

BETWEEN

DAVID DULLY

PLAINTIFF

AND

ATHLONE TOWN STADIUM LIMITED

DEFENDANT

(No. 5)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2018

1. This is the fifth judgment in this matter, the four previous ones being:

(i). *Dully v. Athlone Town Stadium Ltd. (No. 1)* [2018] IEHC 309 [2018] 4 JIC 1203 (Unreported, High Court, 12th April, 2018) in which I removed the defendant as a trustee of the trust in issue and directed the conveyance of the legal interest in the property to a new trustee.

(ii). *Dully v. Athlone Town Stadium Ltd. (No. 2)* [2018] IEHC 225 [2018] 4 JIC 1603 (Unreported, High Court, 14th April, 2018) in which I declined to order a stay on the conveyance of the legal title.

(iii). *Dully v. Athlone Town Stadium Ltd. (No. 3)* [2018] IEHC 366 (Unreported, High Court, 30th May, 2018) in which I made an order pursuant to O. 3(22) of the Rules of the Superior Courts to allow the plaintiff to deal with the remaining reliefs sought, particularly damages, by way of special summons.

(iv). *Dully v. Athlone Town Stadium Ltd. (No. 4)* [2018] IEHC 433 [2018] 7 JIC 1601 in which I dealt with a motion for discovery and particulars brought by the defendant and directed that the plaintiff swear a further affidavit in that regard.

2. I now deal with the damages element of the claim. I have received helpful submissions from Mr. John Paul Shortt S.C. (with Mr. Martin G. Durack B.L.) for the plaintiff and from Mr. Michael Forde S.C. (with Mr. Laurence Masterson B.L.) for the defendant.

Irregular filing of an affidavit

3. On 11th September, 2018, when dealing with the first day of the damages claim, I struck out Mr. Declan Molloy's affidavit of 13th August, 2018, on Mr. Forde's application, as irregularly filed. While that affidavit purported to have been filed by Niall McNelis, Solicitor, Mr. Forde informs me that it was not so filed. Mr. Molloy has no entitlement to file an affidavit independently of the defendant's solicitor for a number of reasons, one of which is that, absent exceptional circumstances, a company cannot act in litigation except through a solicitor. Furthermore, insofar as the purported affidavit contains a statement that is filed on behalf of Niall McNelis, in purporting to file it Mr. Molloy thereby misled the Central Office and therefore the High Court. Certainly this development does not assist his credibility. The purported affidavit exhibits a number of documents that could have been introduced at the substantive hearing but for whatever reason were not relied on. A properly functioning legal process does not allow parties to hold back material and then introduce it at a later stage, having received a judgment with which they do not happen to agree.

Irregular delivery of a notice of counterclaim or set-off

4. Without seeking leave of the court, Mr. Forde delivered a notice of counterclaim or set-off. To do so without leave misunderstands the summary nature of the procedure by special summons. A counterclaim is not in principle precluded but, because the process is in principle a summary one, a defendant must apply to the court for leave in that regard. Having heard submissions from the parties in that regard on 11th September, 2018, I gave the defendant liberty to file the counterclaim and liberty to the plaintiff to file a reply within specified time limits.

Eleventh-hour attempt to amend the notice of counterclaim

5. Following completion of all cross-examination, Mr. Shortt, on behalf of the plaintiff, indicated that he was not proposing to make a submission. Mr. Forde then made a lengthy submission on damages, which concluded on Tuesday, 13th November, 2018 at around 3.50 pm. I asked the parties at that point whether they wished me to sit later or to alternatively to resume the matter the following day. Mr. Forde expressed a strong preference for the latter, so I acceded to that request. When the court resumed on 14th November, 2018 I was presented with a draft "amendment to defence/counterclaim/set-off" seeking to deny that the plaintiff is a trustee of the club. Mr. Forde submits that an amendment can be made at any stage of the proceedings until the final order is perfected, which is certainly true. Of course, merely because something is legally possible does not mean that it is necessarily always appropriate. The amendment was to add in an unspecified part of the notice of counterclaim that "the plaintiff is not a trustee of the club, not having been appointed in the manner provided for in r. 34(d) of its constitution or in any other manner provided for therein by way of resolution of a duly constituted general meeting of the club's members and accordingly lacks the capacity to maintain these proceedings." There are a number of distinct reasons why this amendment was not appropriate.

