APPROVED **[2020] IEHC 539**

THE HIGH COURT

2012 No. 2298 S

BETWEEN

NAHJ COMPANY FOR SERVICES

PLAINTIFF

AND

ROYAL COLLEGE OF SURGEONS IN IRELAND

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 12 November 2020

INTRODUCTION

1. The principal issue for determination in this judgment is whether the defendant was entitled to deliver interrogatories without first obtaining the leave of the High Court. The resolution of this issue turns largely on the question of whether the plaintiff's claim can be characterised as one where relief is sought on the ground of "fraud" or "breach of trust". These are the relevant terms employed in Order 31, rule 1 of the Rules of the Superior Courts.

INTERROGATORIES: GENERAL PRINCIPLES

2. One of the procedural tools available to a litigant is the ability, in certain circumstances, to compel the other party to the proceedings to answer questions on oath prior to the trial. This is done by the delivery of interrogatories. These take the form of written questions (usually, but not always, admitting of a "yes or no" answer) which the other party is required to answer on affidavit. Employed properly, the delivery of interrogatories can have the benefit of saving costs and reducing the amount of court time required for the hearing of an action.

3. The Court of Appeal has said that the use of interrogatories is to be encouraged. See *McCabe v. Irish Life Assurance plc* [2015] IECA 239; [2015] 1 I.R. 346, [3].

> "Often the delivery of interrogatories can obviate the necessity for expensive and time consuming discovery, can dispose of issues prior to trial, can lessen the number of witnesses and result in an overall shortening of trials. In many cases which lend themselves to the delivery of interrogatories the procedure is simply ignored."

4. The following general principles govern the use of interrogatories. First, interrogatories may be served not only in relation to facts *directly in issue*, but also in respect of facts the existence or non-existence of which is relevant to the existence or non-existence of facts directly in issue. (*Goodbody Ltd v. Clyde Shipping Company Ltd*, unreported, Supreme Court, 9 May 1967).

5. Secondly, the right to serve interrogatories is not confined to facts which are in the peculiar knowledge of the *other* party. Rather, they may also be used for the purpose of obtaining an admission from the other side. (*Goodbody Ltd v. Clyde Shipping Company Ltd*, unreported, Supreme Court, 9 May 1967).

6. Thirdly, interrogatories will not be allowed where what is being sought is not an answer in respect of a factual matter, but rather relates to the *interpretation* of the contents of a

document. (*Bula Ltd. v. Tara Mines* [1995] 1 I.L.R.M. 401 (at 406), and *Woodfab Ltd v. Coillte Teoranta* [2000] 1 I.R. 20 (at 26)).

INTERROGATORIES: PROCEDURE

7. Order 31 of the Rules of the Superior Courts prescribes the procedure which governs the delivery of interrogatories. A distinction is drawn between proceedings in which interrogatories can be served as of right, and proceedings in which the prior leave of the court is required. This distinction lies at the heart of the disagreement between the parties in the present case.

8. The key determinant of whether the prior leave of the court is required is whether or not the cause or matter is one where relief is sought on the ground of "fraud" or "breach of trust" (Order 31, rule 1). If relief is sought on the ground of "fraud" or "breach of trust", then either party may deliver interrogatories without leave. If, conversely, relief is not sought on these grounds, then it is necessary to apply to the court for leave. On such an application, the moving party must satisfy the court that the interrogatories are necessary either for disposing fairly of the cause or matter or for saving costs. (See, generally, *McCabe v. Irish Life Assurance plc* [2015] IECA 239; [2015] 1 I.R. 346). In assessing necessity, the court is obliged to take into account any offer, made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents (Order 31, rule 2). Put otherwise, the court must consider whether the objective of the interrogatories might be achieved instead by an *alternative* procedural mechanism, such as the delivery of particulars or the making of admissions.

9. Irrespective of whether the prior leave of the court had been required for the delivery of interrogatories, the party sought to be interrogated is entitled (i) to apply to set aside the interrogatories on the ground that they have been exhibited unreasonably or vexatiously;

or (ii) to apply to have them struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous (Order 31, rule 7). Alternatively, the party sought to be interrogated can take objection to the interrogatories in their affidavit in answer. Such objection can be taken on the grounds that the interrogatories are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground (Order 31, rule 6). Thereafter, it is open to the interrogating party to apply to court for an order requiring the party sought to be interrogated to answer, or to answer further, as the case may be. The court can then determine whether the objections are well made.

