THE HIGH COURT

Record no.: 2021/6816P

[2024] IEHC 483

BETWEEN:-

OSSORY ROAD ENTERPRISE PARK LIMITED

PLAINTIFF

AND

DECLAN ROGERS, TOM HARTY

AND (BY ORDER) ROGERS RECYCLING LIMITED

DEFENDANTS

Judgment of Mr. Justice Oisín Quinn delivered on 31 July 2024

I. Introduction

1. This case concerns the ownership of a property consisting of a number of units at an industrial estate on Ossory Road in Dublin 3. The Plaintiff's case is that the property, which had been owned by the first named Defendant, Mr. Rogers, was sold by a Receiver to the Plaintiff in December 2021 but that since then, Mr. Rogers has wrongly denied the Plaintiff's title, trespassed on the property and interfered with the collection of rents from the property causing loss and damage to the Plaintiff.

II. Background

2. The Plaintiff ('OREP') is a special purpose vehicle company that was established to purchase Units 1, 5A, 5B, 6, 7, 8, 8A, 9 and 10 of Ossory Industrial Estate in Dublin 3 ('the Property').

3. OREP claims that it purchased the Property on 6 December 2021 from a Receiver appointed by Everyday Finance DAC ('Everyday') who sold it at an auction held by BidX1 on 24 September 2021.

4. The first Defendant ('Mr. Rogers') had purchased the Property in separate transactions involving each Unit, largely during the 1990s. He mortgaged the Property, along with various other residential and investment properties which he had acquired, to AIB Bank ('AIB') on 13 January 2005. He fell into difficulties repaying the amount borrowed and AIB appointed a Receiver on 20 February 2016. AIB, as mortgagee, assigned its interest in the Property to Everyday on 17 January 2020 which novated the appointment of the Receiver. Thereafter, Everyday put the Property up for sale by auction with BidX1.

5. BidX1 held three auctions. The first auction was on 9 April 2021. The highest bid was for €1.424m from a company that subsequently pulled out and commenced proceedings to recover its deposit. By way of explanation, correspondence from solicitors for that initial highest bidder references High Court proceedings that Mr. Rogers had commenced disputing the validity of the 2005 Mortgage. Those proceedings were issued in April 2021, bearing record number 2021/2378P and naming AIB, Everyday and the Receiver as defendants. Mr. Rogers used these proceedings to register a *lis pendens* on the Property. However, those proceedings have not been progressed and Counsel for Mr. Rogers indicated to the Court that those proceedings had been '*simply left wither on the vine*' since April 2021. In the Court of Appeal hearing in the related case of *Ossory Road Enterprise Park Ltd v Orlington Company CLG & Rogers* [2023] IECA 256, it is noted at paragraph 10 of the judgment of Allen J. that Counsel for Mr. Rogers (who also appeared for the Defendants in these proceedings) agreed that the purpose of the 2021 proceedings was to try and prevent a sale of the Property.

6. A second auction was organised for 17 September 2021 but there were no bids. Finally, the consortium behind OREP was successful with a bid of €1.251M at the third auction on 24 September 2021. The second and third auction were not generally open to the public. A witness from BidX1 gave evidence that each of the underbidders from the first auction was invited to the subsequent auctions although this was disputed by a witness called on behalf of Mr. Rogers who was the next highest bidder at the first auction and who claimed that he had not been contacted to join the subsequent auctions.

7. The second named Defendant was never served with the proceedings and accordingly was not a party to the trial of the action, which ran for 7 days from 16 July to 26 July 2024. Mr. Rogers and Rogers Recycling Limited (the 'Defendants') were represented by the one legal team (a firm of solicitors instructing junior and senior counsel) and essentially ran a combined defence. In addition, the Defendants did not dispute the lawfulness of the appointment of the Receiver or that Mr. Rogers had fallen into substantial indebtedness to AIB.

III. Issues

(i) Title

8. The Defendants made a number of claims and delivered a Defence and Counterclaim to OREP's proceedings. Primarily, they contend that OREP does not have good title. They put forward a variety of arguments, some relatively technical, to advance this claim. OREP claims it has good title.

(ii) The alleged conspiracy

9. Next, the Defendants claim that there was a conspiracy between the consortium, OREP, Everyday and the Receiver to rig the ultimate sale by deliberately excluding the next highest bidder from the subsequent auctions. This, it is said, impacts on the alleged title of OREP by virtue of the provisions of section 103 of the Land and Conveyancing Law Reform Act, 2009 (the '2009 Act'). Neither Everyday nor the Receiver were joined to the action nor did the Defendants seek any discovery from the alleged co-conspirators. The Defendants seek an Order pursuant to their counterclaim that the Court should direct that the Property be put up for sale again. OREP says there was no conspiracy.

(iii) The alleged leasehold interest of Rogers Recycling Ltd of 30 January 2014

10. Thirdly, the Defendants claim that on 30 January 2014 Mr. Rogers entered into a 21 year lease (the 'Lease') for Unit 1 of the Property with the third named Defendant, Rogers Recycling Limited which, it is said, binds OREP. To support this claim Mr. Rogers contends that AIB consented to this Lease. AIB was mortgagee pursuant to a mortgage with a negative pledge clause whereby Mr. Rogers covenanted not to lease the Property "without the prior written consent in writing" of AIB; per clause 7.01(e). The Defendants contend that AIB did actually consent to the Lease. In particular, Mr.

Rogers sought to rely on a purported letter from a Mr. Foley of AIB dated 10 March 2014 and addressed to Mr. Rogers of Rogers Recycling Ltd., which appears on its face to represent a consent from AIB in writing to the Lease. Mr. Foley gave evidence at the trial and asserted that the purported letter was a fabrication.

11. OREP claims that the purported letter of 10 March 2014 is a fabrication and that the Lease is effectively a sham in that in substance it was never properly operated and there was no prior consent in writing from AIB to the Lease and that accordingly OREP is not bound in any event by any such lease.

(iv) Damages

12. OREP claims damages for trespass and, in part in breach of previous interlocutory orders made in these proceedings, that Mr. Rogers has continued to collect rent, sometimes in cash, from tenants at the Property. In addition, OREP claims that Mr. Rogers turns up at the Property and causes problems by casting aspersions on its ownership and pressuring occupiers of the Units at the Property to pay rents to him. OREP also claims that Mr. Rogers continues to try to rent out containers or Units at the Property. Mr. Rogers denies these claims.