(i). That was a point that was there from the beginning and is a development of the *locus standi* argument that Mr. Forde has been making unsuccessfully all along. It did not arise simply because Mr. Forde had the last-minute idea of recalling Mr. Dully to the witness box on 13th November, 2018.

(ii). Indeed, Mr. Forde accepts that the intention to amend arose on 12th November, 2018 but for some thus far unspecified reason was not signalled to the court until 14th November, 2018. It is probably fair to say that that is not a very satisfactory situation. It certainly does not seem to meet the requirement of explanation that is required to allow an amendment under the doctrine in *B.W. v. Refugee Appeals Tribunal* [2017] IECA 296 [2018] 2 I.L.R.M. 56, *per* Peart J.

(iii). In discussion with the court, Mr. Forde accepted in any event that he probably does not need the amendment. The basic reason why an amendment is not necessary is that there is no document equivalent to a defence in the special summons procedure. If there was such a document, then the question of an amendment might arise. In a sense, the notion of making the *locus standi* point as an amendment to the counterclaim is fundamentally misconceived because if the point embodied in the amendment was upheld then the counterclaim would have to be dismissed, which Mr. Forde

indeed accepts because his contention is that his client is not entitled to damages against Mr. Dully personally, but only against what he says is a properly appointed trustee. On the assumption, which I will come to, that Mr. Forde is entitled to make some sort of a *locus standi* argument at this stage of the proceedings, the amendment is not necessary to enable him to make any such point.

6. So on that basis I refused the amendment. It is possibly worth recalling that I did say in the No. 1 judgment that the conduct of the defendant had been obstructive and certainly the eleventh-hour nature of the misconceived application to amend is very much of a piece with that. That is probably not helped by Mr. Forde's half-complaints about being asked questions by me or about my asking him about caselaw not referred to by the other side. Posner J. has urged judges to be (respectfully of course) interactive with counsel in respect of legal submissions on the grounds that one gets the best out of them that way ("A judge should be aggressive at oral argument. *The prepared remarks of the lawyers rarely add much to what is in their briefs; only through questioning does the judge learn more about the case than he knows already*", Richard A. Posner, *Reflections on Judging* (Harvard University Press, Cambridge, Massachusetts, 2013) p. 129). Obviously that is to be distinguished from excessive intervention during oral evidence: *Murtagh v. Minister for Defence* [2018] IESC 37 (Unreported, Supreme Court, 30th July, 2018). Counsel should not bridle at such interrogation during submissions and can take it that as far as I am concerned such queries are made in a spirit of inquiry and not of assertion. The court is certainly entitled to consider law not raised by the parties, as the overriding point is to ensure that the court does not go wrong on the law, albeit that where the new authority is crucially new and makes a difference (which was certainly not the case with the quotation from Biehler's text book in the No. 1 judgment), the best practice is normally to put that to the parties, and that is what I have tried to do here. It is certainly not the case that the court is required to accept a submission that black is white if the other side doesn't bring up caselaw saying that black is black. A court can interrogate any proposition put up to it and discuss any relevant caselaw with counsel of its own motion – even in a primarily adversarial system. Otherwise one would be setting the courts up to fail and to produce incorrect, even absurd, results.

Submission that the plaintiff lacks *locus standi*

7. Mr. Forde submitted that Mr. Dully does not have standing to prosecute the damages claim or to impugn the leases. That is the third time a similar objection has been made. Indeed, it has been made so repetitively in different iterations that Mr. Shortt rather tartly compared it to pester power. There are several independent reasons why this submission must fail.

(i). I rejected that submission at the close of the plaintiff's evidence at the substantive stage, and also in the No. 1 judgment. As regards standing to prosecute the damages claim, my previous rulings apply. In particular, my finding that the point is one of indoor management: see para. 29 of the No. 1 judgment, which clearly applies here. I would apply by analogy the judgment of Finlay J., as he then was, in *A.I.B. v. Ardmore Studios Ltd* (Unreported, High Court, 30th May, 1973) where he referred to a situation where "*these frailties or defaults in the activity of the two directors of this company are classical example of an irregularity in the internal management of the company*", on which an outside third party was not entitled to rely. Admittedly, that was a company law case rather than a club law case and also admittedly dealt with procedure for meetings rather than procedure for appointment of an office holder, but there is no reason not to follow the same approach here by analogy.

