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Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered:	31/01/2013

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

FRIENDS FIRST MANAGEMENT PENSION FUND LIMITED

Plaintiff;

-and-

JOHN McCANN

Defendant.

BURGESS J

[1] The plaintiff's claim is for the sum of £8m., together with interest thereon, due under a stated and settled account on foot of a loan agreement dated 27 February 2008 (the "Loan Agreement") and made between the plaintiff of the first part and the defendant of the second part. As at 15 January 2013 the interest claimed is £9,577,288.77, with interest claimed to be accumulating from that date at £5,569.32 per day. The Loan Agreement also made provision for security to be provided by the defendant by way of charges over shares in other companies ('the Security Charges')

[2] For ease of description I will refer to the objective of the transaction for which the loan was made available as being the acquisition of shares in the Taggart Group of Companies ('the transaction'). For the purposes of this judgment it is not necessary to go into detail as to the structure of that group of companies and the intricacies of various schemes which were considered not least in terms of particular shareholdings within that group.

[3] Clause 4 of the Loan Agreement provided that the defendant should repay to the plaintiff the loan (together with all interest accrued pursuant to Clause 5 of the Loan Agreement) on the earlier of (a) the Expiry Date, or (b) the occurrence of any of the Events of Default (as therein defined). For the purpose of this judgment it is

acknowledged that the Expiry Date would be the first anniversary of the Loan Agreement, namely 28 February 2009, and that an Event of Default occurred whereby part of the funds were diverted to a use outwith the purpose of the loan, giving rise to the requirement on the part of the defendant to repay the amount due under the Loan Agreement.

[4] The issues now before the court are:-

(a) Whether the plaintiff acted ultra vires its powers set out in the Memorandum of Association in making the loan and taking as security a charge over shares – the Security Charges:

(b) If the defendant was acting as an agent of the plaintiff with no personal responsibility as a principal debtor to repay the amounts due under the Loan Agreement.

[5] The legal process bringing this matter before the court has been tortuous commencing with the Writ of Summons issued on 15 September 2009. How we reached the stage where the two matters to be decided by the court are those set out in the preceding paragraph are relevant to the determination of both of the issues, but in particular the second issue as to the role of the defendant in this transaction.

VIRES

[6] I will deal at this stage with the issue of the vires of the company to enter into this loan and the Security Charges. Before doing so however I record that, as will be seen when I deal with the contents of the pleadings, the defendant alleged that the lending of this money and the taking of these securities breached regulatory provisions both of the Republic of Ireland and of the United Kingdom. This defence was struck out by the Court during the process of the pleadings. At the outset of this hearing it was argued on behalf of the plaintiff that the previous Order also struck out the defendant's allegation that the company was acting ultra vires its powers under its Memorandum and Articles of Association. I however concluded that it was a necessary proof on the part of the plaintiff to show that it had the power to carry out this transaction in all its parts.

[7] The plaintiff is registered in the Republic of Ireland, and therefore its powers and objects are to be determined and interpreted by the law of that jurisdiction. The court was greatly assisted in the determination of those powers by the evidence of Mr John Breslin SC, a barrister practising in the Republic of Ireland whose evidence was given as expert evidence. He completed a declaration acknowledging his primary duty is to assist the court and that this duty takes priority over any other duty which he may owe to a party or parties by whom he is engaged. The expertise of Mr Breslin was not challenged, and rightly so.

[8] I can deal with this matter succinctly by adopting the opinion of Mr Breslin with which I fully agree. The determination of the powers of the plaintiff are those set out expressly in the Memorandum of Association, together with those which can be implied because they may fairly be regarded as incidental to, or consequential upon the plaintiff's express objectives. Clause 2(11) of the plaintiff's Memorandum of Association provides:

> "To apply or invest the monies of the Company in any manner and without prejudice to the generality of the foregoing:
>
> (a) in the acquisition (whether by subscription, tender, purchase, exchange or otherwise however) or underwriting or on the security of any stocks, funds, shares or securities whatsoever:
>
> …
>
> (c) in the lending or deposit of money to or with any persons and on any terms."

Clause 2(12) provides that the company may:

> "… deal with and dispose of any property or investments or other assets belonging to the Company on such terms as may seem expedient."

And Clause 2(29) provides:

> "To do all such things as may be deemed incidental or conducive to the attainment of the above objects or any of them."