IV. History of the proceedings

13. The proceedings commenced by plenary summons on 11 December 2021 shortly after the sale of the Property to OREP had been completed on 6 December 2021. Very shortly thereafter it become clear that Mr. Rogers was going to dispute OREP's ownership, and he indicated effectively that he had every intention of remaining in situ and seeking to continue to collect rents from the various small businesses who were in occupation of the various units in the Property. He said on several occasions he would fight OREP 'all the way' in the courts.

14. There was a particularly concerning incident, which was not denied by Mr. Rogers, whereby to pressurise tenants or occupiers into paying him he threatened to disconnect the power to their units. One of these tenants gave evidence of this occurring. This was not denied by Mr. Rogers. The power was only restored when the tenant who had been paying rent to OREP, started paying rent to Mr. Rogers.

15. This tenant, Mr. Kinsella, gave evidence that he had commenced paying rent to OREP from December 2021 after they had purchased the Property. He continued paying

OREP in January 2022. On 20 January 2022 an application for an interlocutory order came before the High Court on an initial basis and was dealt with by Mr. Justice Allen. Essentially, Counsel on behalf of both parties gave undertakings to lodge with their respective solicitors the rent being collected by them. These undertakings were noted in the record of the Order made on 20 January 2022. After this however, Mr. Rogers cut off the power to several units on 16 February 2022. One of these units was occupied by Mr. Kinsella. He gave evidence and said he clearly remembered the 16 February 2022, as coincidentally it was his birthday. When Mr. Kinsella contacted Mr. Rogers he was threatened by Mr. Rogers (Mr. Kinsella had been paying OREP) that his power would not be restored unless he started paying the rent to Mr. Rogers. While Mr. Kinsella was cross examined, this was not disputed. When Mr. Rogers was asked about the Order and undertakings given to the High Court on 20 January 2022, he described this simply as 'Judge Allen's proposal'.

16. Thereafter the interlocutory application came before Ms. Justice Stack for hearing on 6 April 2022. In Mr. Roger's first replying affidavit sworn on 1 February 2022 he made no mention of any lease to Rogers Recycling Limited. He brought it up for the first time in his second replying Affidavit of 9 February 2022. In his fourth Affidavit sworn on 28 March 2022 Mr. Rogers claimed that "I believe that AIB have on file confirmation of the consent with the deeds but I have not been furnished with this confirmation despite making a request to them to furnish me with a copy of the consent" (underlined for emphasis). Notably, at this juncture, Mr Rogers was not claiming that there was any letter of consent, much less that he had ever even received any letter of consent.

17. On 8 April 2022 Ms. Justice Stack granted interlocutory relief to OREP restraining Mr. Rogers from collecting any rent from all the Units save Unit 1, which issue was adjourned pending the joining of Rogers Recycling Limited. OREP was to lodge rents collected with its solicitors.

18. Thereafter, Rogers Recycling Limited was joined. Mr. Rogers swore a replying affidavit on behalf of Rogers Recycling Limited on 12 May 2022. In this affidavit he swore that "it is common case that no formal written consent to the Lease was ever obtained from AIB". Rather, he averred in this affidavit that there was "clear implicit consent to the lease on behalf of AIB".

19. The interlocutory application was heard in late July 2022. In a reserved judgment of Stack J. of 7 October 2022, [2022] IEHC 556 the High Court found in favour of OREP. The matter was physically listed before Stack J. on 11 October 2022 for the making of the Orders. Mr. Rogers attended and was present in Court along with his solicitor and Counsel when Stack J. made an Order that day restraining him and Rogers Recycling from collecting any rent, license fees or other monies from Unit 1. A stay was applied for by the Rogers Defendants and was refused. The Order provided that OREP was to collect the rent, license fees or other monies from the occupiers of Unit 1.

20. Despite this, Mr. Rogers in evidence confirmed that he had continued to collect rent from occupiers of Unit 1 after that date. Not only that, the documents put to him in cross examination confirmed that he had introduced new tenants into Unit 1 in the weeks after Ms. Justice Stack's Order of 11 October 2022. In part he explained doing this by alleging that his Junior Counsel had advised him that he could do this until the Order was perfected and served on him as the Order did not come into effect until then. During the plenary hearing, Junior Counsel for Mr. Rogers informed the Court that he had not given this advice. When a motion for attachment and committal issued against Mr. Rogers he then, for the first time, produced and exhibited a purported letter of consent from AIB to the purported lease.

21. Separately to this, related proceedings arose between the parties whereby OREP sought orders to be registered as a member of the company responsible for the common areas in the Ossory Industrial Estate, namely Orlington CLG. Mr. Rogers and his wife Mrs. Rogers are Directors of this company and were also respondents in the *Orlington* proceedings. The High Court decided those proceedings in favour of OREP; see judgment of Stack J. of 7 March 2023 [2023] IEHC 34. Ms. Justice Stack determined in those proceedings that OREP was a 'Unit owner' as of the time of the proceedings and that Mr. Rogers was no longer a 'Unit owner' "as all of the Units previously owned by him are now owned by [OREP]"; see para. 62. Ms. Justice Stack then made an Order directing rectification of the register of members so as to record OREP's membership of Orlington CLG. The Court also made an Order that the register be rectified to remove Mr. Rogers as a member of the Management Company.

22. Mr. Rogers appealed that decision to the Court of Appeal and was wholly unsuccessful, the appeal was dismissed, and the order of the High Court was affirmed; see the

judgment of Allen J. [2023] IECA 256 of 27 October 2023. In his judgment for the Court, Allen J. states in relation to the claim of a conspiracy as follows:-

> "*36. There is no suggestion of any link between Everyday or Mr. Tyrrell and OREP or anyone behind OREP. There is not even a theory posited as to why Everyday might have accepted less for the properties than could have been achieved and – on Mr. Rogers' case – was readily and immediately available. …*
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> *39. Surprisingly – in a counterclaim alleging that there was a conspiracy – none of the alleged co-conspirators were joined. Startlingly – in an action to set aside the sale – Everyday was not named as a defendant to the counterclaim. On the hearing of the appeal, counsel agreed that the orders sought setting aside the sale could not possibly be made unless Everyday was a party to the proceedings. It was said that the action between OREP and Mr. Rogers (and Rogers Recycling) had progressed to the point that discovery had been made by OREP and that it was the intention to join Everyday – but not when.*
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> *40 In its reply and defence to counterclaim – which was delivered after the hearing of the Companies Act application by the High Court – OREP admits the bidding at the April, 2021 online auction and admits that after the sale to Tigway collapsed it was approached twice by a representative of BidX1 to enquire whether the consortium was still interested in buying the properties. However, OREP pleads that terms were not agreed privately and that there were two further online auctions; one on 17th September, 2021 at which there were no bids, and a second (or third) on 24th September, 2021 when, after competitive bidding, the properties were knocked down to it for €1,251,000.*"

23. Despite the observations at para. 36 above, during the plenary hearing before me, the Defendants failed to offer any evidence or even theory as to why Everyday and the Receiver would conspire to organise a state of affairs at the third auction which would lead to them achieving a potentially lower sale price.