(ii). Furthermore, a party is not entitled to repetitively seek to revisit previous rulings.

(iii). Separately from the foregoing, I would reject the point on the merits anyway even if Mr. Forde was entitled to make it. There is no factual basis for the point. Mr. Dully himself was unaware of the particulars of the resolution appointing him a trustee but that does not mean he is not a trustee. He averred that he was and that was never challenged and the No. 1 judgment is based on that. That remained the position until Mr. Forde thought up the idea of questioning it at the eleventh hour.

(iv). Furthermore, the minutes of a general meeting of 19th May, 2017 record the passing of a resolution authorising the plaintiff to take the proceedings "*as he is both a trustee of the club and on the executive committee*". That is at least a tacit, if not an explicit, adoption of Mr. Dully's status as a trustee even if hypothetically there was some defect in any previous resolution.

(v). For good measure, the executive committee's interpretation of the rules is final and binding under r. 41.

8. Mr. Forde submitted that these are significantly different proceedings and they have "*radically transmuted*" as a result of the O. 3(22) order. That is not so because the damages claim was there from the outset.

9. Whether the plaintiff can impugn the leases is a question of estoppel not a question of standing. No basis has been made out for this contention, whatever way it is to be characterised. Mr. Forde says that the validity of the leases was not disputed in the special summons and no relief was sought regarding that issue. However, that ignores the defensive nature of the point being made. The question as to the leases was raised by way of reply to the defendant's counterclaim for damages. Mr. Forde also submits that Mr. Dully may have creditors who could make claims against any award of damages. That is a misconception. Creditors of a representative plaintiff do not have a claim against money received in a representative capacity. For example, a personal creditor of an executor does not have a claim against a purely legal interest in an estate held under a will for some other party. The same applies here. Mr. Dully's interest in any damages is purely legal. Any such damages would be held in trust for the members of the club.

10. Mr. Forde semi-launched (although did not pursue, as will be seen) a related complaint that the No. 1 judgment did not set out the arguments made by the counsel for the parties or in particular by him. That complaint is misconceived on the facts. It is clear from the No. 1 judgment that Mr. Forde did argue that Mr. Dully does not have *locus standi*. But more fundamentally, there is no obligation to set out at length in a judgment the arguments of the parties. It is sufficient if a judgment identifies the main issues and the conclusions thereon: see *Walsh v. Walsh (No. 1)* [2017] IEHC 181 [2017] 2 JIC 0207 (Unreported, High Court, 2nd February, 2017) and the authority cited, in particular at paras. 9 to 13. Specifically, Kirby J. has commented that "*the findings of fact need not be lengthy. They can be confined to the barest outline*" "Ex tempore judgments – reasons on the run" (1995) 25 Western Australian Law Review 213 at p. 226. As Munby L.J. said in *In re A. and L. (Children)* [2011] EWCA Civ. 1611, at para. 43 "*the fact that (the judge) did not deal in his judgment with every matter to which [counsel] draws attention does not of itself invalidate either his reasoning or his conclusions*". I commented in *Walsh* that this was in the context of authority to the effect that there is a "*huge virtue in brevity of judgment*" as Thorpe L.J. put it in *Re B (Appeal: Lack of reasons)* [2003] EWCA Civ 881. It is perfectly sufficient for a court to identify the issue in summary terms and set out its finding. There is no obligation to narratively set out the arguments of parties, either at all or in tedious detail.

11. While Mr. Forde initially contended that I had not set out his arguments, when I pointed out the authority on this subject he then changed tack and contended that there had been no argument on the precise issue. A judge certainly cannot be expected to set out

what was not argued. Mr. Forde now seems to contend that the issue of whether Mr. Dully was a trustee was not previously argued and therefore there was no determination that he was a trustee. He submits that all I said in the No. 1 judgment was that he averred that he was a trustee. That is not an accurate summary of the No. 1 judgment because I also went on to say that I accepted Mr. Dully's evidence in full. That amounts to an acceptance of his averment that he was appointed as a trustee. The fact that he does not know the date of any resolution appointing him a trustee does not mean that he is not a trustee. Having accepted Mr. Dully's evidence, the matter is not something I can revisit at this stage. Any challenge to his status as a trustee should have been mounted at the substantive stage. In any event, as I say, even if there was some non-compliance with the rules, which I do not accept, that is a matter of indoor management and not something the defendant has standing to impugn.

