms).

49. More immediate issues arise with regard to the first two issues with the Agreement referenced in para. 47 If a party was to secure a controlling interest in a private company, they would normally expect at least 51% of the issued shares (with appropriate protections for the minority shareholder in addition to those imposed by law). If the major shareholder's interests were each limited to 50%, then one would expect provision to be made for any differences to be resolved in an appropriate manner. Under the Partnership Act 1890, in the absence of provisions in the partnership deed to the contrary, the default rule is that partnership decisions are by majority vote, with each partner having a single vote irrespective of profit share but certain decisions (including as to expulsion) requiring unanimity. Clause 15 superseded such default arrangements, providing that:

> *"Where a matter requires the decision of the Partners under this agreement, such matter shall be determined by the Partners by unanimous vote".*

That high bar may reflect a view at the time the Agreement was entered into that the firm was to be a small professional partnership and was to operate by consensus, with no partner being liable be overridden by the others or it may reflect the fact that both "blocs'" contributions were intended to be equal. While unanimity is obviously the highest possible bar for a partnership vote, partnerships are free to impose such a standard if they wish to do so. Clause 15 is unambiguous, and the Court would give effect to the parties' intentions, especially since there appears to have been a logic for such a bar where there were two equal economic blocks, making unanimity the only fair option. Of course the risk arises that, if unanimity

cannot be reached, stalemate may ensue. The partners must accept the status quo or seek dissolution (if they have grounds).

50. The question arises as to whether the unanimity requirement applies to clause 21 "suspension" or "expulsion" decisions. Clause 15 stipulates that the requirement arises "*Where a matter requires the decision of the Partners under this agreement".* Some provisions of the Agreement are "self-implementing" without requiring a partnership decision, such as the obligation on each partner to account in respect of income and expenditure, to pay over 50%, and the entitlement to retain the other 50% of fees. The meaning of the Agreement will be determined at trial, but for present purposes (and notwithstanding *Blisset*) I consider that the Plaintiff has a strong argument that – unless a contrary intention appears in the Agreement – all powers provided for in the Agreement which are to be exercised collectively by the partnership would necessarily require a decision by the partners under the Agreement. This could suggest that unanimity would be required for all such decisions, including in respect of suspension and expulsion.

51. If that interpretation was correct, then the "suspension" and "expulsion" were invalid in the absence of such unanimous agreement. It would follow that the Plaintiff has been unlawfully excluded from the Clinic.

52. The Defendants will argue at trial that the clause 21 power to suspend or expel partners does not require a partnership decision, let alone a unanimous one. I struggle with the concept that the Agreement could be construed so as to allow such draconian powers to be exercised without a partnership decision. Clause 21.1 provides that, in specified circumstances, *"The Partners may expel any Partner, by giving him written notice".* That power must be exercised by the partners collectively and it seems to me that it follows that there must be a partnership decision in accordance with the Agreement, pointing to clause 15.

In my view, it would be extraordinary and contrary to business logic and normal commercial practice if expulsion decisions could be taken on any other basis.

53. I also agree with Twomey's observations at para 23.87:

> *"The exercise of a power of expulsion will have serious repercussions for the expelled partner and may often lead to a loss of livelihood. For this reason, a court will strictly construe the right to expel a partner and any conditions which have to be met to exercise that right".*

54. Against this, the Defendants will argue that it cannot have been intended that suspension or expulsion decisions would require unanimity because, even where grounds for expulsion existed, the offending partner would veto any such proposal, which would render clause 21 meaningless. *Twomey* comments at [23.87] the courts will take a practical approach to the interpretation of expulsion clauses, noting that in *Hitchman v Crouch Butler Savage Associates* (1983) 127 Sol Jo 441 a clause which required the senior partner to sign all expulsion notices was interpreted by the English Court of Appeal as not requiring the senior partner's signature on his own expulsion notice. However, he also notes at [23.92] that:

> *"In contrast, in the English High Court case of Re A Solicitor's Arbitration, 178 the expulsion clause was not as explicit, but simply provided that if 'any partner' should be guilty of misconduct, he could be expelled from the firm by the 'other partners'. Russell J held that this expulsion clause was not sufficiently explicit to authorise one partner in a three partner firm to expel both of his co-partners".*

55. I see the force in the argument that unanimity could not be required for a partnership expulsion or it would render the power nugatory, but also the force of the contrary position, which is that the unanimity requirement accords with the plain words of the Agreement and there is an obvious commercial logic to it. It appears unlikely that any properly advised party investing 50% of the capital in a partnership would agree to do so if the partners representing the other 50% could expel her at will if they deemed the clause 21 criteria to be met.

56. Accordingly, complex questions may require determination at trial as to: (a) whether all partners can vote on suspension or expulsion motions, including the respondent partner;

(b) the procedure to be followed on such motions; (c) the respondent partner's right to due process and to be heard before any decision is taken; (d) whether the partners voting on any such proposal (which, depending on the answer to (a) may include the respondent partner) are entitled to vote in their own subjective interests or whether they must exercise their vote fairly in accordance with the objective interests of the partnership (and both sides have referenced the nature of the partners' duties of good faith under the Agreement).

57. I do not need to resolve such weighty issues on an interlocutory application save to note that both parties' positions are arguable in that respect. For present purposes it seems to me that it is even more important to note that clause 12.1.4, for example, specifically requires each partner to show *"the utmost good faith"* to the other Partners in all transactions relating to the Partnership and give them a true account of, and full information about, all things affecting the Partnership. Each side appears to allege that the other is in breach of these duties in respect of the operation of the Agreement (particularly in relation to the finances of the Practice) and, in the case of the Defendants, in respect of the "suspension", "expulsion" and related actions, including the access and information afforded to MiDentalCare. Both sides have an arguable case as to whether a partner who is the subject of a suspension or expulsion proposal is entitled to participate in a meeting or vote or as to whether there is a need for such a meeting, or that the unanimity requirement is not applied in such circumstances. The Plaintiff also has a very strong argument that any partners who seek to exercise powers of expulsion must do so fairly and objectively, in the partnership's interests rather than in their own, being fair to the individual against whom such powers are invoked. It seems to me that this case may also trigger the application of the "*Braganza Principles*" as enunciated in English and Irish authorities such as *Yam Seng Pte Ltd. v. International Trade Corporation Ltd*. [2013] 1 CLC 662, *Braganza v BP Shipping Ltd* [2015] UKSC 17, *British Telecommunication Plc v. Telefonica O2 Ltd and Others* [2014] UKSC 42 and *O'Sullivan v.*

The Health Service Executive [2023] IESC 11, *Watson v. Watchfinder.co.uk* [2017] EWHC 1275 (Comm), *BHL v. Leumi ABL Limited* [2017] EWHC 1871 (QB), *Lehman Brothers Finance AG v. Klaus Tschira Stiftung GmbH* [2019] EWHC 379 (Ch), *Equitas Insurance Limited v Municipal Mutual Insurance Limited* [2019] EWCA Civ 718, *Shurbanova v. Forex Capital Markets Ltd* [2017] EWHC 2133, *O'Flynn v. Carbon Finance Ltd.* [2014] IEHC 458, *Flynn v. Breccia* [2015] IEHC 547, *Betty Martin Financial Services Limited v. EBS DAC* [2019] IECA 327, *Start Mortgages DAC v. Simpson* [2023] IEHC 683 and *O'Sullivan v. Health Service Executive* [2023] IESC 11.