Clause 2(29)(ii) provides that each of the objects is an independent object, namely it is not limited by reference to any of the other objects of the plaintiff set out in the Memorandum of Association.

[9] No evidence was called on behalf of the defendant to assist the court to come to a contrary view to that expressed by Mr Breslin and I therefore determine in accordance with paragraph 20 of his witness statement, adopted by him in evidence, that:

> " In my opinion it is clear beyond any doubt that Clause 2(11) of Friends First's Memorandum of Association allowed it to do the following:
>
> (a) To apply or invest the monies of the company in any manner.
>
> (b) To apply or invest the monies of the company in the acquisition of shares or securities of any kind.
>
> (c) To apply or invest the monies of the company on the security of shares or securities.
>
> (d) To lend the company's money to any person and on any terms.
>
> (e) To lend the company's on terms that the borrower would provide security for the loan."

[10] I therefore determine that the plaintiff had the power to make the loan and to take security for the loan by way of a charge over shares. This determination is made on the basis of the express terms of the Memorandum of Association without any requirement to address any implied powers arising from the express power to lend money "on any terms". As a consequence I am satisfied that the Loan Agreement and all charges taken by the plaintiff to secure the obligations of the defendant under the Loan Agreement are within the powers and vires of the plaintiff and that they are valid in all respects.

CAPACITY

[11] I now turn to the argument of the defendant that he has no personal responsibilities under the Loan Agreement and the Security Charges, but rather that he was an "intermediary" (as he describes himself in an affidavit filed in this matter dated 6 June 2012) or an "agent" (as he describes himself in a second amended defence dated 28 November 2011 at paragraph 6).

[12] I will reach my determination on this issue under three headings namely:

(a) The pleadings in the case:

(b) The development of the transaction prior to the execution of the Loan Agreement and thereafter: and

(c) Other relevant evidence given during the course of the hearing.

(A) Pleadings

[13] (a) The Writ of Summons was issued on 15 September 2009 in the terms set out in paragraph [1] above:

(b) The Statement of Claim was served on 9 of October 2009 claiming that by reason of an Event of Default (to which I referred in paragraph 3 above) that the monies due under the Loan Agreement were now due and owing. The plaintiff claimed that the necessary Draw Down Notice had been served on 27 February 2008 whereby the monies were paid to the defendant's solicitors' client account, and that by letter dated 24 November 2008 the plaintiff's solicitors had notified the defendant's solicitors that he was in breach of the terms of the Loan Agreement and that the funds due thereunder had become payable. Further, on 16 December 2008 the plaintiff demanded immediate repayment of the principal sum together with interest.

Certain events and negotiations followed to which I will refer below, but on 22 July 2008 a further demand for immediate payment of the principal sum due and interest then due was served, and a further letter of demand was sent on 22 July 2009 setting out the interest and principal monies due up to that date.

(c) On 3 November 2009 the defendant served his defence statement. This was a blanket denial. It did not admit that he had entered into the loan agreement: it denied that it contained the terms set out in the Statement of Claim: it denied that the monies had been drawn down: it denied that he executed any deeds of charge by way of security: it denied that he had failed to repay the funds advanced under the Loan Agreement: it denied that he was in breach of the terms of the Loan Agreement: and it denied each and every allegation contained in the Statement of Claim - culminating at paragraph 15 in a denial of any entitlement on the part of the plaintiff to immediate payment of the principal sum and interest.

In his submissions at the conclusion of the evidence in this matter Mr McEwen BL on behalf of the defendant argued that a defence statement in such sweeping terms of denial was not unusual at that time in terms of practice in Northern Ireland. Whether that is right or not, and it certainly would not justify the defence statement in this case being approached in this manner, nevertheless what is **not** in the defence is of interest, namely:

(i) No reference was made to the absence of any power of the plaintiff to make the loan:

(ii) No mention was made of any breach of regulatory provisions in the Republic of Ireland or in the United Kingdom:

(iii) No mention was made that the defendant was acting in the capacity of an intermediary or agent.