12. Finally, even if I am wrong about all of the foregoing, I previously held that the plaintiff's standing was not dependent on being a trustee.

Witnesses

13. Mr. Dully was cross-examined at some considerable length on behalf of the defendant, and following the delivery of the plaintiff's reply to the notice of counterclaim the defendant sought to cross-examine him again and I gave liberty to do so. However, it now appears that the purpose of that cross-examination was to lay the ground for an amendment, which was not signalled to the court until a much later stage, virtually at the conclusion of all submissions. The defendant tendered Mr. McCaul, who was cross-examined on behalf of the plaintiff. Mr. Molloy was not required for further cross-examination by the plaintiff.

14. In submissions, Mr. Forde complained that he was disadvantaged in not having been able to *subpoena* a witness which he said would have been the case had the matter been sent to plenary hearing, but he never made such an application. Again, the court can only deal with applications that have been made. It is virtually an Alice-in-Wonderland situation to make a complaint of that kind after receiving a judgment, never having taken any steps to seek to procure the attendance of this so-far-identified witness. Mr. Forde also returned irrelevantly to the No. 3 judgment and claimed that Mr. Shortt did not ask for an order under O. 3(22) and that he was disadvantaged by such an order. That just does not reflect what happened. Mr. Shortt indicated in the course of such discussion with me that I should make such an order and no disadvantage to Mr. Forde was identified at that stage.

15. I will turn now to deal with some of the more salient issues that arose in evidence under the relevant headings of damage, but perhaps I can be allowed to observe that the procedural skirmishing to which I have referred on a number of occasions created the possible impression of the defendant seeking to create procedural appeal points rather than necessarily dealing with the matter in a way that was most economical in terms of use of time.

The cost of seeking an alternative to the astro turf pitch

16. The plaintiff claims a sum of €25,978.05 under this heading. I accept the evidence of the plaintiff that, had the defendant not been in breach of trust, the all-weather pitch would have been ready from January, 2017. It follows that the cost of providing alternative pitches since then is properly recoverable. Mr. McCaul complains that it was not explained that a delay in the astro turf pitch would cause loss. The plaintiff disputes that, at least to some extent, and I prefer his evidence having seen and heard the witnesses, but even assuming in favour of the defendant that this was not explained, it's quite obvious that unavailability of such a pitch would cause costs to be incurred in renting an alternative. Mr. Forde claims that the defendants should not be liable under this heading because it offered to do the work itself and of course get the full benefit of the capital grant. That is not a matter that absolves it from damages. As a trustee it was obliged to act in the best interests of the beneficiary rather than itself and that clearly required urgent co-operation with the application for a grant. Such cooperation was lacking. The capital grant had, in any event, been awarded to the club rather than the company. Mr. Forde claims that the defendant as trustee acted honourably and reasonably in respect of the all-weather pitches and is so not liable, especially as it was an unremunerated trustee. I reject that submission. I certainly consider that the company acted unreasonably and in breach of trust and had so held. Mr. Forde says that the company directors were "*well-intentioned amateurs*" but being a well-intentioned amateur is not a defence known to the law. For good measure, the company was legally advised at all times. The characterisation of the defendant as well-intentioned is not necessarily one I would accept. Even if I did accept the suggestion from its own counsel that it was amateurish, it is clear that the company was in significant, and from its own point of view counterproductive, breach of trust. I accept the plaintiff's evidence as to the loss incurred and as to its amount and thus the plaintiff's claim under this heading is recoverable in full.

The return of VAT monies held by way of constructive trust

17. The plaintiff claims €121,445 under this heading. In Mr. Molloy's affidavit of 10th April, 2018 at para. 9 it is accepted that the money was held on behalf of the club subject to an indemnity. Mr. McCaul attempted to resile from this averment rather unconvincingly but this concession must be regarded as very much a part of the defendant's case as it comes from the defendant itself. Mr. Forde claimed that Mr. McCaul was not challenged on this, but apart from the fact that the cross-examination seemed to me to amount to such a challenge, there is no general obligation to challenge one witness for the opposing party by putting the evidence of a different witness for the opposing party. The latter evidence is part of that party's case. The indemnity of course exists as part of the declaration of trust but in the substantive judgment I rejected the contention that the indemnity was as wide as contended for on behalf of the defendant and held that it did not cover an alleged agreement by the company to repay Mr. Molloy €665,000 approximately which was invested in the company to buy shares. As far as any other matter that could properly come within the indemnity is concerned, the defendant's entitlement to assert any deduction from that sum based on the indemnity has not been established in evidence. Any alleged expenses coming within the indemnity have not been properly quantified or accounted for, still less established. The plaintiff's claim under this heading must therefore be recoverable in full.