58. The Plaintiff will also doubtless invoke the *contra proferentem* rule at trial and will also argue that terms cannot be implied simply to rectify a lacuna in the Agreement in circumstances in which it is not obvious that, properly advised, parties would have agreed to such terms – she would say that no properly advised partner with a 50% interest would ever have agreed to allow the other 50% partners to expel her at their whim and that therefore the unanimity requirement did apply to clause 21 in its entirety and was entirely consistent with the commercial logic of the arrangement.

59. In any event (and particularly given the development of the law since *Bisset*), whether or not the Plaintiff was entitled to vote on any such proposal, there is certainly an argument that the expulsion needed to be put to a partnership meeting and a vote and that all other requirements of clause 15 should have been complied with. In other words, whether or not the Plaintiff was entitled to vote on the proposal, the First Defendant (as managing partner) was required to serve on *"all partners"* – including the Plaintiff – 7 days' notice of the meeting at which the suspension or expulsion proposals were to be considered. Such notice should have specified the place, day and time of the meeting and contained a statement of the matters to be discussed. All other requirements of the Agreement (including as to quorum and minutes) should have been observed. None of this appears to have been done and in all the

circumstances, and because of the doubts as to the Defendants' motivation in invoking the powers as outlined below, I consider that there is a strong case that the process was flawed (irrespective of the issue of the Plaintiff's entitlement to participate in any vote).

60. For completeness, I should note that the Defendants invoked clause 29, which stated that each party had been advised to seek independent legal and accountancy advice on the Agreement prior to its execution and had determined not to do so or had done so and that Crowley Millar Solicitors had been requested by all parties to draft the Agreement. That clause will require further consideration at trial once all circumstances of the negotiation of the Agreement have been ascertained. On its face that provision may make it even more likely that a Court may apply the doctrine of *contra proferentem* (which would not normally arise in a partnership context) and that the entirety of the clause would also lend support for application of the *Braganza* principles. Most importantly, the concluding sentence of clause 29 raises the issue as to what, if any, obligations Crowley Millar may or may not have assumed to the partnership as a whole and the plaintiff in particular in respect of the Agreement. Evidence may be required as to the arrangements as to the provision of instructions to that firm, their letter of engagement (including their letter pursuant to Section 150 of the Legal Services Regulation Act 2015) and the payment of their fees. It would be important to establish at trial whether, in addition to the insertion of a ritualistic 'legal advice' mantra, the |Defendants and their solicitors did actually sufficiently encourage the Plaintiff to secure such advice. From an equitable viewpoint, if the Defendants are contending that the true meaning and effect of the Agreement was that a partner with a 50% interest could be expelled without any meeting or vote and without being offered any hearing, then it would have been prudent for the Agreement to have been explicit in that regard and it would also have been prudent for the Defendants' solicitors to have insisted that the Plaintiff was actually independently advised before entering into such an agreement. The pro forma mantra

at the start of clause 29 may be even less likely to suffice if the Court considers that the effect of the provision is unduly onerous or unclear.

Miscellaneous Points

61. For completeness, before setting out my overall conclusions, I will deal with miscellaneous points raised in the affidavits or submissions which appeared to me to be peripheral to the current application. Firstly, the Defendants objected to the Plaintiff exhibiting communications to which she was not originally a party (but which had been forwarded to her) including the redacted communication from a customer referencing a communication from the Partnership. However, the Plaintiff sufficiently quoted and exhibited the essential parts of the message. It is telling that, while taking technical points as to the exhibits, the First Defendant did not disclose what communications were sent to staff or patients. He says he does not know who sent or received the particular message to the patient. However, he was the Managing Partner and he had purported to expel the Plaintiff who had been effectively running the Clinic for several years. He claims that arrangements were made to care for and communicate with patients so he cannot disavow responsibility for such communications. It would be a sad indictment of his approach to his duties if he failed to ensure that he was fully informed of all such communications. I also note that the MiDentalCare email to the Clinic staff member appears to have been sent with the First Defendant's knowledge and authority so it is reasonable to infer that communications with patients were on the same basis. If, however, the First Defendant was aware but failed to disclose such details then such reticence could lend further support for the Plaintiff's concerns. In any event, I do not consider that any major concern arises in the circumstances (and on an interlocutory application) in respect of the Plaintiff's reference to the patient's redacted email but I am surprised that the First Defendant failed to disclose the terms in which the Defendants and their associates and representatives communicated with patients

and other parties in respect of the Plaintiff's "absence". In the absence of more cogent evidence from the Defendants, I accept for present purposes that it is probable that the Defendants were communicating (or authorising and permitting communications) in terms of the text to the customer and the email to the receptionist as alleged by the Plaintiff and that the Defendants must accept responsibility for such communications.

Plaintiff's share of the Practice

62. I do not accept that the Plaintiff has yet established an arguable case that the Defendants are seeking to exclude her from any share of the proceeds of sale or depriving her of any such entitlements (which have yet to be determined). Their affidavits and correspondence shows otherwise. There are stronger grounds for the concern that the "expulsion" was a device to compel the Plaintiff to agree to a sale or to engineer a sale irrespective of her objections and arguably contrary to the Agreement).

Tenancy

63. I am not convinced by the Plaintiff's claim to have rights to access the Clinic as a signatory to the lease. The effect of Clause 5.2 of the Agreement is that the parties signed the lease in trust for the Partnership. The Practice, rather than the individual partners, is entitled to the beneficial interest in the lease.

Failure to seek undertakings

64. The Defendants contended that interlocutory relief should be refused because the Plaintiff did not seek undertakings. I disagree. Interlocutory relief might be refused if a party issued such an application prematurely, without seeking to resolve the issue without the need for such an application where there was a realistic prospect that such engagement might have obviated the need for litigation. However, in this case the parties had made their respective positions clear. The Plaintiff cannot fairly be criticised for the timing and manner or content of her application for interlocutory relief in the light of the Defendants' actions and conduct.

Furthermore, as the Plaintiff has noted, the Defendants' position appears inconsistent to the extent that they simultaneously accuse the Plaintiff of bringing this motion prematurely as well as delaying in bringing it or in challenging the purported expulsion.

65. The Defendant's responded to the letter before action by dealing with most points but refusing a key confirmation sought by the Plaintiff (and nothing turns on whether this was framed as an undertaking or confirmation). I am not troubled by the fact that the grounding affidavit was sworn prior to the expiration of the deadline - the Defendants had made their position clear and were unlikely to give the crucial confirmation. It was reasonable for the Plaintiff to swear the affidavit while holding off issuing the application until the deadline expired. The Defendants' eventual response vindicated the plaintiff's approach in that regard.