24. Despite the Court of Appeal being told on behalf of Mr. Rogers that it was his intention to join Everyday to these proceedings, that was not done. No explanation was given for that decision. In addition, no discovery was sought on a non-party basis from either Everyday or the Receiver.

25. In addition, Mr. Rogers confirmed in evidence that nothing had been done by him or Orlington CLG (of which he is a Director) to comply with the Order of the High Court of 7 March 2023 despite the fact that his appeal was wholly unsuccessful.

V. Decision

26. Both sides prepared very helpful written submissions which were supplemented by detailed oral submissions of Counsel on Day 7 of the hearing on 26 July 2024.

(i) Title

27. I am satisfied based on the evidence of the witnesses called on behalf of OREP and the documents proved by those witnesses that the Plaintiff has good title to the Property. There was nothing of detail pleaded by the Defendants as to what precise case they were making in terms of these technical points and a significant amount of court time and expense was taken up in terms of various conveyancing solicitors and executives of companies involved in the chain of title giving evidence. The Defendants drew attention to the fact that the PRA in a letter of 24 June 2022 had rejected OREP's application to register title and had raised queries and, inter alia, requested additional documents. However, it is not the function of this court in these proceedings to engage in any review of the role of the PRA in relation to OREP's title. Aside from that, no effort was made on behalf of Mr. Rogers to seek to establish what title he claimed to have. In that regard, perhaps the simple application of the principle described in *Ocean Estates Ltd. V Pinder*, Privy Council, [1969] 2 AC 19 in the judgment of Lord Diplock could have sufficed: "*Where questions of title to land arise in litigation the court is only concerned with the relative strengths of the titles proved by the rival claimants*".

However, the Plaintiff, perhaps prudently approached the matter in a comprehensive fashion and I am satisfied they did so successfully.

28. A booklet of Title Documents was introduced into evidence during the trial. Each of the Title documents was sufficiently proved to my satisfaction by some six different witnesses, essentially conveyancing solicitors and executives of the various entities involved in the transactions. The cross-examination of these witnesses was modest in terms of the questions put and nothing of substance emerged to throw any proper doubt over the authenticity or effectiveness of these documents.

29. I accept the Plaintiff's submission that, in general at least, original Deeds or equivalent title documents and certified copies or original counterparts of such title documents should start with a 'presumption of regularity' which, as Butler J. explains in *Re the Estate of Delahunty* [2021] IEHC 657 at para. 9, is a presumption "to the effect that a document which on its face appears to be in order should be presumed to have been regularly executed unless the evidence suggests otherwise".

30. Specifically, this evidence (which was mainly given on Day 3 of the trial) established that Mr. Rogers had purchased the Property largely by way of separate purchases of each of the Units during the late 1990s. The evidence then showed that Mr Rogers mortgaged his interest in the Property to AIB in 2005. That is clear from the original counterpart of the mortgage handed in to the Court and Mr Rogers' signature appears thereon which was not disputed. Mr. Rogers in evidence also confirmed he had mortgaged the properties to AIB. In addition, I ruled during the trial that the Defence did not deny the fact of the mortgage and no application was made to amend the Defence.

31. The evidence given by the conveyancing solicitors called on behalf of OREP makes it clear that each of these documents is an authentic document and proof of execution of each was put before the Court.

32. The assignment of AIB's interest in the Property to Everyday was proved. A certified copy of that assignment was produced in Court and was examined and was clearly authentic. The queries raised about the authority of the persons who signed the assignment were of no substance. Mr. Cullen introduced into evidence an AIB file note showing that the signatories had authority. There was no credible challenge to this document and had there been, I would have been happy to rule that the redacted Deed

of Assignment was admissible as to the truth of its contents pursuant to Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020. The Deed was provided earlier in the case during the discovery process, meeting the requirements of notice in section 15; see *Nolan v Dildar* [2024] IEHC 4. It was clearly compiled in the ordinary course of business (the sale of a number of secured loans/debts from AIB to Everyday) thereby complying with section 14(1)(a). In addition, I am satisfied the copy Deed was authenticated by the evidence of the witness from Wilton Secretarial who signed on behalf of Everyday. This meets the requirements of section 14(1)(b) and section 18.

33. Next, various powers of attorney were introduced into evidence. The originals were shown to the Court and were clearly authentic. These Powers of Attorney indicated that on 22 April 2021 Everyday appointed various personnel in BCM Global to have power of attorney in relation to dealing with certain assets.

34. Thereafter, after the third auction, there was a contract entered into to sell the Property from Everyday to the consortium ('Saybrook') for €1.251M. This was signed by BidX1 and executed electronically. Counsel for the Defendants confirmed that no issue was taken in relation to Saybrook's entitlement to nominate OREP to be the purchaser of the Property.

35. This then led to the Deeds of Conveyance of 6 December 2021 from Everyday to OREP. These documents were stamped, and various personnel named in the Power of Attorney document then signed same on behalf of Everyday.

36. Thereafter there was a Deed of Rectification executed. This Deed was handed in and shown to the court. The solicitor who gave evidence in relation to this Deed was not seriously challenged about it.

37. Executives of BCM Global gave evidence. Their names appear in the Power of Attorney. Between them, they signed the Deed of Rectification at page 185 of the book of Title Documents and they also signed the Deed of Conveyance of the 6 December 2021 on behalf of Everyday and I am satisfied this was done by them as authorised officers entitled to do so.