(d) By an affidavit made 18 March 2010 in the action the defendant averred:

(i) That the plaintiff had advanced to him the sum of £8m for the commercial purpose of making an investment in the Taggart Holding Group of companies:

(ii) That because of regulatory restrictions which he claimed applied to the plaintiff the Loan Agreement was void:

(iii) That whilst Clause 2(11)(c) of the plaintiff's Memorandum of Association "might" permit the loan to be made to the defendant, he contended that it had to be viewed against the regulatory framework which he claimed restricted the permitted activities of the plaintiff, thereby making this loan ultra vires the objects of the plaintiff. I note that the vires issue is approached by the defendant purely in the context of his allegation that the loan would be breach of a regulatory framework – not because of the absence of any powers to do so under the plaintiff's Memorandum of Association:

(iv) That the funds were paid to him in Northern Ireland and "for a commercial activity which occurred in Northern Ireland".

Again the court notes no allegation was made that the defendant was acting in any capacity other than the principal debtor, with no mention of him acting in the role of an intermediary or an agent.

(e) The defendant served an amended defence statement dated 11 January 2011. A new paragraph 17 was added to the defence statement alleging that the plaintiff was not licensed or authorised to engage in activities outside the scope of the regulations referred to. At paragraph 17(b) the defence statement goes on to say:

> "(b) If the plaintiff has entered into a transaction for which it is not licensed or authorised to make it has acted ultra vires the objects contained within its Memorandum of Association."

It will be seen that the vires of the company is not linked to the absence of powers contained within the terms of the Memorandum of Association but rather by linking it to an alleged breach of regulatory provisions. The obverse of that argument of course is that if it was not in breach of those regulatory provisions then there would be no reason to argue it was not acting within the objects contained in the Memorandum of Association.

For the sake of completion I note that at paragraph 17(c) reference is made to the agreement being "either unenforceable due to the lack of regulatory authorisation or licence, <u>or is void by reason of it being ultra vires the plaintiff's company's Memorandum of Association</u>, …."

It accepts it could be could be argued that by the use of the word "or" the allegation of ultra vires simpliciter is raised - but for the first time.

However what is still absent in this amended defence statement is any reference to the claim which the defendant now makes of him acting as an intermediary or an agent. At this point we are some 14 months after the issue of the Writ of Summons.

(f) On 28 November 2011 the defendant served a second amended defence statement. One aspect of the changes was to move from "denying" to "not admitting" various assertions on the part of the plaintiff in its statement of claim. However at paragraph 6 reference is made to the allegation that the plaintiff was "an undisclosed principal in the purchase of "those shares" and had "used the device of a loan to the defendant to acquire those shares to circumvent the prohibition on the plaintiff not to purchase shares". Paragraph 6 then continues:

> "The plaintiff avers that this device was ultra vires the powers of the plaintiff. In the alternative, the defendant avers that the true nature of the agreement was that the plaintiff wished to acquire these shares for £8m using the defendant as an agent, and the defendant was required to deliver up the shares to the plaintiff, which he has done. In those premises the defendant denies that he has any indebtedness to the plaintiff."

Therefore for the first time in a period of two years from the issue of the Writ and 3 years from the demand for payment in the letter of the 24th November 2008, reference is made to the status of the defendant not being the principal debtor but rather as an agent; and for the first

time the allegation is made that the transactions was 'a device' seemingly based on the allegation that to proceed by direct purchase of the shares by the plaintiff would have been ultra vires its powers – something I have determined is not correct.

This latter argument as to a 'device' is supplemented by a statement filed by the defendant dated 6 June 2012. This chartered some of the progress of the potential investment in the Taggart Group of Companies to which I will come later, but the relevant portion for the purposes of this issue is contained in paragraph 11 which states:

> "I was presented with the agreement by Mills Selig, and I also executed the share transfers in favour of Friends First Pension Fund Limited. I verily believe that those share transfers were given to the plaintiff company. I also believe that by using me as an intermediary, the plaintiff company achieved the aim of investing in Taggart Holdings, and in return received the shares in Taggart Holdings. I believe that the use of the loan agreement was a device which the plaintiff company used to circumvent their inability to purchase shares in a property company."

(g) On 22 July 2011 the plaintiff served a Notice to Admit a number of matters namely that the defendant did sign the Loan Agreement: he did execute the Draw Down Notice: and he did execute three Charges over Shares relating to certain shares in three companies – the Security Charges. It was not replied to until 26 October 2012 some 14 months later when the admissions were made formally.

(h) I record in general terms that there were a number of hearings when the defendant was accorded the opportunity of filing expert evidence in relation to the issue of vires and in relation to the alleged breaches of regulatory provisions. 'Unless Orders' were made and as a result of the failure of the defendant to file any such documentation paragraph 17 of the second amended defence statement was struck out.