Acquiescance and Delay

66. The Defendants blame the plaintiff for failing to engage with their escalating correspondence. I agree that she would have been more prudent to have answered the letters (if only to reject them). A "head in the sands" approach is unwise when another party is potentially engaged in a crude attempt to lay a paper trail. However, the Defendants must share some blame for the one sided correspondence. The apparent gamesmanship in their intemperate correspondence was not calculated to encourage engagement and would doubtless have been seen by the plaintiff as highly tendentious – it shed heat rather than light and was not directed to constructively resolving partnership issues in accordance with the letter and spirit of the Agreement. It is also significant that the initial correspondence was clearly triggered by the Plaintiff's legitimate decision not to sell and that the subsequent correspondence was likewise geared to requiring the Plaintiff to capitulate on that issue, notwithstanding her entitlements under the Agreement.

67. The Plaintiff would have been smarter to likewise "lawyer up" and to put her position on record sooner. She should have addressed any genuine issues which might arise as to

monies owed to or by her (and, indeed, have insisted that the Defendants did the same). Her failure to engage could weaken her position if the defendants follow through on their repeated threat to issue dissolution proceedings. However, her failure to respond to the correspondence is of limited relevance to the current application. The defendants have never averred that, as a result of the plaintiff's failure to respond, they believed that she accepted their allegations or conceded the validity of the of the "suspension" or "expulsion". It would have been remarkable if they had formed any such impression given the fractious relations. The retention of a security guard shows that the defendants were under no illusions as to the Plaintiff's position. Any suggestion of acquiescence is unconvincing.

68. As for the suggestion of delay, given the serious position facing the plaintiff, it was reasonable for her to take time to instruct solicitors, correspond with the defendants and bring the current application. The time taken broadly compares to that taken by the Defendants for the implementation of their own strategy following the August 2024 letter. I do not consider that there was sufficient delay on the Plaintiff's part to change the status quo or to disentitle her to the relief sought. Nor do I consider that the plaintiff's failure to engage with correspondence precludes her application for injunctive relief. Both sides understood each other's positions and there was no basis on which it could be contended that the plaintiff acquiesced in the "suspension" or "expulsion" her. Nor did the plaintiff delay guilty unreasonably in issuing proceedings.

Possible Sale of the Practice

69. In reality, it seems unlikely that any party would buy the Practice until the litigation is resolved. The Plaintiff expressed concern that the Defendants' alleged actions in giving MiDentalCare access to the Practice might have obviated the need for it to buy the Practice because they could effectively exploit its goodwill without doing so. Clearly, extremely serious issues could arise for MiDentalCare and its CEO (as well as for the Defendants) if

such allegations of wrongful conduct on their part were substantiated. In particular, MiDentalCare and its CEO could be exposed if it was established at trial that they had unlawfully interfered in the Practice's ownership, control or operation (including by means of inappropriate access to or use of the firm's patient and financial data) or that they had breached the firm's or the Plaintiff's property, contractual or reputational rights or had wrongfully induced the defendants to breach their contractual obligations to the Plaintiff. For example, if, as the plaintiff contends, the "suspension" and "expulsion" were invalid, then issues could arise as to the legitimacy of the defendants' dealings with MiDentalCare and its CEO, including their retention of MiDentalCare to operate the Clinic and their decision to give MiDentalCare access to patient records and confidential partnership information. It is also possible that such parties could be joined as a party to the proceedings if it is alleged that they wrongfully interfered with the parties' contractual relationship or induced the defendants to breach the Agreement or exploited the Practice's confidential data for the benefit of MiDentalCare. However, none of those points have been established in the evidence before me. Any such questions are matters for another day and do not need to be considered at this stage.

70. The Defendants' affidavits deny having agreed a sale of the Practice but it is clear from the correspondence that they continued to engage with MiDentalCare about the possibility of the sale of the Practice even after the Plaintiff made clear that she would not agree to the sale. The "Warning Letter" acknowledges this. However, the Defendants have confirmed that no sale has been agreed. Furthermore, in the course of the hearing of the application, and at the Court's invitation, the Defendants have offered an undertaking not to sell the Practice pending the determination of the proceedings or further order (and the Defendants note that no undertaking was sought in those terms earlier in the proceedings). While this undertaking is welcome, the Defendants still have not disclosed the extent to

which they were negotiating a sale to any party (or any other arrangement) before or after the purported "expulsion".

71. On the basis of the "Warning Letter" it seems reasonable to infer that the Defendants remain committed to a sale, albeit they have now furnished an undertaking. This inference is reinforced by the facts that: (a) it was MiDentalCare who had sought to buy the entire Practice; (b) the Plaintiff's rejection of the MiDentalCare offer led to an escalation of hostilities between the parties; (c) the Defendants' solicitors declared in correspondence that their clients would continue to negotiate with MiDentalCare about the purported sale; (d) the MiDentalCare website identified the Clinic as *"our third clinic coming soon";* (e) The 1 November 2024 email from MiDentalCare Dental's CEO to the plaintiff's dental nurse discussed their role in reopening the Clinic and looked forward to having the recipient work with them going forward. (The fact that this message came from MiDentalCare rather than from the Defendants, albeit expressly sent with the latter's knowledge, speaks volumes, implying that MiDentalCare would manage and control of the Clinic on a day to day basis). I am also satisfied that it is likely that patients received communications from or on behalf of the Defendants along the lines alleged by the Plaintiff. In other words, they were informed that the Plaintiff had left the clinic and no longer worked there and that the surgery had been 'taken over' by MiDentalCare - the accuracy of such communications appears dubious even on the Defendant's view of the position.

72. Although the Defendants notes that the CEO of MiDentalCare's email to the receptionist of the Practice did not actually say that MiDentalCare had bought the Practice, the email was opaque in that regard, either deliberately so or as a result of poor drafting, which would be surprising. In any event, it was an extraordinary email for MiDentalCare to send and it was entirely reasonable for the recipient (and the Plaintiff) to interpret it as indicating that MiDentalCare was assuming ownership and/or control of the Clinic,

particularly since the email was sent with the first defendant's authority, an impression doubtless reinforced by the MiDentalCare website. I have difficulty crediting the possibility that MiDentalCare would have published the *"coming soon"* announcement unless it was sure it was about to secure ownership and/or control of the Practice. It would also be astonishing if they had done so without the Defendants' consent.