38. In summary, the evidence at the trial has proved to my satisfaction that Mr. Rogers bought the Property in a number of transactions mostly in the late 1990s. Mr. Rogers

then mortgaged the Property (along with other properties) in favour of AIB on 13 January 2005. This mortgage contained a negative pledge clause, inter alia precluding Mr. Rogers from leasing any part of the Property without the prior written consent of AIB. Mr. Rogers then fell into substantial arrears on his repayments to AIB and at one point owed them, on his estimate, approximately €8M. AIB appointed a Receiver over the Property on 20 February 2016. Mr. Rogers does not dispute the validity of the appointment of the Receiver or his power of sale. AIB then assigned its interest in the Property to Everyday on 17 January 2020 which had the effect of novating the appointment of the Receiver. Everyday granted various people in BCM Global a power of attorney. BidX1 was appointed by the Receiver to conduct an auction of the Property. The Property did not sell at the first two auctions. The consortium behind OREP made the highest bid at the third auction on 24 September 2021. Thereafter, Everyday completed the conveyance of the Property to OREP (properly nominated by Saybrook) by Deed of Conveyance of 6 December 2021.

39. The Deed of Rectification was then executed on 15 June 2022 between Everyday, OREP and Mr. Rogers (through the secretary of Everyday acting as his attorney pursuant the 2005 Deed of Mortgage).

40. The Deed of Rectification essentially addresses a somewhat technical problem whereby AIB was assigned a 10,000 year lease as opposed to the fee simple interest. Section 76 of the 2009 Act provides essentially for an 'all estates clause' so as to assign the residue of the 10,0000 year term to Everyday; see the judgment of Donnelly J. in *McCann v A, B and C* [2015] IEHC 366 at para 142 (which deals with section 63 of the Conveyancing Act, 1881, the predecessor of section 76 of the 2009 Act); see also Wylie and Woods, *Irish Conveyancing Law,* 3rd Edition 2005 at para 18.82 which states "… a conveyance of the fee simple will pass to the grantee any outstanding term of years vested in the grantor and not merged with the freehold".

41. Therefore, while the 2021 conveyances purported to convey the fee simple to OREP, section 76 operates to convey the residue of the 10,000 year term to OREP. This makes the failure in the 2021 conveyances to expressly assign the residue of the term irrelevant. The Deed of Rectification operates so that each of the 2021 Conveyances was rectified so as to convey the fee simple reversion, then assign the residue of the

term of years, and finally merge the leasehold in the freehold such that the OREP now holds the Property in fee simple in possession.

42. Ms. Justice Stack addresses the issues raised by the Defendants on title in her judgment of 7 October 2022, [2022] IEHC 556; see para.s 22-32 in particular. While the analysis therein was for the purposes of an interlocutory hearing (and in respect of which she found that OREP had established a 'strong case' as to its title), I am satisfied that having heard the evidence at trial and the detailed submissions of Counsel, that the same rationale holds good for the purposes of the permanent orders now sought.

43. Section 76 of the 2009 Act means that the residue of the 10,000-year term was conveyed by Everyday to OREP on 6 December 2021. The Deed of Rectification has operated to ensure that OREP now holds the fee simple in possession.

44. Finally, following the purchase of the Property, it is clear from the evidence that OREP attempted to take possession and attempted to collect rents. The evidence indicates that Mr. Rogers sought to deliberately interfere with and frustrate those efforts.

(ii) The alleged conspiracy

45. I am satisfied that there was no credible evidence of the alleged conspiracy adduced. Indeed, on Day 1 of the trial, Counsel for Mr. Rogers, when dealing with an explanation of the evidential basis for the plea, conceded that they (the Defendants) might well be 'barking up the wrong tree'. It was clear to me from the evidence of the witnesses who gave evidence on behalf of OREP that they were not involved in and knew nothing of any conspiracy. It was also clear that BidX1 who ran the auction were not involved in any conspiracy. The witness from BidX1 indicated that any plan to exclude a bidder and to reduce the price at which the Property might be sold would be entirely contrary to the commercial interests of BidX1 whose fees are increased the higher the selling price goes. This witness, who was in charge of the arrangements for the auction, denied any suggestion that he had excluded anyone or been given any such instructions.

46. The lack of evidence offered on behalf of the Defendants in this regard was stark. It is notable that none of the co-conspirators were joined to the Counterclaim and no non-party discovery was sought from them.

47. While witnesses were questioned that an email letter on the morning of the third auction from Mr. O'Dowd of BidX1 to Mr. Stokes on behalf of the consortium indicated a set

of ‘common assumptions’ which in turn suggested knowledge of a conspiracy to exclude the previous second highest bidder, the answers of these witnesses made it clear that they did not hold the so called ‘common assumptions’.

48. In addition, no explanation or theory was put forward to explain why Everyday and/or the Receiver would conspire together to damage their own interests by reducing the field of bidders. Certainly, such a scheme would have been contrary to interests of BidX1, and yet Counsel for Mr. Rogers who pushed the ‘common assumptions’ questions was running a theory that if correct, meant that BidX1 were in on the plan. Based on Mr. O’Dowd’s answers and reactions to questions in the witness box I am satisfied he was not aware of any such plan. For example, he was asked in cross-examination on Day 3, page 101:

> Q. You weren’t hoping to deliver this property to Emmet Stokes and his consortium?
>
> A. Absolutely not.

49. In addition, when Mr. O’Dowd was asked in cross-examination about his reaction to the competitive bidding at the third auction he was asked “so this was a happy outcome for BidX1?” and he replied “Absolutely”; Day 3, page 102. There was no doubt that Mr. O’Dowd came across in the witness box that, from a BidX1 perspective, they wanted a competitive auction and a high selling price. Yet, on the Defendants’ theory they had to be in on the scheme. This did not come across in anyway as plausible, much less probable, based on Mr. O’Dowd’s evidence.

50. Finally, while an attempt was made by Counsel for the Defendants to have the highest under-bidder from the first auction give an account of a conversation with a ‘manager’ in BidX1 apparently in January 2022 I ruled this as inadmissible on the grounds of hearsay. There was no explanation for why this ‘manager’ had not been subpoenaed. Counsel for the Defendants sought to reopen this argument by reliance on authority on the basis that the potential hearsay evidence was, he submitted, an admission against interest by an agent of a predecessor in title. I rejected this argument on the grounds, inter alia, that there was no evidence that the ‘manager’ was authorised by the principal (Everyday) and that at the time of the alleged conversation, Everyday was no longer the owner; see *Bord na gCon v Murphy* [1970] IR 301 and see *McGrath on Evidence* para.s 5-132 to 5-142.

(iii) The alleged leasehold interest of Rogers Recycling Ltd of 30 January 2014

51. I am satisfied based on the evidence adduced that this purported Lease was effectively a sham in the sense that it never was genuinely operated and there is a complete lack of clarity as to what rent was actually to be paid and whether any rent was ever paid or consistently paid.