[14] I have reviewed the pleadings supplemented by the affidavit and statement of the defendant. Without more the court would have grave concerns as to the assertions of the defendant, given the piecemeal manner in which he has approached the allegations of the plaintiff. I believe it is fair to say that if someone were to be the subject of a claim for over £10m in circumstances as described by the defendant, the case made by him now that he was an agent for the plaintiff with no personal liability would have been made from the outset. Not only was it not done then, it was not made for some considerable period of time. At the hearing itself the defendant did not give evidence. That is his right but it means that those assertions

made by him through the pleadings require to be considered by the court as assertions made without being tested through cross-examination.

(B) The development of the transaction

[15] (a) The possibility of acquisition of shares in the Taggart Group of Company arose in and around November 2007. The Taggart Group of Companies was clearly in financial difficulty and required an urgent injection of funds. A proposal named 'Project Swan' was prepared by KPMG, accountants. One of the parties approached was Mr McCann, at that time in his capacity as a shareholder in a company known as Orion International Property Development Limited S.a.r.l ('Orion'). The plaintiff was one shareholder in Orion as was the defendant and a third party. As and when potential investments were being considered each of the shareholders would introduce capital either by way of loan or share acquisition. The defendant was the fund manager of Orion. Prospective investments were brought to the Investment Advisory Committee of Orion, which sat in Ireland. If it was considered that a project that could be taken forward it was brought to its Board which sat in Jersey. In relation to the proposed investment in the Taggart Group of Companies after some consideration Orion decided not to proceed. There appeared to be two reasons for this. First certain prejudicial tax implications; and secondly a view that the projections in the brief from KPMG were "aggressive" - with values being placed on assets which were considered optimistic, and concerns over the adequacy of income streams. It is worth noting however that Mr McCann had been involved as a shareholder in his own right in Orion which, in cross-examination, Mr McEwen referred to as "substantial".

As part of this investigation for Orion, Mr Richard Fulton, a solicitor in the firm of Mills Selig, solicitors, was instructed to conduct due diligence. This was taken some distance before Orion decided to proceed no further.

(b) The possibility of the plaintiff becoming involved in an investment in Taggarts was raised in and around the beginning of January 2008. No exact structure was settled at that time but initially it appears that it could be a direct loan from the plaintiff to the Taggart Group, probably secured by charges over shares and joint venture companies within Taggarts, but also by personal guarantees to be given to the plaintiff company by one of the Taggart Group directors and shareholders, Mr Michael Taggart, <u>and the defendant</u>.

Jumping ahead, this particular structure foundered on issues over rights of third parties to shares in the Taggart Group, in circumstances where third parties could trigger steps which could give rise to a catastrophic impact on the Taggart Group of Companies. The exact problems were set out in an e-

mail of 14 February 2008 from Mr Chris Guy a solicitor in Mills Selig acting on behalf of Mr McCann. Mr McCann was copied into that e-mail. It sets out the intricacies of the problem that had arisen and I do not require to go into it any further than that.

(c) Between January and February discussions were taking place to put into effect a structure under which, inter alia, Mr McCann would be a guarantor. Evidence was given by Mr Chris Guy, Mr McCann's solicitor, who was subpoenaed by the plaintiff. Great care was taken to ensure that no question of client/solicitor confidentiality or privilege was breached, but Mr Guy was able to be asked a number of questions about the general approach to the proposed structure, all of which are relevant to my deliberations. Even this structure which was under consideration changed from time to time, but for my purposes the note of a meeting of 13 February 2008 is of considerable importance in that establishes, in my opinion without argument, the exact state of negotiations at that time and the respective intended roles of all of the parties – including the plaintiff and the defendant.

Having set out some of the difficulties that were being encountered at that time, given the parlous financial position of the Taggart Group, and its requirement for an urgent injection of funds the note records as follows:

"

- FF explained that FF's view was that the £8m loan would either be given by FF to T supported by a personal guarantee given by JMcC, or directly to JMcC. FF's comfort was essentially JMcC and his personal net worth, not T or its business/strategy plans and FF therefore intended to call on the personal guarantee or go after JMcC directly if necessary.

- RF asked JMcC why he was proposing to invest in T, given the position referred to above. JMcE then gave a summary of the business/strategy plan for T which he has discussed with JMcC.