73. The full circumstances of the Defendants' engagement with MiDentalCare (and any other) parties will no doubt be probed on discovery and in oral evidence at trial (with discovery and oral evidence also presumably being required from MiDentalCare and from Mr. O'Rourke). As matters stand, I simply note that the Defendants have not disclosed the full extent of those parties' role in the Practice or in the events associated with the "suspension" and "expulsion". There was no disclosure of their role in the First Defendant's first affidavit despite the issue having been raised in the grounding affidavit (in the context of a possible sale). His second affidavit was somewhat more fulsome but still failed to provide meaningful details of the arrangement with MiDentalCare – when was it negotiated and formally entered into? Is it documented and, if so, why is the agreement not exhibited? If the arrangement was not documented, why not? What records does MiDentalCare have access to? Has MiDentalCare signed a non-disclosure agreement? What arrangements are in place to deal with the Practices' GDPR and other confidentiality obligations to its clients? Did the Practice obtain legal advice in that regard? What payment is MiDentalCareCare receiving? Was MiDentalCare privy to the plans to suspend or expel the Plaintiff? Why was its CEO copied on the "suspension" email?

74. Accordingly, while I have no reason to doubt the Defendants' assurance that they have not sold the Practice to MiDentalCare, I'd consider that MiDentalCare's actions, correspondence and website publications as well as the Defendant's own actions and its failure to disclose such arrangements in their entirety reinforce the Plaintiff's argument that

the “suspension” and “expulsion” may have been intended to clear the way for the ultimate sale to MiDentalCare, . This view of the likely motivation is reinforced by the fact that the First Defendant copied the “Suspension Email” to, firstly, MiDentalCare’s CEO and, secondly, to Mr. Jennings (the agent retained on behalf of the (entire) partnership at the First Defendant’s suggestion in respect of the proposed sale to MiDentalCare) at the same time as he sent it to his wife and his solicitor, immediately after it was sent to the Plaintiff.

Motivation for the “Expulsion”

75. Both sides’ correspondence, affidavits and submissions referenced the Plaintiff’s rejection of the MiDentalCare offer to buy the Practice. The Defendants’ solicitors’ letters appeared to assume that the Plaintiff was not entitled to reject the offer and stated that their client was considering dissolution proceedings. However, they ignored the fact that the Plaintiff was not obliged to agree to the sale nor could her refusal to do so justify her expulsion. Accordingly, this issue is primarily relevant to the extent that it goes to the motivation for, bona fides and validity or otherwise of the “suspension” or “expulsion”.

76. Particular concerns arise from the contents and dissemination of the “suspension” and “expulsion” correspondence and on the basis of the timing, tone and contents of such correspondence from the Defendants and their representatives. On the basis of such correspondence and of paras. 14 - 20 of the First Defendant’s first affidavit in particular, I consider that the Plaintiff has established a strong argument that the true motivation for the “suspension” or “expulsion” was to facilitate the sale. This conclusion is supported by the tone and content of the correspondence, as shown by examples in the following paragraphs.

77. The Defendant’s solicitors’ 16 August 2024 letter, having complained about the rejection of the MiDentalCare offer, threatened dissolution proceedings unless the Plaintiff immediately accepted that offer. The letter did not explain why the Plaintiff was obliged to agree to the sale. It is not evident to me that she was obliged to do so, nor, in isolation, would

her refusal to do so be grounds for the Defendants' threatened application for the dissolution of the Practice. The Defendants may or may not have had other grounds to seek dissolution but, despite the terms of their solicitor's letter, they failed to follow through on the threat by issuing the promised dissolution proceedings and instead adopted an alternative strategy.

78. One month after their 14 August 2024 ultimatum, the Defendants' solicitors despatched the 13 September 2024 *"*Warning Letter*"*. The "Warning Letter" was not sent by the Defendants themselves. Nor was it sent by the First Defendant as Managing Partner or by independent solicitors representing the firm. It was sent by the Defendants' solicitors. Over the course of the correspondence the latter variously described themselves as representing the First Defendant or as representing both Defendants but never as representing the firm. This is important because, although not a body corporate, the obligations on a partnership and its solicitors may be different from those on individual partners.

79. In any event, the unparticularised allegations in the "Warning Letter" bear all the hallmarks of a lawyer armed with a dictaphone indiscriminately citing terms of the Agreement to allege breaches of the various obligations placed on the Plaintiff without regard for the circumstances (including the extent to which the other parties were aware of and had accepted the arrangements or to which they may have been in the same position). The letter generally fails to provide the comprehensible particulars of such claims required to allow the Plaintiff to respond to (or, if necessary, remedy) such breaches. There are slightly more specific pleas in the 13 September 2024 letter, such as a suggestion that the Plaintiff has improperly sublet part of the Clinic but those allegations were not raised in the affidavits and there is no evidence that they were sufficient to justify the "expulsion" or "suspension". I therefore attach to attach little weight to such points. For all its bluster, the letter fails to provide meaningful particulars of supposed breaches or the action required to rectify them.

80. It is also important to note that, as appears from the First Defendant's first affidavit, the Defendants appear to have known from late 2021 of the accounting issues raised in the Warning Letter which are apparently relied upon as the basis for the "suspension" and "expulsion". In particular, he has admitted being aware since then that the Plaintiff was not paying all fees earned into the partnership accounts. She says that this was necessitated by the Defendants' own prior failure to pay their dues under the Agreement. Whatever the respective rights and wrongs of those positions, the Defendants were aware of the Plaintiff's position for two and a half years and they appear to have acquiesced. No explanation is proffered as to why they only took action in respect of that issue in September 2024. There is no explanation for the First Defendant's failure to take action within the period mandated by clause 21.2 of the Agreement.

81. In the absence of any meaningful explanation by the Defendants, the only reasonable inference appears to be that these longstanding issues were resurrected in 2024 to pressurise the Plaintiff and to avoid the necessity for dissolution proceedings. There is no evidence nor any suggestion in submission that information came to the Defendants' attention within the timeframe provided for in clause 21.2 of the Agreement which was relied upon as a basis for the suspension or expulsion. Therefore, the Plaintiff, rather than the Defendants, may be better placed to plead acquiescence and delay.

82. The "Warning Letter" stated that the Defendants' solicitors had advised their clients as to the legal remedies available to them *"to protect their position",* which might include suspension or expulsion or dissolution proceedings. The letter did not explain the procedures envisaged in respect of any such suspension or expulsion – it might be debated whether it is correct to describe such measures as "remedies" available to the defendants or as tools to protect their position. As noted above, it could certainly be argued that the suspension or expulsion powers must be exercised by the partners in accordance with the Agreement and

with the requirements of natural justice, fair procedures and, if applicable, Braganza principles. In the circumstances, I do not consider that the "Warning Letter" was an effective notification of a breach or that it gave the Plaintiff sufficient warning of issues requiring remediation or that it met the requirements of due process. I consider it devoid of legal effect and do not regard it as providing a basis for the Defendants' subsequent actions.