Sums received from Telefonica

18. The plaintiff claims €13,250 under this heading as money received by the defendant and not accounted for. The defendant's role as a trustee required it to account for such monies and to prove an entitlement to make any deduction from such monies for expenses. No such entitlement has been proved. Mr. McCaul's averment at para. 29 of his affidavit is not one I could accept, couched as it is in entirely general terms. All he said is that the money received was "*expended by it on the stadium project for the club's benefit*".

19. Mr. Forde relies on Mr. Molloy's affidavit of 11th April, 2018, which exhibits a strange handwritten document that contains staccato headings of alleged expenditures in a limited time frame in 2011, much of which appears on the face of it to relate to the development rather than the operation of the stadium. Even if one were to consider that to be a satisfactory document, which I do not, it only explains how Mr. Molloy's contribution was spent. It does not explain how the Telefonica money was spent. Mr. McCaul's affidavit at para. 29 states the Telefonica money was received in 2011 to 2012, so partly after this period in any event. The strange fact remains that the company has never accounted for any alleged expenditures of the Telefonica money. Mr. Forde accepts there is no "*documentary proof*" of how it was spent. All there is is an extremely vague averment from Mr. McCaul not particularised or backed up in any way. On one view it is odd that the defendant has not focused on the need to particularise and account for the alleged expenditures on the running of the stadium. This was the opportunity to do so. Failure to account properly for such alleged

expenditures did not enhance its case under this heading. The plaintiff's claim under this heading is therefore recoverable in full.

20. I turn now to the counterclaim.

Overall difficulty with the counterclaim

21. The defendant's contention was that the plaintiff did not have standing to maintain the proceedings because he was not properly appointed as a trustee. Mr. Forde in submissions accepted that the logical inference of that is that his counterclaim for damages was not maintainable against the plaintiff personally. Given that the defendant has resiled from the only legal basis upon which damages could be recovered from the plaintiff, the defendant is precluded from recovering on the counterclaim because to pursue the counterclaim would require as a precondition the assertion and acceptance of a legal basis for seeking damages against the plaintiff. As the defendant now denies that legal basis, it is precluded from succeeding. However, I will assume I am wrong about that and will consider the counterclaim on its merits such as they are.

Counterclaim for arrears of rent on the 2007 lease.

22. The counterclaim was first made in an unfiled purported notice dated 13th August, 2018. That had no legal effect until the court order giving permission for it to be delivered. €200,433 is claimed under this heading. Mr. McCaul avers at para. 21 of his affidavit that the purpose of the lease was to assist in repayment of monies due by the company on the loan from the council whereas Mr. Dully, whose evidence I accept having seen and heard them both and having regard to the greater level of consistency in the evidence on behalf of the plaintiff overall, says that the purpose was to assist in reclaiming VAT. There are three reasons why this claim fails, apart from the one I have referred to already.

(i). Taking all of the evidence into account it is clear that this was not an instrument that was intended by either side to be legally binding as a lease and nor was it treated as such.

(ii). Secondly, in Mr. Molloy's affidavit of 23rd August, 2017 at paras. 17 and 21, he denied that the 2007 lease was valid. Those averments are fatal to the claim now made. The defendant is simply precluded from claiming arrears of rent under a lease that it has averred to be invalid.

(iii). The accounts of the defendant of 31st May, 2014 made no mention of alleged sums of rent due by the club. The defendant's current star witness Mr. McCaul (the defendant having seemingly more or less abandoned Mr. Molloy as a witness) was unable to explain this.

23. Finally, I should observe that even if I am wrong about the foregoing, at least the bulk of the claim is statute barred in any event. Mr. Forde cannot recover anything due more than six years before my order of 11th September, 2018 allowing notice of counterclaim and set-off to be lodged. The Statute of Limitations 1957 covers set-offs (see s. 6).

24. The defendant's claim under this heading must be rejected.

Counterclaim for arrears of rent under 2015 lease.