- RF explained that it was not possible for MS to draft any legal documents which would protect JMcC or the £8m investment, or ensure that the proposed share purchase in T by JMcC would proceed and/or complete, or that T's financial and commercial position would improve at any time. RF explained that JMcC needed to understand the risks involved, and that, ultimately, the decision whether or not to proceed was one for JMcC to make for himself.

- MS and JMcE then asked JMcC to confirm whether or not he wanted, or was willing, to invest in T through the £8m loan given, given T's current financial and commercial position, and the various financial and commercial risks attaching to and resulting from that current position. JMcC confirmed that he wanted, and was willing, to invest."

Without more this makes clear the alternative routes open to what was clearly the wish of Mr McCann to invest in the Taggart Group of Companies in a personal capacity. Mr McCann is a successful businessman. Amongst the papers furnished were the reports as to his net worth. He was at a meeting where his own financial adviser John McEneaney (J McE) was present, and who spelt out the position regarding the Taggart Group of Companies. He was advised by Mr McEneaney and indeed by Mills Selig that there were substantial risks involved which could not be protected against. The defendant acknowledged those risks but stated that he wished to proceed.

Over and above the fact that he was fully informed both of the risks and the role that he would be taking as principal debtor, we now know that before Christmas 2007 the defendant had invested £750,000 in the Taggart Group outwith any of negotiations for the more substantial investment facilitated by this loan from the plaintiff. This evidences that this defendant wished to be a major shareholder in the Taggart Group; had already taken a direct step to invest a very substantial sum; and, knowing the risks had indicated to all parties, he wished to proceed with this loan in order to achieve his objective.

During cross-examination it was never put to Mr Guy that the note was inaccurate in any respect.

(d) The approach of the defendant is further confirmed, if further confirmation is required, by a letter from Mr McCann personally dated 21 December 2007 addressed "To Whom It May Concern" in the following terms:

> "TAGGART GROUP
>
> We wish to confirm that John McCann/The Castleway Group are currently in negotiations with the Taggart Group with the view to taking a substantial equity stake in the latter. To this end we have made available <u>the deposit</u> (my underlining) of GDP £750,000 and upon successful negotiation hope to conclude above referred by 31 January 2008.

(e) Finally by way of confirmation the court has examined carefully the documentation evidencing that the plaintiff's solicitors made enquiries as to the net worth of Mr McCann and, given that he resided in Switzerland, also took the advices of Swiss lawyers as to the enforceability both of the obligations under the Loan Agreement and the enforcement of the Security Charges. Why they would have required to do that in the context of the allegation by Mr McCann has not been explained.

(f) The loan structure was then agreed to be to Mr McCann direct with the charges over shares referred to in the Writ and Statement of Claim. In correspondence and in pleadings Mr McCann states that he had handed over share transfers in relation to the various companies and asked the court to accept this as evidence that he was acting as an intermediary for the plaintiff. As I stated during the course of the hearing it was just as valid an argument that, in order to ensure that securities could be enforced, open share transfers would be completed so that, in the proper circumstances of the enforcement of those securities, the relevant transfer could be made. In the absence of such transfer forms it would be open to any person in the position of Mr McCann to refuse to sign the documents giving rise to delay. The execution of the share transfers and the handing over the share certificates in respect of them gives no weight to the argument of Mr McCann, but instead reinforces the claim of the plaintiff that they exist for the purposes of the realisation of assets charged to them in circumstances where there is default on part of Mr McCann.

(C) Relevant evidence

[16] During the course of examination of Mr Guy and Mr Fulton, Mr McEwen established that they were aware of the necessary regulations under the Solicitors' Order (Northern Ireland) to acting for both parties in certain commercial transactions. That is a matter which is of no relevance to the issues between the plaintiff and the defendant. However having introduced the matter I am content to express a view on their evidence although, other than in one respect (namely credibility), I consider it irrelevant to the final determination of this case. Having listened carefully to their evidence; having read the note of the meeting of 13 February 2008: and taking into account the business expertise of the defendant, it is crystal clear that Mr McCann was well advised as to the risks involved and had made a conscious decision to allow the solicitors to act for the plaintiff and himself – albeit with the operation of a Chinese wall. I make no comment on such a process save to say that I would be satisfied that both gentlemen acted in good faith and at all stages gave legal advice in the interests of the party that they represented.

One final point on this subject is that whether Mr McCann was the principal debtor or was the guarantor of a loan directly to the Taggart Group by the plaintiff, his obligations at all stages were exactly the same. Therefore the change from guarantor to principal debtor carried with it no change to the liabilities of the defendant – or the requirement of additional advice.