83. The Defendants' Sunday 6 October 2024 "Suspension Email" is also problematic. It purported to suspend the Plaintiff, instructing her not to attend the clinic, stating that they had changed the locks, and had informed patients that the Clinic would be closed for a few days, suggesting that the Plaintiff's solicitor should engage her solicitor, failing which the next step might be "expulsion" and a possible application to the High Court. However, no details were provided as to how: (a) a decision had been taken by the firm to suspend the Plaintiff without notifying her of any such proposal or allowing her the opportunity to be heard or to oppose the proposal (given that she was still a partner with a 50% interest in the Practice); (b) patients were informed; or (c) as to arrangements for alternative dental cover. The strong suspicion arises from the terms of the communication that it was primarily strategic, designed to pressurise the plaintiff to engage with regard to the sale to MiDentalCare, which would not be appropriate (just as, in *Blisset*, it was inappropriate to penalise the plaintiff by expelling him as a partner when he adopted an entirely legitimate position in respect of the unsuitability of the senior partner's son as managing partner).

84. The "suspension email" also refers to the authors' *"entitlement"* to suspend the Plaintiff, but, as noted above, it is not obvious that the Agreement vested such an entitlement in the Defendants, as opposed to the partners acting collectively in accordance with the Agreement and, presumably, with the requirements of fair procedures. In particular, there is no evidence that the decision was taken by the partnership (rather than by the defendants alone) in the best interests of the firm and in accordance with the parties' duties of good faith

as opposed to being taken in the Defendants' own interests. The reference in the "Warning Letter" to the Defendants' solicitors having advised their clients of the "remedies" available to them, and the Defendants' use of the term "entitlement" serve to reinforce the concern that the "suspension" and the "expulsion" may reflect a misapprehension of the partners' entitlements and obligations in respect of the proper exercise of such powers.

85. Even leaving aside the Agreement's procedural requirements, fundamental issues also arise with the 14 October 2024 "Expulsion Email". In particular, it is remarkable that the email was not sent by the Defendants or by solicitors representing the Partnership. It opened with revealing references to *"our clients"* - i.e. the Defendants with their 50% interest - as having suspended and then expelled the Plaintiff. The email does not explain the procedure used by the Defendants in "expelling" the Plaintiff, nor does it suggested that she was notified of the proposal or offered an opportunity to be heard.

86. The fact that the email was sent by the Defendants' personal solicitor and the terms of that email suggest that raises concerns as to the absence of independent advice to the Partnership as to the process. Serious issues (such as in respect of legal professional privilege and conflict-of-interest) could arise if the same legal advisors represented the Defendants in respect of their individual interests as well as the Partnership as a whole. Conflict issues may also arise as a result of the fact that the Defendants' solicitors drafted the Agreement, apparently on the instructions of and on behalf of all parties. In any event, the tenor and content of the email and the fact that was sent by the First Defendant's solicitor lend credibility to the Plaintiff's concern that the "expulsion" was not authorised by the Partnership as a whole and in its best interests but was an initiative designed to intimidate the Plaintiff and engineer the sale.

87. I do not agree with the Defendants' submission that the plaintiff's narrowing of the interlocutory reliefs (i.e. no longer seeking reinstatement as a partner as an interlocutory

relief) debars her from pursuing the remaining interlocutory reliefs. The change reflected the reality that substantive reliefs could only be granted at trial. The Plaintiff seeks to quash the "expulsion" and to establish that she remains a partner but is not seeking such substantive reliefs as interlocutory reliefs. This was an appropriate decision, prompted by Sanfey J..

Significance of other reliefs sought by the parties

88. The Defendants also submitted that the interlocutory relief was inappropriate because the reliefs sought by the Defendants included dissolution and damages. I agree that if the only substantive reliefs sought were dissolution and damages, then it may have been peculiar for the Plaintiff to seek different reliefs pending trial - there would be an inconsistency in seeking to preserve a status quo which was not the objective of the proceedings. However, no such inconsistency arises here. The primary substantive reliefs sought are consistent with the interlocutory application. Dissolution and damages are prudently sought as secondary or ancillary reliefs. To assess whether the plaintiff would be entitled to seek the interlocutory reliefs if she succeeds at trial, I must consider the entirety of her case not just the interlocutory application or the alternate reliefs. The Plaintiff may be entitled to seek the reliefs sought at paragraphs 1 to 8 of the Indorsement of Claim if she succeeds at trial in showing that the "expulsion" and "suspension" were invalid. Accordingly, pleading alternative reliefs (such as dissolution and damages) does not necessarily mean that damages would be an adequate remedy. The primary relief sought is the determination that she remains a partner and that the Defendants remain bound by the Agreement. The alternative reliefs do not disentitle the Plaintiff from seeking interlocutory relief because such relief is necessary in order to keep open the possibility of securing the primary relief sought.

89. Ironically, the dissolution argument actually favors the interlocutory relief because it is the Defendants, rather than the Plaintiff, appear most concerned to sell the Practice and/or to apply for dissolution. It was the Plaintiff's determination to continue to operate the

Practice in accordance with the Agreement and her refusal to countenance a sale which sparked the recent escalation of hostilities whereas the defendants have repeatedly threatened dissolution in correspondence. This supports the Plaintiff's submission that damages would be an adequate remedy for the Defendants, but not for the Plaintiff.

Irretrievable Breakdown of Relationship

90. A related issue in the application arises from the breakdown of the relationship between the parties. There is an increasing gulf between them. It may well have been appropriate for the Defendants to apply to the court for dissolution if they believed they had grounds to do so (and they repeatedly indicated an intention to mount such an application). However, no such proceedings have been issued by the Defendants, so my assessment of their position is not based on the merits of hypothetical dissolution proceedings but on their contention that "suspension" and "expulsion" of the plaintiff were valid. I accept that even if Plaintiffs win at trial, courts are reluctant to grant injunctive relief forcing parties to work together where there has been an irreconcilable breakdown. However, that is not an absolute rule, with the determination depending on the circumstances. Furthermore, the Courts are rather more willing to make orders in favour of plaintiffs vindicated at trial (as opposed to interlocutory orders where the merits have yet to be determined. In considering the possibility of the substantive relief being granted in this particular case it is important to bear in mind that: (a) the plaintiff has a 50% interest in the partnership; (b) she was the partner principally responsible for operations at the Clinic and for the generation of the overwhelming majority of its fees and developing its customer base over recent years; (c) the defendants' active role in the Clinic appears to have ended on their "departure" from the Clinic several years ago. In those circumstances, if she was to succeed at trial it seems unlikely that, the Plaintiff would be denied an effective remedy and that the exclusion from the Practice would be maintained. Even if dissolution was ultimately granted in these or other proceedings, it is likely that, if the

expulsion was invalid, the Plaintiff would be permitted to continue to practise at the Clinic unless and until the partnership was finally dissolved. Obviously, the precise terms of relief (if any) would depend on as yet unresolved issues. However, as matters now stand, I am satisfied that if the Plaintiff succeeds a court could determine that: (a) the "expulsion" was invalid; (b) the parties remained bound by the Agreement, and (c) having a 50% interest the Plaintiff could not be excluded from the Clinic.