52. The evidence of Mr. Rogers in relation to this issue was unsatisfactory and in several important respects was clearly false. Firstly, the copy of the Lease put into evidence contained two hand written additions in the margins. The first addition consisted of an asterix and the words 'Jan 2014' beside the Habendum clause, the typed terms of which provided that the Lease was for 21 years from 1 July 2012. The second addition consisted of the words '300 per week from Jan 2014'. These words were written in the margin beside the Reddendum clause, the typed terms of which provided for an annual rent of €24,000.00 payable at €2,000.00 per month. Mr. Rogers said he made those additions. Crucially however his sworn evidence was that he made them before the Lease was executed on 30 January 2014. I am satisfied that this evidence is false. The bank account statements of Rogers Recycling Limited make it clear that there is no noticeable pattern of any payments being made that would plausibly reflect the payment of rent pursuant to the Lease. Mr. Rogers endeavoured to explain this by saying he would withdraw round sums in cash from the company from time to time and said this was the payment of the 'rent'. His evidence in that regard did not stack up. The amounts of cash withdrawn did not total or equate in any way to the 'rent' and sometimes several months would go by during which the company was in funds and no cash withdrawals (or 'rent' as Mr. Rogers sought to characterise these withdrawals) would be made.

53. However, against that background, came the evidence of Mr. Plunkett the solicitor who had drawn up the Lease. He gave clear evidence by reference to his file and contemporaneous records that Mr. Rogers had given him explicit instructions in 2013 to draw up the Lease in the terms reflected in the typed document. On the other hand, Mr. Roger's evidence was that in 2013 he had instructed Mr. Plunkett to draw the Lease up reflecting a term commencing in January 2014 and a rent of €300 per week (or €1,200 per month as Mr. Rogers insisted his second handwritten note actually meant). I am satisfied that this evidence is also false. I am satisfied that Mr. Plunkett's evidence

and his file records the correct position. Mr. Plunkett explained that he had checked his file prior to giving evidence. He came across as a careful witness who checked his file on occasion before answering questions. He was also basing his evidence on contemporaneous records. In addition, he was giving evidence about a piece of legal work (drawing up a commercial lease) which was something that he appeared to have a clear routine work practise that he usually followed. In addition, Mr. Plunkett gave very clear evidence that the handwritten notes were not there when the Lease was executed on 30 January 2014. Mr. Plunkett witnessed Mr. Rogers' signature to the Lease. He said if there were two handwritten changes like the ones on the document now that he would have simply asked his secretary to make the changes or he would have initialled the handwritten notes. As neither happened he said he was 99% sure those handwritten notes were not there at execution.

54. In short, the purported leasehold relationship between Mr. Rogers and Rogers Recycling Limited was a sham. The company was not paying any rent or equivalent amount of money on any consistent basis, even when it had ample funds to do so, whether in the amount of the actual rent in the Lease of €2,000 per month, or in the amount in the handwritten note of €300 per week, or in the amount of €1,200.00 per month which Mr. Rogers insisted his second note meant. There was no evidence the company was operating consistently from the Unit 1 premises either and it appears that Mr. Rogers was simply collecting rent directly from whoever was there.

55. Turning now to the question of whether AIB gave consent for the Lease, I am satisfied that there was no "prior written consent in writing" issued by AIB to the purported Lease. The purported Lease was executed on the 30 January 2014. The purported letter from Mr. Foley of AIB is dated 10 March 2014. It is self-evident that this post-dates the Lease.

56. Irrespective of the foregoing, I am satisfied that the document purporting to be a copy of a letter of 10 March 2014 from AIB produced by Mr. Rogers is a fabricated document. I am also satisfied that Mr. Rogers deliberately introduced this document into these proceedings firstly as an exhibit to one of his Affidavits and then at the trial with a view to misleading the Court. The document handed in to Court on Day 2 as purporting to be the document that Mr. Rogers claims he found some 9 or 10 months

ago when rummaging through some boxes in the basement of his house has been kept on the Court file.

57. Mr. Foley, the putative author of the letter, gave evidence on Day 1 and Day 2 of the trial and was cross-examined extensively on behalf of Mr. Rogers on the basis that this letter was real. Mr. Foley's evidence was clear and convincing. He explained to the Court that he was extremely upset to find that this had happened. He had no doubt it was, as he described it, a 'forged' letter and a 'bogus letter'. He said he did not write the letter; he did not sign the letter and he did not author the letter and it was not his style of writing.

58. During the course of his evidence, he gave a number of reasons for stating that the letter was fabricated. I found each of these reasons to be convincing and persuasive. Essentially Mr. Foley's reasons for knowing that this was a fabricated letter can be summarised as follows:-

(i) He said the headed notepaper was wrong. In the top right corner, the purported letter indicated it was coming from AIB Bank Commercial Banking. He said this was not correct. He explained that AIB Bank Commercial Banking as a division or unit was long gone by 2014 following the restructuring of the Bank several years earlier due to the financial crash. During the course of his evidence reference was made to a copy of an actual document issued by him, dated 18 March 2014 marked with a stamp as received by the waste management services department of Dublin City Council on 24 March 2014, and separately to a copy of an email actually sent by him dated 30 January 2013 to Mr. & Mrs. Rogers, both of which showed that his position was in a business unit of AIB called 'Financial Solutions Group' and his job title was that of 'Credit Manager'.

(ii) He pointed to the fact that the pre-printed strapline at the bottom of the fabricated letter purported to indicate that AIB was regulated by the Financial Regulator. Mr. Foley pointed out that by 2014 AIB was regulated by the Central Bank. He said, with a degree of understatement, that AIB would be "fussy" about a matter such as this and that there is no question that such an error would be made ("there's no way that letter would have been issued in 2014 with a strapline issued by the Financial Regular"; Day 1, page 120, lines 3-5). Mr.

Foley also pointed to a copy of an actual document entitled 'Financial Guarantee' issued by him on AIB headed paper as far back as 19 December 2011 which stated that the Bank 'is regulated by the Central Bank of Ireland'. As a matter of law, AIB ceased to be regulated by the 'Financial Regulator' in October 2010. This letter from 2011 also described his role by that stage was as 'Credit Manager'.