10. As appears from the foregoing summary of the procedure, the requirement for the prior leave of the court, while an important safeguard, is not the only protection afforded to the party to be interrogated. Even in those cases where prior leave is not required, the party to be interrogated is entitled to impugn the interrogatories on a wide range of grounds, including *inter alia* that they are unreasonable, oppressive or irrelevant.

HISTORY OF THESE PROCEEDINGS

11. The within proceedings arise out of an "arrangement" entered into between the plaintiff and the defendant in respect of the recruitment of students from Saudi Arabia for the defendant's medical commencement programme. The neutral term "arrangement" is used advisedly in this judgment in circumstances where the precise nature of the relationship between the parties is in dispute, with the plaintiff contending that the arrangement was in the form of a partnership, and the defendant contending that the agreement was, in essence, an exclusive agency agreement.

12. The proceedings were instituted by way of summary summons on 19 June 2012, but were ultimately remitted to plenary hearing by order of the court made on the consent of the

parties. A statement of claim was delivered on 29 January 2016, and a defence delivered on 3 June 2016.

13. It appears from the pleadings that the "arrangement" between the parties had arisen against a factual background whereby the Ministry of Higher Education in Saudi Arabia provided state-funded scholarships to students to participate in medical courses. The plaintiff has pleaded that it was to receive a commission in the sum of €5,000 in respect of each Saudi Arabian student recruited to the defendant's medical commencement programme. For ease of exposition, I will use the shorthand "***the College*"** when referring to the defendant, the Royal College of Surgeons in Ireland; and the shorthand "***the recruiting agency***" when referring to the plaintiff. It should be emphasised that the use of the latter term should not be understood as indicative of any finding by the court in relation to the precise legal status of the plaintiff under the agreement, i.e. whether an agent or partner. Rather, the term "recruiting agency" is a commonplace term that will assist the reader in identifying the two parties.

14. The College maintains that it received a directive from the Ministry of Higher Education of the Kingdom of Saudi Arabia ("***the Ministry***") in or about June 2010. It is pleaded that the effect of the directive was that henceforth all students were to be recruited through the cultural section of the Saudi Arabian Embassy in London; the College was to cease forthwith recruiting students in Saudi Arabia; and the fees to be charged to the Ministry for the students in future were to be *reduced* by an amount equal to the commission which had, until that date, been paid to the recruiting agency by the College.

15. It is pleaded by the College that the implementation of the Ministry's directive rendered the agreement between it and the recruiting agency impossible to perform, and the College relies on the doctrine of frustration.

16. One of the issues in dispute between the parties concerns the level of fees to be paid by the students. Specifically, there is a dispute as to whether the fee of €16,000 fixed in or about September 2008 was inclusive or exclusive of the commission in the sum of €5,000 said to be payable to the recruiting agency. It is pleaded in the statement of claim that the Saudi Arabian officials were advised *in error* that the fee for each participating student was €21,000 instead of €16,000.

17. This alleged mistake then gives rise to a series of allegations against the College. See paragraphs 23 to 26 of the statement of claim as follows. (The abbreviation "MCP" refers to the medical commencement programme).

> "23. Between the January/February 2010 and the 4th November 2014, the Defendant continued to charge a fee of €5,000 in respect of each Saudi Arabian student registered on the MCP and sought to disguise this fact by reducing the fee from €21,000.00 to what the Plaintiff believes was a fee of €18,000.00 and in doing so failed to disclose the previous error that had occurred when the sum of €5,000.00 payable to the Plaintiff was added twice to the Defendant's fee of €11,000.00 for each Saudi Arabian student registered on the MCP.
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> 24. The Plaintiff therefore asserts that the fee charged by the Defendant in respect of each Saudi Arabian student registered on the MCP between January/February 2010 and the 4th November 2014 continued to include a fee of €5,000 which was properly and lawfully due to the Plaintiff and all of which with the approval and authority of the Defendant, was wrongfully retained by the Defendant who thereafter caused all or part of the €5,000 to be wrongfully paid to ICHET and/or Castel International Limited.
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> 25. The Plaintiff expressly pleads that the above pleaded conduct by the Defendant duly shows that the Defendant continued to receive the sum of €5000 properly payable to the Plaintiff in respect of each Saudi Arabian student registered on the MCP over and above the fee of a €11,000 set by and payable to the Defendant for each student registered on the MCP.
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> 26. Further to the matters pleaded above and in particular having regard to the express terms of the agreement entered into between the Plaintiff and the Defendant and under which the Defendant as a partner of the Plaintiff owed, *inter-alia*,