Validity of Suspension or Expulsion Process

91. Notwithstanding the detailed provisions with regard to preparation of accounts and maintenance of books and records and the First Defendant's role as managing partner, the Defendants have not exhibited documents to support their assertion as to the monies owed to the partnership by any of the parties. There seems to have been a mutual divergence from the procedures stipulated by the Agreement. Each side blames the other and it is not appropriate for me to adjudicate those issues now. However, there is no evidence that there has been any change in the position since alternative arrangements were adopted on a day to day basis in 2021/2022. It is difficult to see how the Defendants could now summarily expel the Plaintiff for circumstances which they were aware of for several years, apparently without objection (until the Plaintiff vetoed the offer to sell the Practice) and in circumstances in which at least some of the same allegations could possibly be levelled against them.

92. It is not necessary for me to determine the extent to which the First Defendant duly discharged his duties as Managing Partner, including in particular those expressly imposed by the Agreement and the issue was not explored in legal submissions. Accordingly, I will confine myself to noting that there appears to be a strong case that all such powers as managing partner must be exercised in good faith in the partnership's interests.

93. The Defendants have not suggested that any Partnership meetings took place in accordance with clause 15 in relation to the "suspension" or expulsion. To the contrary, they

argue that no such meeting, nor any specific process, was required and that the "suspension" or "expulsion" of partners was entirely governed by clause 21 and that the Defendants were entitled to suspend or expel the Plaintiff, who had a 50% interest in the partnership and who had been primarily responsible for its day to day operations since 2019, without conducting a hearing or meeting at which the complaints were put to her and at which she was afforded an opportunity to respond. In the absence of any evidence of a Partnership meeting or decision in respect of either the "suspension" or "expulsion" and in view of the objective doubts as to the true motivation for the purported exercise of the power of expulsion, I am not surprised that clause 21 was properly invoked. In my view, the Plaintiff has strong grounds to contained on factual, legal and procedural grounds that the Defendants were not entitled to suspend or expel her in the circumstances or in the way that they sought to do so. On its face the correspondence reinforces the Plaintiff's objections in this regard.

94. In summary, for present purposes there is a strong case that:

a. the "suspension" or "expulsion" was not based on any decision taken by the partners at a duly convened partnership meeting (and the absence of evidence as to how, when and where and the "partners" took either decision reinforces that conclusion).

b. the Plaintiff was not sufficiently notified of any such proposal or afforded an opportunity to be heard.

c. No valid meeting or vote was held pursuant to clause 15. No minutes have been exhibited.

d. The correspondence and circumstances lend credence to the Plaintiff's suspicion that, rather than having regard to their obligations under the Agreement and their duties of good faith, the Dfefendants acted unilaterally in own interests, when sending the warning letter and then purporting to suspend

and expel the Plaintiff which would, in my view, be an improper exercise of such powers (as was the case in *Blisset*).

e. While the Defendants can fairly argue that the process required to expel a partner are not as rigorous as the rights afforded to an employee (and clearly that is an issue which would merit further adjudication), the fact that the Plaintiff does not appear to have been given a meaningful opportunity to be heard before either the "suspension" or "expulsion" reinforce concerns about the motivation for the process. Such doubts as to the process are greatly increased by the fact that the "expulsion" was notified to the Plaintiff by the Defendants' solicitor rather than by the firm itself. As matters stand, it is not clear that; (a) any legally robust process underpinned the alleged decision to suspend or expel a partner with a 50% interest; (b) the Plaintiff was offered a sufficient opportunity to be heard; (c) the "suspension" or "expulsion" were duly authorised; (d) most importantly, the "suspension" or "expulsion" powers were exercised in good faith and in accordance with the Agreement but were directed at a collateral objective, securing the sale for which the Defendants contended and obviating the need for them to seek dissolution.

It is (d) which I regard as the most decisive factor.

The Applicable legal test

95. The parties largely agreed the fundamental principles pertaining to interlocutory relief, if not their application but the defendants contended that the higher, *Maha Lingam*, standard applied, requiring the Plaintiff to demonstrate a strong - rather than merely an arguable - case. This was on the basis that the reliefs sought were mandatory and would change the status quo, because the Plaintiff was no longer a partner and, in the absence of any such mandatory orders, she was not entitled to access the Clinic or the Practice records.

Counsel acknowledged that this submission depended on identifying the *"status quo"* which was to be preserved pending trial.

96. In my view, the relevant status quo is the position provided for in the Agreement and which actually prevailed until November 2024, the partes being in partnership together and entitled to carry on practice at the Clinic. I do not consider that the disputed "expulsion" changed the status quo, any more than the launch of the generic product had such a consequence in *Merck*, or in the authorities cited by O'Donnell J. in that case (and noted at paras. 23 to 25 above).

97. I agree with the observations of Megaw LJ and Finlay Geoghegan J. in *Alfred Dunhill Ltd v Sunoptic SA* [1979] FSR 337 and *Contech v Walsh* [2006] IEHC 45 (which *Kirwan* cites) – Megaw LJ observing that in identifying the status quo *"may well vary in different cases"* and Finlay Geoghegan J. suggesting in the context of a passing off action that

> *"where a plaintiff moves speedily after learning of the commencement of selling of the product on the market, it appears to me that the status quo which the court must primarily have regard to is the position prevailed before the commencement of the alleged wrongful acts, or the acts alleged to constitute passing off."*

I also agree with *Kirwan*'s observation at [6 – 256], that lengthy delay in seeking an interlocutory injunction may mean that it will be the status quo at the time immediately preceding the motion which will be of relevance (this approach, and *Contech v Walsh* in particular, align with O'Donnell J.'s approach to the issue in *Merck*). However, I do not regard the delay in this case as have been sufficiently lengthy to raise any issue that regard.

98. Whereas the Courts generally use the phrase *"status quo"* I note that O'Donnell J. in *Merck* (and several English cases he cited) and Hogan J. in *Moonblast,* used the phrase *"status quo ante",* which I take to mean the status quo before the events which immediately triggered the proceedings (as opposed to the status quo on the day the proceedings were

launched). Although many of those decisions were in the context of patent infringements, they demonstrate a generally applicable principle, that the Court will focus on the longstanding position as it stood between the two sides. If, before proceedings are launched, a party pre-emptively takes a controversial legal action (such, for example, as physically ejecting a longstanding sitting tenant without any justification) they cannot thereby say that the status quo has thus changed, rendering the reliefs sought mandatory and making it more difficult for a plaintiff to get interlocutory relief than it would have been but for the defendant's controversial actions. Such an interpretation would encourage parties to take pre-emptive action disrupt the status quo so as to inhibit prospective plaintiffs' access to the Courts and entitlement to secure relief. This would be inconsistent with the philosophy underlying the exercise of the jurisdiction to award interlocutory relief.