(iii) He explained that the purported title ascribed to him in the signature section as 'Commercial Lending Manager' was an old title that did not apply to him as of March 2014. He pointed to the documents described above from 2011, 2013 and 2014 which described his title as 'Credit Manager'. Again, he explained that this was a change made several years before, due to restructuring within the Bank after the financial crash.

(iv) He then explained that he would not have had the actual authority to issue such a consent on behalf of the Bank in relation to a commercial lease like this.

(v) He also explained that from his recollection there was no likelihood that he would have been able to obtain such a consent by 10 March 2014 having only been asked for it on 6 March 2014. It would, he said, take weeks to get such a letter, in the region typically of 6-8 weeks.

(vi) He also said he was satisfied from his recollection that he had not consented to the Lease.

(vii) In terms of the structure of the purported letter itself he said that with such a letter it would not be his practice to write to Mr Rogers. He would write to the solicitors involved, in this case Plunkett Kirwan.

(viii) Next, he said in a letter addressed to a person (this letter was addressed 'Dear Declan, … ') he would normally put a salutation at the end such as 'yours sincerely' or 'yours faithfully'. There was no salutation in this letter.

(ix) Next, he said the main paragraph in the letter would be different. In a letter confirming the consent of the Bank to a commercial lease he said he would ensure such a letter gave basic details such as the term of the lease and the amount of the rent and matters of that sort.

(x) Next, he said it appeared that the font was different as between the text of the letter and the purported signature text beneath the purported handwritten signature at the bottom of the letter.

(xi) Finally, he said when he was handed a copy of the purported letter which was, at that stage claimed to be the original (later in the case Mr. Rogers claimed the letter was a photocopy of the original) and said to be the actual letter received by Mr Rogers, he was quite satisfied that this was fake. The letterhead did not feel right and was not proper paper. The quality of the printing of the strapline at the bottom and of the header at the top was faint and overall, it was a poor quality type of letterhead.

59. Overall Mr. Foley was an impressive witness. He had retired from the Bank in 2015. It was not suggested he bore any ill will to Mr. Rogers. Indeed, in his evidence he explained that he had met Mr. Rogers in recent years (and after his retirement) when Mr. Rogers was looking for help to identify dates when they might have met to discuss the Property. One of the dates that Mr. Foley said was in his diary and would therefore probably have reflected a meeting with Mr. Rogers, was the 10 March 2014. He explained that he had supplied this date to Mr. Rogers to assist Mr. Rogers making requests to AIB for file notes of meetings. That is the date on the fabricated letter.

60. His evidence about the reference in the fabricated letter to the Bank being regulated by the 'Financial Regulator' was particularly stark. The Financial Regulator ceased to be the regulator of AIB in October 2010 as a result of the banking reforms introduced by the Central Bank Reform Act 2010. Thereafter AIB has been regulated by the Central Bank.

61. It is implausible that a person described in letter as a 'Commercial Lending Manager' would issue an important letter of consent to a 21 year commercial lease on apparently pre-printed letterhead that refers to the wrong statutory regulator of the Bank. The slim possibility of such an error, reduces even further, in the context of a witness who could point to other letters issued by him around and prior to that time with his correct job title and with pre-printed headed paper which refers to the correct statutory regulator.

62 Aside altogether from the foregoing, Mr. Rogers own evidence thereafter on this topic was very unsatisfactory. His oral evidence was inconsistent with his previous sworn evidence tendered to the court on Affidavit, which, in itself, was inconsistent and

changed over time. In addition, significant aspects of his oral evidence were inherently unlikely, even on their own terms. Regrettably the only conclusion I can sensibly come to is that he deliberately did not tell the Court the truth and that he deliberately introduced this fabricated document in an effort to mislead the Court.

63. Firstly, he could not remember ever receiving the letter around the time it was apparently sent. His wife had no memory of receiving it either. She was confident it did not arrive by email. It was addressed to Mr. Rogers at his then and still home address. He could not explain this. Neither Mr. Rogers nor his wife claimed that either of them had any conversation around the time noting or referring to the letter – which on Mr. Rogers' account was a very important matter and which they had been seeking.

64. Supportive of the likelihood that Mr. Rogers never received this letter is his own sworn evidence in an Affidavit sworn by Mr. Rogers in these proceedings on 12 May 2022. In that affidavit he swore that 'it is common case that no formal written consent to the Lease was ever obtained from AIB'.

65. He explained in evidence that he had been looking for months in all sorts of places for the 'letter' which he now claimed he believed existed and that one day his wife apparently suggested he should try boxes in the basement. He claimed that he checked those boxes and that 'this is where this letter has appeared from as we speak'; see transcript Day 5, page 112 lines 16-17. He claimed on Day 5 that 'it was on a bunch of files just thrown'. On Day 6 he claimed, 'I don't know where the letter came from and how it was delivered'. He said he did not know how the letter came to be 'with these files'; Day 6 page 98 line 22.

66. Aside from the unconvincing nature of this evidence, it was additionally at odds with what he had sworn on affidavit belatedly about the letter in response to the motion for attachment and committal. In an affidavit sworn by Mr. Rogers on 28 March 2023 he claimed that:

'*The lease was emailed to Philip Foley of AIB by Brid Rogers on 6 March 2014 for his approval. Subsequently a letter was received by me from AIB signed by Philip Foley consenting to the granting of the said lease… I say that the letter from AIB was mislaid but was recently discovered by my wife Brid Rogers at our home*'.

67. Ho could not explain these averments in his oral evidence. He claimed during his evidence at the hearing that he had discovered the letter in the basement. On Day 6 in response to questions from the Court he stated as follows:-

> *Q. Where was it?*
>
> *A. It was in the -- we have a room that was totally empty and we were just going to use that as a rubbish room, to throw everything in, files, bits and pieces, and that's where I took the box from.*
>
> *427 Q. What box?*
>
> *A. With just paper, paper, paper documents in it. It was a brown type of box maybe this size with all the stuff in it, just documents.*
>
> *428 Q. Go on, yes?*
>
> *A. Then, at that stage I produced it. It was after that then that I produced it.*

68. While Mrs. Rogers said, 'I do not recall exactly but I would have imagined at the time that I saw the letter of consent and I copied it' (on Day 6, page 177 lines 12-14) this evidence that she must have photocopied the letter was not convincing. Firstly, Mrs. Rogers explained that she has no recollection of ever receiving the letter. In addition, she said she had no recollection of what she might have done with the original. She gave no evidence of even speaking to her husband about the receipt of this important letter. In addition, even though she seemed to believe that she suggested to Mr. Rogers to check the basement (his evidence was that he asked her in the context of looking for this letter) she accepted that she did not know he had found it there.