> fiduciary duties to the Plaintiff to act *bona fide* and in the best interests of the Plaintiff and to fully account as a partner to the Plaintiff in accordance with the terms of the agreement, the Defendant's conduct in the circumstances amounted to a repudiatory breach of the agreement and breach by the Defendant of the fiduciary duties which it owed to the Plaintiff under the agreement."

18. As appears, the case pleaded as against the College includes, first, a claim that it not only failed to disclose a previous error in respect of the amount of fees payable, but sought to "disguise" this fact; and, secondly, a claim that it breached the "fiduciary duties" which it is said to owe the recruiting agency under the (partnership) agreement.

19. The College served a notice for particulars prior to the delivery of its defence. The College also served a notice to admit facts on 8 February 2019. The recruiting agency, in its response of 5 March 2019, raised a number of objections to the notice to admit facts. In particular, it is stated that the "purported" notice to admit facts is really directed to seeking to have the recruiting agency admit the College's interpretation of the "partnership agreement". It is said that this is not permissible, and does not constitute a proper use of a notice to admit facts.

20. Thereafter, the College delivered interrogatories on 8 October 2019. These interrogatories were delivered without the prior leave of the court. No substantive response was received to those interrogatories. A reminder letter was sent by the College's solicitors on 8 November 2019. The recruiting agency's solicitors sent a holding reply on 11 November 2019.

21. The College subsequently issued a motion on 13 December 2019 seeking an order pursuant to Order 31, rule 11 requiring the recruiting agency to answer on affidavit the interrogatories delivered on 8 October 2019. This motion was grounded on the affidavit of Adele Hall, Solicitor. Ms. Hall set out the procedural history of the proceedings. As

discussed presently, one of the grounds of objection raised by the recruiting agency is that the grounding affidavit should have been sworn by an official from the College.

DETAILED DISCUSSION

22. The motion seeking to compel the recruiting agency to answer the interrogatories on affidavit came on for hearing before me on 29 October 2020. The recruiting agency sought to resist the application by reference to the following three arguments.

(1). WAS PRIOR LEAVE OF THE COURT REQUIRED?

23. It is contended that the delivery of interrogatories without the prior leave of the court was irregular and that the interrogatories are invalid as a result. Specifically, it is said that the proceedings do not involve a cause of action which seeks relief on the ground of either "fraud" or "breach of trust". Rather, the recruiting agency has, in fact, sought damages for breach of contract under which the partners of the (alleged) partnership were subject to fiduciary duties. A cause of action for fraud or breach of trust is not equivalent to a cause of action for breach of fiduciary duty.

24. It is further submitted that a breach of fiduciary duty may arise in the case of a cause of action for damages for breach of contract where both of the parties owes fiduciary duties to the other, including the fiduciary duty to account fully to the partners in a partnership. A claim for damages for breach of contract and breach of fiduciary duty does not therefore necessarily involve a cause of action for fraud or breach of trust. The statement of claim does not, in the main body thereof, plead a cause of action for fraud or for breach of trust.

Findings of the court

25. As discussed at paragraphs 7 to 10 above, the key determinant of whether the prior leave of the court is required for the delivery of interrogatories is whether or not the cause or

matter is one where relief is sought on the ground of "fraud" or "breach of trust" (Order 31, rule 1). In order to determine whether the objection to the validity of the interrogatories in the present case is well made, therefore, it is necessary to consider the pleadings. This is done with a view to examining whether relief is sought on the ground of "fraud" or "breach of trust". If relief is sought on either of these grounds, then the College was entitled to deliver interrogatories without the prior leave of the court.

