

IRISH

COMMERCIAL Soc. LTD 306 ✓

THE HIGH COURT

1984 No.1149P, 1085P, 1148P and 1086P

IN THE MATTER OF:-

IRISH COMMERCIAL SOCIETY LIMITED (IN LIQUIDATION)  
IRISH COMMERCIAL SOCIETY GROUP LIMITED (IN LIQUIDATION)  
IRISH SAVINGS BUILDING SOCIETY LIMITED (IN LIQUIDATION) and  
IRISH COMMERCIAL FINANCE LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF:-

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACTS 1893-1978

AND

IN THE MATTER OF:-

THE BUILDING SOCIETIES ACTS 1976-1983

AND

IN THE MATTER OF:-

THE COMPANIES ACTS 1963-1983

Judgment Delivered by O'Hanlon J., the 10th September, 1986.

The Official Liquidator of the above-named companies and societies has applied to the Court to approve the terms of a settlement entered into by him with certain of the Defendants in High Court proceedings which were commenced by the Official Liquidator with the leave of the Court, for the benefit of the above-named liquidations. He further seeks an Order permitting him to take all necessary steps to carry into effect the terms of the said Agreement.

The High Court proceedings in question were brought in the name of the four above-named companies and societies against six Defendants

the first-named Defendant being Mr. Peter Plunkett, and the remaining five Defendants being companies with limited liability. The action was commenced by Plenary Summons on the 15th March, 1984, (Record No. 1984 No.2277P), and an Order was sought for the aggregation of the assets and liabilities of the Defendants, other than the first-named Defendant, with those of the Plaintiffs. The relief sought against the first-named Defendant was, (1) an injunction restraining him from dealing in any way with certain properties set forth in a schedule to the General Indorsement of Claim, and any other properties held by him in trust for the Plaintiffs or the other Defendants in the proceedings, and (2) an Order declaring him personally liable for any excess of loans and deposits received by the fourth-named Plaintiff in breach of the provisions of the Building Societies Act, 1874, as amended.

The proposed terms of settlement of the action are to be found in a written Agreement dated the 30th day of October, 1985, under which a sum of £320,000 was to be paid by the Defendants to the Official Liquidator, together with a further sum amounting to 75% of the value of such of the Net Assets of the Defendants as should exceed £600,000. The Defendants also agreed to pay a sum of £5,000 for costs of an appeal to the Supreme Court which were ordered to be paid by the Defendants. The Agreement specified the manner in which the value of the Net Assets of the Defendants was to be ascertained, and provided that the term "Net Assets" was not to be taken as including assets owned by the first-named Defendant personally and not held by him in trust for the other Defendants. The settlement was made subject to the approval of

the High Court and the Official Liquidator agreed to recommend approval of the terms of the Agreement to the Court.

An important provision is contained in Clause Q of the Agreement which reads as follows:-

"Q. In consideration of the payment of the Settlement Money and the Agreed Costs (as defined and referred to at paragraph T below) to the Plaintiffs by the Defendants, the Plaintiffs confirm that the Settlement Money is hereby accepted in full and final settlement of all claims of any nature whatsoever (including claims of any nature whatsoever not specifically referred to in the Proceedings) which the Plaintiffs may have against the Defendants and each of them PROVIDED ALWAYS that any matters which lie outside the discretion of the Official Liquidator the Plaintiffs and the Defendants and each of them are not included in the terms of this Agreement."

The Liquidator in the affidavit sworn by him for the purpose of the present application on the 16th April, 1986, gives the further information that the Net Assets of the Defendant Companies, calculated in the manner prescribed by the Agreement come to a sum of approximately £609,576, so that the sum of £7,182 would be added to the minimum settlement figure of £320,000 referred to in the Agreement. He is apprehensive that if the action were allowed to proceed to a hearing the greater part of the moneys available would be swallowed up in costs and expenses, and that even total success would amount to no more than a Pyrrhic victory yielding a much smaller sum than the amount now offered by way of settlement.

The Registrar of Friendly Societies and Registrar of Building Societies asks the Court not to approve the Settlement and in doing so his particular concern is on behalf of the depositors in Irish Commercial Society Limited, an Industrial and Provident Society, and Irish Savings Building Society, a Building Society, in respect of which Societies he has certain supervisory responsibilities under the Industrial and Provident Societies Acts and the Building Societies Acts. In two affidavits sworn by him for the purpose of resisting the Liquidator's application he makes it clear that, (a) he is not satisfied that the Net Assets of the Defendant Companies should only yield the amount referred to by the Liquidator and he contends that they should yield a substantially higher figure; (b) he does not accept that the costs of litigating the claim to the full against the Defendants would dissipate the assets to the extent envisaged by the Liquidator, and (c) he is very much opposed to the clause in the Agreement which would effectively put paid to proceedings against the first-named Defendant in his personal capacity.

I am indebted to both the Liquidator and the Registrar for the meticulous care with which the relevant documentary evidence has been put before the Court to enable it to consider whether the Settlement should be approved or not. I should also pay a particular tribute to the work of Mr. Breffni J. Byrne, FCA, of Messrs. Arthur Andersen and Co., Chartered Accountants, who was appointed as Inspector in the year 1984 by the then Registrar of Friendly Societies to investigate and report to him on the affairs of Irish Commercial Society Limited. His very comprehensive and clear

report in which he examined in considerable depth the workings of the various companies has been of considerable assistance to me in ascertaining the background to the present proceedings.

*ROH*  
Having regard to the detailed examination carried out by the Liquidator of the present status of the Defendant Companies it seems unlikely to me that their Net Assets would ultimately produce a very much higher figure than that referred to in the Liquidator's affidavit. With regard to the costs <sup>of</sup> the proceedings <sup>if</sup> the action were allowed to proceed to a conclusion, I think the Liquidator's estimate of the possible length of the Court hearing is more realistic than that of the Registrar and my experience would lead me to believe that even the Liquidator's estimate may be too conservative. With regard, however, to the question of the release contained in the Agreement, of the first-named Defendant from further liability, I share the view taken by the Registrar that the benefits of the Agreement are being purchased at too dear a price. The report of the Inspector appointed by the Registrar suggests to me that substantial grounds exist for bringing separate proceedings against the first-named Defendant in his personal capacity in respect of the manner in which the funds and other assets of the Plaintiffs were dealt with prior to liquidation. It is not possible to forecast the outcome of such litigation, nor would it be proper for me to do so. Suffice to say that, in my opinion, the material before me discloses prima facie grounds for a claim of such a substantial nature that I am unwilling to approve the Settlement which has been entered into by the Liquidator.

*R. J. O'Hanlon.*

R. J. O'Hanlon.