25. The defendant claims €27,000 under this heading. Mr. Molloy in his affidavit of 23rd August, 2017 at para. 23 says that the mutual obligations were never implemented, honoured or performed. Again, I conclude on the evidence that this instrument was not intended to have had effect as a formal lease. Rather I accepted Mr. Dully's evidence that the purpose of the rent was to go towards paying insurance payments, but beyond the first tranche paid by the club amounting to €2,500 no such payments were made, nor did the defendant enter into the necessary insurance contracts.

26. Again, the accounts of the defendant as of 31st May, 2017 made no provision whatsoever of any alleged rent liabilities. Mr. McCaul was unable to explain this other than by saying that there was no rent of note being collected. Having seen and heard him I formed the view that that was an on-the-spot rationalisation and does not explain why there was no contention in the accounts that there was rent due and owing. Even that rationalisation is much more compatible with my view that the lease was not intended to have had effect as the lease in accordance with the terms. Rather it is a vehicle to allow for payment of insurance by the company on behalf of the club. In these circumstances the defendant's claim for rent under the 2015 lease must also fail.

Counterclaim for interest

27. This would only have arisen had the defendant succeeded in the substantive counterclaim, which is not the case.

Conclusion and order

28. The saga of Athlone Town Stadium could perhaps have made a poignant story by Guy de Maupassant. His telling might have recounted that the host of people involved in the stadium were facing serious debts regarding that development having given personal guarantees for very significant sums in that regard. A Mr. Martin Egan, solicitor, was one of those people, who in late 2010 took the initiative of approaching one of his own clients, Mr. Declan Molloy, who had just come into a sum of around €1 million while Mr. Egan was acting for him. Mr. Molloy was persuaded to provide about €665,000 to the Stadium Project, thus relieving all other persons, including Mr. Egan and other collaborators such as Mr. McCaul, of any liabilities. The legal status of this payment was potentially unclear until the crucial development when Mr. Egan again appeared in the story and advised Mr. Molloy as to entering into a declaration of trust which acknowledged that the stadium was held in trust for the club. The declaration of trust contained a limited provision for an indemnity which I have held was not wide enough to cover any purported claim for repayment to Mr. Molloy of his €665,000.

29. The other novelistic feature of the present case, which places it firmly in the genre of the cautionary tale, is that the whole matter came to a head because of the defendant's self-defeating failure to cooperate on a couple of relatively minor issues. The first issue related to buildings insurance in February, 2016 where, rather than fully explain the insurance position, furnish all documentation and request funding, they threatened to close the stadium. The final straw was failing to provide quite innocuous assistance to the application for the astroturf pitch in 2017, when rather than enter into the appropriate instrument, the company tried to hold the club to ransom by pressing its financial demands at the risk of the loss of the capital grant for the pitch. The company not having been more cooperative and reasonable on these relatively minor matters led to them driving the matter down the legal route and conflating the dispute into the present proceedings with all of its ultimately negative consequences for them. A final cautionary note was that at a very early stage of the proceedings, well before I had seisin of the substantive hearing, I did on a number of occasions urge the parties to settle their differences. Such suggestions were not successfully taken up for whatever reason. Indeed if anything, finality is at some remove here because there is a suggestion now from the company's counsel that there may be further litigation in negligence as between the company and Mr. Egan.

30. For the foregoing reasons, the appropriate order is:

(i). a decree in favour of the plaintiff for €160,673.05 to be held in trust for the members of Athlone Town Athletic Football Club made up of:

(a). the cost of alternative playing facilities: €25,978.05.

(b). VAT refund of €121,445.

(c). a sum received from Telefonica Ireland €13,250.

(ii). an order dismissing the counterclaim and the claim for indemnity or set-off in its entirety.

Postscript – consequential orders

31. Having heard counsel on any further matters, the consequential orders will be:

(i). costs to the plaintiff to include reserved costs and the costs of all hearings to be taxed in default of agreement and to be held in trust for the members of Athlone Town Club for the purpose of discharging the legal costs of the proceedings;

(ii). liberty to the plaintiff to bring a motion seeking to have the directors of the defendant held personally liable for the costs and if necessary damages, returnable for 10th December, 2018, to be served by 23rd November, 2018 and with any replying affidavits to be delivered by 7th December, 2018.

(iii). a stay on the damages and costs until 10th December, 2018 at which date I will consider the question of renewing the stay, and if so of any appropriate terms.