26. It is apparent from the statement of claim that allegations of *dishonesty* have been made against the College. In particular, it is alleged that the College informed the recruiting agency's representative that he was not to correct the error which had been made in respect of the calculation of fees (paragraphs 7 to 10). It is subsequently pleaded that the College continued to charge a fee of €5,000 in respect of each student registered and "sought to disguise this fact" by reducing the (tuition) fee, and in doing so "failed to disclose" the previous error (paragraph 23). It is next pleaded that the College "wrongfully retained" fees which were properly and lawfully due to the recruiting agency, and caused all or part of these fees to be "wrongfully paid" to third parties (paragraph 24). The College's conduct is said to amount to a breach of the "fiduciary duties" which it owed to the recruiting agency (paragraph 26). The prayer for relief includes (i) a declaration that the fees paid are held "on trust" by the College for the recruiting agency; and (ii) a claim for damages, to include aggravated and exemplary damages, for breach of fiduciary duty (paragraphs 2 and 9 of the prayer).

27. I am satisfied from this examination of the statement of claim that the recruiting agency's cause is one where relief is sought on the ground of "fraud" and "breach of trust". The term "fraud" is not intended to refer to fraud in a criminal sense, but rather should be understood in its equitable sense. The procedural device of interrogatories was one originally available only in the Court of Chancery, and the concept of "fraud" should

therefore be interpreted as it would have been understood by courts exercising equitable jurisdiction. In this regard, counsel for the College cited the decision of the House of Lords in *Nocton v. Lord Ashburton* [1914] A.C. 932 as authority for the proposition that, in the Court of Chancery, the term "fraud" came to be used to describe what fell short of deceit. An actual intention to cheat does not always have to be proved. Counsel placed especial emphasis on the following passage from the speech of Viscount Haldane L.J. (at pages 953/54 of the reported decision).

> "It must now be taken to be settled that nothing short of proof of a fraudulent intention in the strict sense will suffice for an action of deceit. This is so whether a Court of Law or a Court of Equity, in the exercise of concurrent jurisdiction, is dealing with the claim, and in this strict sense it was quite natural that Lord Bramwell and Lord Herschell should say that there was no such thing as legal as distinguished from moral fraud. But when fraud is referred to in the wider sense in which the books are full of the expression, used in Chancery in describing cases which were within its exclusive jurisdiction, it is a mistake to suppose that an actual intention to cheat must always be proved. A man may misconceive the extent of the obligation which a Court of Equity imposes on him. His fault is that he has violated, however innocently because of his ignorance, an obligation which he must be taken by the Court to have known, and his conduct has in that sense always been called fraudulent, even in such a case as a technical fraud on a power. It was thus that the expression 'constructive fraud' came into existence. The trustee who purchases the trust estate, the solicitor who makes a bargain with his client that cannot stand, have all for several centuries run the risk of the word fraudulent being applied to them. What it really means in this connection is, not moral fraud in the ordinary sense, but breach of the sort of obligation which is enforced by a Court that from the beginning regarded itself as a Court of conscience."

28. Notwithstanding that the recruiting agency has not actually employed the word "fraud" in its statement of claim, I am satisfied that, in substance, the cause is grounded on a claim of "fraud" in the equitable sense. The gravamen of the pleaded case is that the College sought to take advantage of an earlier mistake in the communication of the level of (tuition) fees so as to overcharge the Saudi Arabian authorities for a number of years.

The College stands accused of having sought to disguise the fact of this overcharging, and of failing to disclose the earlier error. These pleas impute dishonesty to the College.

29. Even if the cause could not be characterised as one where relief is sought on the ground of "fraud", it is undoubtedly grounded on an alleged "breach of trust". This term, as employed under Order 31, rule 1, is not confined to breach of an express trust. Applying its traditional equitable meaning, a breach of trust also encompasses a breach of trust in the sense of a breach of fiduciary duty. The cause as pleaded against the College is predicated on an allegation that a partnership agreement existed between the recruiting agency and the College; and that the College breached the "fiduciary duties" which it is said to owe the recruiting agency under the partnership agreement. Conduct of this type is properly characterised as grounded on an alleged "breach of trust".