69. This narrative does not have a ring of truth. Two people living in the same house apparently discuss looking for an important document. One suggests looking in the basement of the house. The other then goes to the basement and apparently finds the document and yet neither then discuss this presumably happy discovery.

70. For the foregoing reasons I am satisfied that the purported letter introduced into evidence by Mr. Rogers, first as an exhibit to his affidavit of 28 March 2023 in response to a motion for attachment and committal and thereafter during the trial of the action, was a fabricated document and it was designed to mislead court. Regrettably, the only sensible conclusion is that Mr. Rogers fabricated this document and has then given deliberately untruthful sworn evidence about it.

71. Mr. Cullen, the solicitor for the Plaintiff gave evidence. He explained that when Mr. Rogers claimed to have this letter that he requested to inspect it. On inspection at the Defendants' solicitors office, he said he felt straight away that this was a 'forgery'; Day 4, page 47 , line 20. He then felt, quite appropriately, that he should report the matter to the Gardai. He explained that he felt it 'was proffering a false document under the Theft and Fraud Act, 2001' and that section 19 of the Criminal Justice Act, 2011 essentially required him to report the matter to the Gardai. Mr. Cullen explained that the matter was currently being investigated by the Gardai. Despite the manner in which leading counsel for the Defendants challenged Mr. Cullen I am quite satisfied that Mr. Cullen behaved entirely properly in relation to this matter.

72. Accordingly, in the circumstances, there was no prior written consent to the Lease from AIB as mortgagee and, given that there was no evidence or assertion that AIB or their successor Everyday or the Receiver had ever acknowledged or taken over the Lease, then as between the mortgagee and its successors the lease is void and no tenancy exists as between Rogers Recycling Ltd and OREP; see the judgment of Dunne J in *Fennell v N17 Electric in liquidation* [2012] 4 IR 634 (regularly cited with approval by the Court of Appeal on this point; see for example *Kennedy v O'Kelly* [2020] IECA 288 and *AIB v Fitzgerald* [2022] IECA 286).

(iv) Damages

73. The evidence indicates that Mr. Rogers has interfered with OREP's ownership rights from the beginning. He has sought to ensure that tenants and occupiers paid rent or fees to him, and he has denied that OREP is the owner of the property without any proper justification. I am satisfied on the evidence that OREP has been deprived of the proper rental income which the Property should have generated due to the wrongful actions of the Defendants. This loss has arisen since 6 December 2021. Despite Court Orders it is clear that Mr. Rogers (and he admitted as much) deliberately broke those

orders and sought to continue to collect rents from Unit 1 after 11 October 2022. As a result of the findings in this judgment, he has no lawful entitlement to any of the rents he collected in respect of the Property from December 2021.

74. The evidence also indicates that Mr. Rogers collected rent in cash and his evidence about this I found unreliable. For example, on Day 3, evidence was given by a tenant called Mr. Farbelow. Junior Counsel for Mr. Rogers, cross examined Mr. Farbelow on the basis that Mr. Rogers 'will say he never met you in his life' (Day 3, page 112) and 'he knows nothing about any arrangement to pay €200 for the rent of a container'. This arrangement with Mr. Farbelow for cash rental of a container in Unit 1 took place for six months from August 2022 to January 2023, in other words for a significant period of time after the Order of Ms. Justice Stack of 11 October 2022. After the cross examination and in answer to questions from the Court, Mr. Farbelow explained that he had also been in WhatsApp communication with Mr. Rogers. He called out the mobile number he had been in communication with. This turned out to be Mr. Rogers' number. It was agreed that both junior counsel would look at Mr. Rogers' mobile phone. This revealed a series of WhatsApp messages on Mr. Rogers phone with Mr. Farbelow. Despite this, as of the end of Day 3, Mr Rogers maintained his position through Counsel that he had never dealt with Mr. Farbelow. The next morning, Senior Counsel for Mr. Rogers revealed that in fact Mr Rogers had rented a container to Mr. Farbelow and, what was more, he had a copy of his passport in his files; but the claim now was that Mr. Farbelow had perhaps put on weight since his passport photograph was taken, which it was claimed, was why Mr. Rogers had not recognised him. In any event, Counsel confirmed that Mr. Rogers 'regrets the instructions furnished yesterday. He retracts them in their entirety'; Day 4, page 8 lines 2 and 3. Nonetheless and despite this, Mr Rogers later in his own evidence sought to deny Mr. Farbelow's claims, and he would only admit to the precise references to cash being paid that were explicitly referred to in the WhatsApp messages. I am satisfied that Mr. Farbelow's account was correct. He was a straightforward witness, and he was clear in his recollection. Mr. Rogers on the other hand adopted a variety of different positions so far as Mr. Farbelow's evidence was concerned and the only common theme as between them was he seemed to adopt whatever approach he thought he might get away with at the time.

75. Overall, therefore, OREP is entitled to damages for the loss of rent that has occurred due to the unlawful actions of the Defendants in trespassing on the Property since 6

December 2021, interfering with the orderly letting of Units at the Property and wrongly taking rents or other monies off occupiers or tenants of the Units and containers on the Property.

76. As to the measure of damages I am satisfied to use Mr. Roger's own figures in his agent's letter to AIB. According to this letter to AIB, it ought to have been possible to obtain as much as €100,000 per annum in respect of Unit 1 with its containers, or just over €264,000 from 6 December 2021 to the end of July 2024 (31 months and 3 weeks). According to Mr. Stokes, the Plaintiff has collected the total sum of €85,292.20 from Unit 1 in the period of December 2021 to July 2024, when it could have collected, on the plaintiff's figures €264,000.00 if it had been able to let the properties. This represents a shortfall of approximately €178,000.00. Allowing for the fact that Mr. Rogers' agent may have puffed up the figures somewhat for presentation to the Bank and allowing for the likelihood of some level of vacancy in the units I propose to award the Plaintiff €150,000.00 in damages.

VI. Conclusion

77. The Plaintiff has been entirely successful in its action. The Plaintiff has established good title to the Property. The Defendants have failed in their challenge to the Plaintiff's title and have failed to establish the alleged conspiracy. The Defendants have also failed to establish that the apparent lease was operating. In addition, the Defendants have failed to establish any prior consent or consent in writing either before or at any time in relation to the said lease. Consequently, Rogers Recycling Limited has no entitlement to occupy Unit 1 of the Property. For the reasons set out above, the Defendants have wholly failed in their counterclaim. The Defendants have no entitlement to be on the property or to collect any rent or any monies from any occupier there.