99. Such questionable tactics (launching an allegedly infringing product) were not regarded as changing the status quo in the cases referenced at paras. 23 and 24 above, nor in *Merck* itself. Likewise, although the Defendants cited *Moonblast*, that decision actually favours the relief sought. Hogan J explained that the Courts were reluctant to grant mandatory interlocutory injunctions and applied the higher standard before doing so because *"the effect of such relief is generally to disturb the status quo ante"* (emphasis added). In this case the reliefs likewise seek to preserve the status quo ante, the arrangements envisaged by the Agreement (including as to unanimity) and in place from 2019 until November 2024. To paraphrase O'Donnell J's conclusion in *Merck*, noted at para. 25 above, the relief sought would represent the *status quo ante*. There was no unreasonable delay in the commencement of the proceedings (as I do not accept the Defendants' submissions in that regard), and the status quo must therefore be taken to be the position which existed prior to the "expulsion". Finally, the same factor comes into play when consideration is given to the Defendants' failure to take the steps open to them to *"clear the way"*.

100. Furthermore, just as those authorities referenced and criticised the defendant's actions in launching a controversial product without first *"clearing the path"*, the same criticism could be levelled at the defendants in this case for taking precipitate expulsion action against the plaintiff whereas they might have been better advised to either issue dissolution proceedings (as they threatened) or, if they were determined to enforce the deed up to and including expulsion if necessary, then to do so precisely in accordance with its terms. To my mind, preserving the status quo means preserving the Practice on the same basis as it has been operating since 2019, with the parties allowed full access to the Clinic and its records (although the Defendants appear not to be exercising their own rights in that regard). As Whelan J. observed in *Merck,* an essential aim of an interlocutory injunction is to preserve the status quo existing between the parties until trial (and she rejected the contention that the status quo involved the defendants' continued distribution of their product as that represented the position which obtained at the date on which the proceedings were launched). I do not regard the "expulsion" proceedings as having changed the *"status quo/status quo ante"* so as to render the nature of the relief sought mandatory (any more than the product of launch in *Merck* had). It may be more technically correct to describe the historic position in this case as the *status quo ante,* but the semantics of the use of the Imperial Roman tongue misses the point. On a balance of justice assessment in a case such as this, the Court is concerned to understand the situation which prevailed before the events which triggered the litigation (rather than necessarily being fixated with the day proceedings were issued). I am concerned with *the* arrangements envisaged by the Agreement as exercised over recent years, under which the Plaintiff enjoyed full access to the Clinic and its records. The defendant has not satisfied me that the "expulsion", which will be a central issue at trial, changed the position which the orders seek to preserve. Accordingly, the usual injunction standard applies.

Conclusions

***Could the Plaintiff secure the interlocutory reliefs at trial*?**

101. Applying *Merck*, I am satisfied that a permanent injunction could be achieved at trial. If the Plaintiff succeeded, she could regain access to the premises to her own patient records and to the practice records and any purported sale would either be set aside or fall away.

Has the Plaintiff demonstrated a fair question to be tried or a strong case?

102. There is a fair question to be tried and the claim easily meets the *O'Gara* test. Indeed, although the Defendants' written submissions contended otherwise, their counsel conceded in oral submissions that the lower threshold was met but argued that the higher, *Maha Lingham,* threshold applied. I am satisfied that the Plaintiff has demonstrated not only an arguable but a strong one that she has been unlawfully excluded from the partnership, the Practice and the Clinic. Accordingly, even if the higher standard applied I would be satisfied that it was met. The Plaintiff has demonstrated a strong case that the "suspension" and "expulsion" were unlawful and that the Defendants attempted to override her rights, illegally excluding her from the Practice and the Clinic, her place of work, causing her ongoing harm so as to achieve a collateral objective, overriding her objection to the proposed sale of the Practice. Any such motivation would be a misuse of those powers, as in *Blisset.* In that 1853 decision, Woods VC considered that the exercise of the power of expulsion had been an act of *"absolute and arbitrary power"* for the benefit of those exercising that power rather than in the interests of the partnership and they could not possibly be permitted to retain such benefit. It seems to me that, for present purposes, the Plaintiff has demonstrated a strong case that the same applies to her "expulsion".

103. The parties' positions must be assessed in terms of the 2019 Agreement, which, on its face, entitles, and indeed obliges, the plaintiff to access the clinic and the records of the practice to carry on the business of the partnership. The defendants' arguments to the

contrary depend on their having established at least an arguable case that the plaintiff is no longer a partner, having been lawfully expelled from the partnership in accordance with its terms. It may be that the defendants will succeed in establishing that proposition at trial. However, as matters now stand, for the reasons outlined above, I do not think that they have yet established such an arguable case to that effect.

Balance of Justice/Balance of Convenience

104. As *Okunade* and other authorities confirm, I must balance the consequences for the Plaintiff if an interlocutory injunction is refused but she succeeds at trial against the consequences for the Defendants in the converse scenario. The balance favours the granting of this injunction for the reasons set out below.

105. Firstly, the parties' respective involvement in the Clinic and their dependence on it for their livelihood is relevant to the balance of justice. The Defendants' solicitors acknowledged in correspondence that their clients had *"departed the practice".* As the Plaintiff's solicitors put it in correspondence:

> *"Your clients [who have not set foot in the premises or done a day's work in the partnership or contributed a penny in outgoings in 2.5 years and 4 years respectively] claim to have expelled the majority partner with no kind of due process or regard to the law".*

Technically, neither side has a majority interest, but the point otherwise stands.

106. Damages would be an adequate remedy for the Defendants if they were to successfully defend the proceedings. Their interest in the Practice appears primarily economic - even following the "expulsion" the Defendants appear to have outsourced patient care and Practice responsibilities to MiDentalCare to a significant degree although the First Defendant claims to have attended the Clinic since the "expulsion". Nor can I discern in the Defendants' affidavits and submissions any other convincing basis to assert that they would

be meaningfully prejudiced by such interlocutory relief, particularly in circumstances in which they have not suggested that a sale is imminent and in which there is no evidence that they have made any economic contribution to the Partnership since 5 April 2022.

107. The Defendants argued in submissions that they would be prejudiced by the reliefs if the Plaintiff was continuing to act, at least ostensibly, as a partner and they would be subject to the perils of joint and several liability. In fact, the partners signed up to those perils when they entered into the Agreement and no doubt the Defendants' solicitors explained the concept of joint and several liability to them at that time. The Defendants have been content to allow the Plaintiff to practise at the clinic for five years. It is also relevant to the balance of justice assessment to note that the partners also agreed that all decisions in respect of the Partnership required by the Agreement should require unanimous agreement. There is no evidence that that risk of the longstanding arrangements has increased in recent months so as to affect the balance of justice. In any event, at the conclusion of the hearing, I directed the parties to engage as to practical arrangements in the event that I was minded to grant some or all of the reliefs sought (an outcome which, as I noted, reflected my initial thinking and which has been confirmed in this judgment). With more prompting from me than should have been necessary, the parties agreed practical arrangements in that regard. I expect that any issues can be resolved by such practical engagement between the parties or, in the hopefully unlikely scenario that the parties and their advisors are unable to do, by the Court.