30. Finally, whereas my decision as to the correct interpretation of the terms "fraud" and "breach of trust" (as employed under Order 31, rule 1) is informed largely by the fact that the procedural device of interrogatories derives from the Court of Chancery, my decision is also informed by a consideration of the *limited* practical significance of the distinction made under rule 1. The absence of a requirement for leave of the court does not greatly discommode the party to be interrogated. This is because, as explained at paragraphs 7 to 10 above, the requirement for the prior leave of the court, while an important safeguard, is not the only protection afforded to the party to be interrogated. Even in those cases where prior leave is not required, the party to be interrogated is entitled to impugn the interrogatories on a wide range of grounds, including *inter alia* that they are unreasonable, oppressive or irrelevant. The fact that the disadvantage suffered by the party to be interrogated in those cases where prior leave is not required is slight relative to the party in those cases where leave is required is something to be considered in interpreting the rule. Put otherwise, there is no necessity to give the terms "fraud" and

"breach of trust" (as employed under Order 31, rule 1) a narrow or restricted interpretation.

(2). WHETHER GROUNDING AFFIDAVIT CONTAINS HEARSAY?

31. Counsel for the recruiting agency objects that the solicitor who swore the grounding affidavit on behalf of the College has no direct knowledge of the factual matters in dispute between the parties. It is submitted that if and insofar as the solicitor advances what she asserts to be the College's account of, and position on, those factual matters, her evidence is hearsay. It is further submitted that the *entire* of the affidavit is inadmissible as a result.

32. It is said that there was an obligation on the College to have the grounding affidavit sworn by one of those individuals who were actually involved in the agreement between the parties.

Findings of the court

33. The objection made by reference to the rule against hearsay is misconceived. It is unnecessary for this court to resolve any *factual dispute* for the purposes of ruling on the validity of the interrogatories delivered on behalf of the College. This is because the key determinant of whether the prior leave of the court had been required for the delivery of the interrogatories is whether or not the cause or matter is one where relief is sought on the ground of "fraud" or "breach of trust". In order to determine whether the objection to the validity of the interrogatories in the present case is well made, therefore, it is only necessary to consider the pleadings. The affidavit evidence filed by each of the parties is, with respect, largely irrelevant to this issue.

34. When asked at the hearing before me to identify those paragraphs of the solicitor's affidavit to which objection was taken, counsel on behalf of the recruiting agency pointed

to two paragraphs only, namely paragraphs 7 and 11. It was said that these paragraphs purported to address matters outside the direct knowledge of the solicitor.

35. In circumstances where the task of this court, on the present application, is confined primarily to an examination of the pleadings, it is not necessary to have regard to either of the two impugned paragraphs. The content of same is simply not relevant to any issue which the court now has to determine. It is not necessary, therefore, to rule on the question of whether the application presently before the court represents an interlocutory application such as to avail of the exception to the rule against hearsay provided for under Order 40, rule 4.

36. Counsel submitted that the consequence of the inclusion of *any* hearsay evidence in an affidavit is that the affidavit has to be disregarded in its *entirety*. More specifically, it is said that the presence of even two paragraphs containing hearsay renders the entire of the solicitor's affidavit inadmissible. With respect, this cannot be correct. If, for example, a witness giving oral testimony were to stray into hearsay evidence, then the court would simply disregard that part of their testimony. The entire of their evidence would not be stricken off the record. It seems to me that similar sentiments should apply to an affidavit, at least in circumstances where the majority of the affidavit consists of an unobjectionable recitation of facts which are within the deponent's own knowledge. At all events, even if the entire of the solicitor's affidavit were to be disregarded, the court would still be in a position to rule upon the application in circumstances where, as already stated, the task of this court is confined primarily to an examination of the pleadings.

(3). ALLEGED ATTEMPT TO AVOID CALLING WITNESSES

37. It is alleged that the "real purpose" of the College in delivering interrogatories is to avoid having to establish its defence by calling witnesses as to fact at the hearing of the

proceedings. This would, it is said, deprive the recruiting agency of the opportunity of cross-examining the College's witnesses in relation to contested facts.

38. I must admit to some difficulty in understanding the logic of this objection. One of the perceived benefits of the use of interrogatories is that it may reduce the number of witnesses which it is necessary to call, with a corresponding benefit in terms of shortening the length of the trial of the action and a saving in legal costs. (See *McCabe v. Irish Life Assurance plc* cited earlier). Accordingly, to object to interrogatories on the basis that they may obviate the necessity to call certain witnesses rather misses the point.