[17] Subsequent to default, extensive negotiations took place, which are evidenced in voluminous documents which have been produced to the court. It is not necessary for me to set them out, but rather to record that it is quite clear that through his legal advisor every attempt was being made by Mr McCann to restructure the debt that was owed by him under the Loan Agreement (including the possibility of offering further security over and above that already given) and a re-scheduling of the debt payments. None of that would have been required if the situation had been as described and claimed by the defendant.

[18] For the claim of the defendant to have any merit whatsoever the plaintiff would require to have had a reason for not pursuing a direct purchase by it of shares in the Taggart Group. We know there is no regulatory prohibition and I have confirmed that it was not outwith its powers as contained in the Memorandum of Association. What we know from the evidence of all witnesses, who I found clear, unambiguous and forthright, is that the plaintiff did not wish to take that route because of many of the same considerations that led to the conclusion of Orion not to proceed. The argument of Mr McCann requires there to have been a sophisticated, long-running conspiracy, involving a wide range of parties, including legal and professional advisors. All have testified that such a device or such a façade was never mentioned; it is not evidenced in any of the documentation; and was not raised by the defendant until some two years after these proceedings started and three years after the loan was called in. To my assessment of the plaintiff's witnesses I add that of my assessment of Mr Fulton and Mr Guy, whose evidence was not challenged and who were witnesses on whose testimony I can place considerable weight.

No explanation for the absence of any documentation was given: no evidence was given as to why such an argument was not put until 2011: no sworn testimony was given disputing all the assertions made by the witnesses for the plaintiff and the other witnesses including his own solicitor – all of whom deny the existence of any such device or conspiracy.

[19] The court has seldom come across more unmeritorious assertions as those put forward by this defendant. His approach to these proceedings has been one of procrastination, delay and a failure to produce evidence to substantiate those claims – including failures to meet court deadlines resulting in defences being struck out.

[20] The court rejects the arguments of the defendant in this case, and Orders that:

- The defendant pay the capital sum of £8,000,000 (sterling) due under the Loan Agreement together with interest as set out in Clause 5, a rate and basis of calculation never challenged by the defendant. That sum for interest will be £ 9,577,288.77 to the 15th January, the date of the last calculation, together with the daily sum of £5,569.32 thereafter, including after judgement - as provided in the Loan Agreement (Clause 11.2) and not challenged.

- The securities referred to in the 'Condition Subsequent' in the Loan Agreement are valid and enforceable by the plaintiff.

COSTS

[21] At Clause 7.2 of the Loan Agreement it provides:

> "7.2 The Borrower shall pay, on demand and on a full indemnity basis, to the Lender all costs and expenses and any Value Added Tax or similar taxes on such costs and expenses respectively incurred by it … in contemplation of or otherwise in connection with the enforcement (or attempted enforcement) of, or preservation (or attempted preservation) of any rights under this Agreement or otherwise in respect of any monies from time to time owing under this Agreement."

[22] The plaintiff seeks costs to be paid on a full indemnity basis as provided by the above paragraph. The court reminds itself:

(i) Of its strictures in relation to the approach of the defendant in this particular matter whereby

- he originally denied every aspect of the plaintiff's claim only to later make formal admissions as to a substantial number of fundamental and basic issues: and

- the defendant then sought to introduce new issues:

  (a) in relation to vires relating to regulatory issues which were then struck out due to his default in producing any substantial argument to allow the matter to become a triable issue:

  (b) the issues of agency.

(ii) That in counter distinction to the attitude of the defendant, the plaintiff has taken a number of steps to seek resolution in this particular matter.

[23] The court has also commented on the lack of any merit on the part of the defendant in respect of any issue in this particular matter, but that he has sought to delay the enforcement by the plaintiff of its justified rights.

[24] In the above circumstances and on the basis of the terms of the Loan Agreement, I order that the costs be paid on an indemnity basis. Inherent in that will be that the level of charges for the work done is not unreasonable with the burden of proof falling on the defendant to show that they are unreasonable. For the avoidance of doubt all costs and expenses involved in relation to the attempts at settlement fall to be paid by the defendant in accordance with the Loan Agreement as steps taken to seek to obtain payment of the monies due under the Loan Agreement - and indeed to seek to avoid the further expenses of legal proceedings including the hearing of the matter.