78. In addition, on a number of significant occasions as set out above, Mr Rogers gave clearly false evidence. This was established by reference in particular to evidence from independent witnesses such as Mr. Plunkett and Mr. Foley, both of whom were also able to support their evidence by reference to contemporaneous documents. Mr. Rogers' evidence in relation to Mr. Farbelow was also false for the reasons described above. Mr. Rogers also displayed a dispiriting lack of regard for previous orders made

by the High Court and gave false excuses for not complying with those Orders, such as claiming to have received certain advice from Counsel.

79. However, the most serious deceit on his part was the introduction into the case of the fabricated document purporting to be the letter of 10 March 2014 from AIB. As observed above, I have been informed by Mr. Cullen, the Plaintiff's solicitor, that there is a current Garda investigation into that letter on foot of Mr. Cullen's complaint, described above.

80. It might seem more straight-forward to leave matters rest there, on the basis that the Defendants have lost the case. However, introducing fabricated documentation with a view to misleading the Court should not be a 'consequence free' enterprise. In this case the Plaintiff was able to secure the evidence of Mr. Foley who had retired from the Bank some 9 years ago. In addition, his evidence was robust and was supported by his own contemporaneous correspondence and objective legislative changes that corroborated his evidence that the purported letter was a fabrication. In addition, Mr. Rogers displayed a willingness to give further false evidence on several other occasions (including falsely seeking to excuse his deliberate conduct in breach of an Order of the Court) that was disproved by, inter alia, what his own Counsel informed the Court, the evidence of the solicitor Mr. Plunkett (corroborated by his file) and the evidence of Mr. Farbelow (corroborated by the WhatsApp messages on Mr. Rogers' mobile phone). It might be thought that losing the litigation would be a sufficient disincentive for such behaviour. However, in circumstances where a litigant's legal position on the actual facts is already likely to lead to defeat, simply being caught and losing a case, that is otherwise likely to be lost, represents no real additional disincentive.

81. Introducing false evidence and relying on fabricated documentation both in interlocutory hearings and at a plenary trial is not a victimless crime - even when the wrongdoing is transparent, exposed and the wrongdoer loses the litigation. It is a crime against the administration of justice. It creates the real risk that the outcome of Court proceedings will not be just if the result is affected by undetected perjury or the fabrication of documentation. Next, it has the propensity to dissuade genuine witnesses from testifying, creating as it does the risk and well-founded apprehension that such a person will be challenged vigorously in court on the truth of their evidence based on a deliberately false premise (as occurred here). Additionally, in some cases, from the

perspective of the party on the other side who knows of the deliberate falsehood or fabricated evidence, it has the risk of creating a legitimate sense of grievance as to the judicial hearing and potentially, its outcome. If it goes unpunished it risks causing harm to the necessary confidence required from the public in the administration of justice. Even where it is wholly unsuccessful it has the propensity to cause damage. For example, in this litigation, days of additional Court time were taken up in this case dealing with the false positions that Mr. Rogers elicited his legal team to pursue. In addition, were it not for the transparent nature of the fabrication (based in part on a change in the law relating to the regulation of banks of which Mr. Rogers may have been unaware) and the fortuitous availability of the retired bank official, then who is to say whether or not Mr. Rogers may have got away with his endeavours on another occasion. If there were no other consequences for Mr. Rogers than merely losing the case, then there would be very little disincentive to others of an unscrupulous nature to adopt such tactics. Certainly, if his own legal team gave him any warnings that his intended evidence (flagged and deployed in the cross-examination of the Plaintiff's witnesses on Days 1, 2, 3 and 4 of the trial) was creating risks for him outside of the litigation, it had no effect.

82. Accordingly, in light of the evidence that has emerged at this trial and in light of my conclusions in relation to same I propose to ask the Court Registrar to refer this judgment, together with the document handed to Court by Mr. Rogers purporting to be a copy of a letter of 10 March 2014 from AIB, to the Gardai for further investigation as to whether offences may have been committed, including but not limited to, offences contrary to section 2 and section 7 of the Criminal Justice (Perjury and Related Offences) Act, 2021.

83. In relation to the issues as between the parties and arising from my conclusions above, I propose to make the following Orders:-

(i) A permanent Order restraining the First and Third Named Defendants, their servants or agents, and all persons acting in concert with them, from trespassing upon in or any way interfering with the Property known as Units 1, 5A, 5B, 6, 7, 8, 8A, 9 and 10 Ossory Industrial Estate, Ossory Road, Dublin 3;

(ii) A permanent Order restraining the First and Third Named Defendants, their servants or agents, and all persons acting in concert with them, from interfering

with and or demanding any kind of payment from the Occupiers of the Property known as Units 1, 5A, 5B, 6, 7, 8, 8A, 9 and 10 Ossory Industrial Estate, Ossory Road, Dublin 3;

(iii) A permanent Order restraining the First and Third Named Defendants, their servants or agents, and all persons acting in concert with them, from advertising for rent any units contained within the Property known as Units 1, 5A, 5B, 6, 7, 8, 8A, 9 and 10 Ossory Industrial Estate, Ossory Road, Dublin 3;

(iv) An Order restraining the First and Third Named Defendants, their servants or agents, from slandering or otherwise denying the Plaintiff's Title to the Property known as Units 1, 5A, 5B, 6, 7, 8, 8A, 9 and 10 Ossory Industrial Estate, Ossory Road, Dublin 3;

(v) A Declaration that the purported lease agreement allegedly entered into on 30 January 2014 is not valid and that the Third Nmaed Defendant is not a tenant of the First Named Defendant;

(vi) A Declaration that the Third Named Defendant has no authority and or right to collect and or receive rent from the Occupiers of Unit 1 Ossory Industrial Estate, Ossory Road, Dublin 3;

(vii) I award the Plaintiff the sum of €150,000.00 as damages for trespass as against both the first and third named Defendants jointly and severally;

(viii) I direct that all sums held by the Defendants' solicitors pursuant to previous orders and/or undertakings given in this matter be paid over forthwith to the Plaintiff's solicitors in part discharge of the damages awarded; and

(ix) The Defendants' counterclaim is hereby dismissed.

84. I will hear the parties in relation to costs and any other matters arising.