39. More importantly, however, the implications for what witnesses it will be necessary to call are entirely dependent on the nature of the answers to the interrogatories. If, for example, the recruiting agency were to provide answers on affidavit which are supportive of the College's case, then it may well become unnecessary for the College to call particular witnesses. This cannot, however, be said to deprive the recruiting agency of an opportunity to cross-examine witnesses in relation to *contested facts*. The need to call witnesses will have been avoided precisely because certain facts will have been accepted on affidavit in answer to the interrogatories.

40. If, conversely, the answers on affidavit contradict the College's case, then it will be necessary for the College to call such witnesses as it considers necessary to substantiate its case.

41. In summary, therefore, the procedural disadvantage apprehended by the recruiting agency will not come to pass. It should also be recalled that the decision as to which witnesses, if any, to call at the trial of an action is largely a matter for the individual parties. If the College chooses not to call particular witnesses, then it is open to the recruiting agency to call those individuals as witnesses itself, and, if necessary, to serve a subpoena on them.

42. At all events, this particular objection is one which is not properly before the court. Order 31, rule 7 provides that if the party to be interrogated wishes to object to interrogatories on the grounds *inter alia* that they are oppressive, then this should be done by way of an application to set aside the interrogatories. No such application has been brought by the recruiting agency, and it has instead confined its case to the three objections outlined herein.

CONCLUSION AND PROPOSED FORM OF ORDER

43. For the reasons set out above, the plaintiff's three objections to the interrogatories are rejected. In particular, the defendant had been entitled to deliver the interrogatories without the prior leave of the court in circumstances where the cause of action as pleaded in the statement of claim is one where relief is sought on the ground of "fraud" and "breach of trust" within the meaning of those terms under Order 31, rule 1. The term "fraud" is not intended to refer to fraud in a criminal sense, but rather should be understood in its equitable sense. It encompasses an allegation of dishonesty. The term "breach of trust", applying its traditional equitable meaning, encompasses a breach of trust in the sense of a breach of fiduciary duty.

44. The three objections raised by the plaintiff can fairly be characterised as "procedural" in nature. The court has not yet been addressed on the "merits" of the interrogatories delivered. Therefore, it remains open, in principle, to the plaintiff to object to the interrogatories on other grounds. Any such objection must, however, comply with the procedures prescribed in that regard under Order 31. In circumstances where the plaintiff failed to bring a motion to set aside the interrogatories within time (Order 31, rule 7), the only procedural route remaining to it is that under Order 31, rule 6.

45. The order of the court will direct that a nominee of the plaintiff is to answer the interrogatories on affidavit by 10 December 2020. The order will also recite, for the avoidance of doubt, that it is made without prejudice to the plaintiff's entitlement to object pursuant to Order 31, rule 6. I also direct that all further interlocutory applications in these proceedings be made returnable before me. It is a cause of concern that proceedings first instituted in 2012 have not yet been brought on for trial.

46. Given that this judgment has been delivered electronically, the attention of the parties is drawn to the notice published on 24 March 2020 in respect of such judgments, as follows.

> "The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

47. The parties are invited to correspond on the issue of the precise form of the order, including the identity of the plaintiff's nominee. In the event of a dispute, the parties should file written submissions electronically within two weeks (26 November 2020).

48. Insofar as costs are concerned, the default position under Part 11 of the Legal Services Regulation Act 2015 is that legal costs follow the event, i.e. the successful party is entitled to recover their legal costs as against the unsuccessful party. This applies also to interlocutory applications. Given that the plaintiff's objection to the delivery of the interrogatories has failed, my *provisional* view is that an order for costs should be made in favour of the defendant. Such costs to be adjudicated in default of agreement, and the execution of the costs order is to be stayed pending the determination of these proceedings. If the plaintiff wishes to contend for a different form of cost order than that

proposed, then this should be addressed by way of written submissions to be filed electronically within two weeks (26 November 2020). The defendant will have two weeks thereafter to reply.

Appearances
Eamon Marray for the plaintiff instructed by Rennick Solicitors
Daniel Donnelly for the defendant instructed by William Fry Solicitors