108. Whatever the reason for the delay in the growth of the Partnership, it seems to be accepted that it was primarily the Plaintiff rather than the Defendants who was physically present and carrying on the Practice at the Clinic in recent years. Since they have not been as actively involved at the Clinic on an ongoing basis it hard to see how the Defendants could be prejudiced by the continuance of those arrangements while the dispute is resolved. The injunction would allow the Clinic to continue to operate pending the determination of the

proceedings on much the same basis as it has since at least 2022. Since the Plaintiff has had access to the Clinic and its records for five years it is difficult to see any legitimate objection by the Defendants to the continuation of those arrangements or to offering her access to her own patients' records.

109. The essentially economic nature of the Defendants' interest is also demonstrated by their solicitors' 5 November 2024 letter which revealed the Defendants' intentions in its closing observation that the Plaintiff's share of the Partnership Assets remained *"intact until the Partnership is dissolved by way of Court Order or agreement between the parties."*

110. Damages would not be an adequate remedy from the Plaintiff's perspective in circumstances in which she has been primarily responsible for building up the Practice and developing a client base for 5 years. Failing to allow her access to the Clinic and its records or to communicate with and serve those patients would be prejudicial to her ability to earn a livelihood and also damaging to her professional and personal reputation and relationships with her clients.

111. The Plaintiff has established a strong case that the Defendants' actions are an abuse of the Agreement and are intended to circumvent its obligations and to deprive her of her rights. The Plaintiff has shown a strong case that her property rights and right to earn a livelihood and her good name are being jeopardised by questionable "expulsion" procedures which arguably appear designed to both force a sale which is not mandated by the Agreement and to obviate or pre-empt the outcome of dissolution proceedings.

112. On the basis of the evidence before me, it seems reasonable to conclude that granting the interlocutory reliefs would be in the best interests of the patients of the Practice, including the vulnerable patients referenced on affidavit and in correspondence and the patients who would require or wish to be treated by the Plaintiff specifically. The Partnership has legal and professional obligations to such patients and there is no evidence that the arrangements which

pertained from 2019 to 2024 were deficient in that regard. Nor does the evidence confirm that the Defendants have implemented adequate arrangements to ensure the uninterrupted treatment and welfare of such patients – the bland averments of the First Defendants do not reassure me in the absence of meaningful detail of the arrangements including as to the level of professional resource deployed.

113. There is no suggestion that any arrangements between the Defendants and MiDentalCare would be relevant to the Balance of Convenience.

114. For completeness, I should note that, although the Defendants relied on *Curust,* O'Flaherty J.'s reasoning in that decision actually favoured the granting of the reliefs in this case. He ruled against an interlocutory application which sought to enforce a disputed *exclusive* distribution agreement, refusing to prevent the defendant from supplying the product independently of the plaintiff. As O'Donnell J. noted at para. 39 in *Merck*, O'Flaherty J. noted the dispute as to whether the agreement had been terminated, and that the case was finely balanced, but that *Curust* would not be deprived of access to the market but simply obliged to share it in with the second defendant. He concluded that it was preferable to allow co-habitation pending trial, rather than exclude the defendant from the market. O'Donnell J. observed that:

> *"Viewed in this way, the decision was a robust and pragmatic approach to the regulation of the period between the commencement of the proceedings and the trial of the action".*

Accordingly, the logic of *Curust,* as explained in *Merck,* would likewise favour allowing the Plaintiff, as well as the Defendants, to continue as a Partner with access to the Clinic and its records as before until the proceedings are resolved.

115. Even leaving aside the fact that the Defendants were content for the Plaintiff to effectively run the clinic for five years notwithstanding the tensions between them, the fact that they offered her access following the "expulsion" (albeit on their terms) confirms that

there is no principled objection or prejudice to the Defendants in allowing such access in terms of professional standards or patient care. The restricted and conditional terms on which the Defendants offered to allow the Plaintiff to continue to operate at the Clinic were unreasonable and the Defendants could scarcely have expected that such terms would be acceptable. However, the fact that they were prepared to offer such a "consultancy" demonstrates that there is no objection to the Plaintiff in principle accessing the clinic or treating patients and that there is no issue as to her competence or integrity. The Defendants' objection essentially concerns the commercial dispute. They have not established an arguable case that the interests of the Practice, or those of its patients, or even the Defendants' own interests would be prejudiced by the reliefs sought.

116. I am not satisfied that damages would be an adequate remedy for the Plaintiff. She has worked at the clinic since January 2019 and claims to have done so diligently and profitably and to have built up a large practice and patient base. She is a professional with obligations too her patience and with a reputation to protect, as well as the right to earn a livelihood. The impact of "suspension" or "expulsion" on a professional could go far beyond the immediate financial impact. She has plausibly testified did the current position is causing ongoing harm to her livelihood, mental health, and good name.

117. The balance of justice favours the Plaintiff in circumstances in which she has effectively been charged with day-to-day responsibility for the clinic for five years, has built up relationships with clients and has developed a substantial Practice whereas the Defendants, "departed" the Clinic several years ago. It is reasonable to conclude that more satisfactory patient care and greater continuity will be maintained by allowing the Plaintiff to continue to serve her patients at the Clinic if those patients wish to avail of their services.

118. In considering the balance of convenience, the analysis of Clarke J. in *Diamond* is particularly apposite. The refusal of relief would exclude a partner from the Clinic

notwithstanding her 50% interest in circumstances in which no arguable case had been demonstrated that such exclusion was mandated by the Agreement or that the procedures provided for in the Agreement and required under Irish law were followed. Accordingly, refusing interlocutory relief could deprive the Plaintiff of her property and contractual rights in circumstances which could be extremely prejudicial to her (whereas the prejudice to the Defendants would be far less if they are ultimately vindicated at trial). To the extent that the Defendants' real motivation may have been to compel the Plaintiff to accede to a sale, then this would be a further reason why her rights would be prejudiced in the absence of such relief and would also demonstrate why damages would not be an adequate remedy.

119. There is force in the Plaintiff's contention that the Defendants should not be rewarded for their oppressive behaviour in seeking to remove the Plaintiff from her workplace and as a partner despite her having built up the Practice and having been effectively entrusted with the management of the Clinic until recently.

120. Preservation of the arrangements to which the parties committed in the Agreement and which have prevailed between 2019 and November 2024 requires leaving the Plaintiff in situ in the Clinic pending the trial of the proceedings. I consider that the normal test the interlocutory relief would apply but that the Plaintiff would meet the higher standard in any event. The balance of justice requires me to grant interlocutory orders restraining the Defendants from excluding the Plaintiff from the Clinic injury or to its patient and other records.

121. I will grant orders in the terms sought save that, in view of the undertaking proffered in the course of the proceedings, there is no need at present for an order to restrain the sale of the Practice pending the resolution of the proceedings.