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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	08/03/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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CAVAN, FERMANAGH, LEITRIM COMMUNITY GROUP ("CIC")
Plaintiff

and

QBRC LIMITED
First Defendant

JOHN McCARTAN
Second Defendant

JOHN BOSCO O'HAGAN
Third Defendant

ERNIE FISHER
Fourth Defendant

LIAM McCAFFREY
Fifth Defendant

DARRAGH O'REILLY
Sixth Defendant

KEVIN LUNEY
Seventh Defendant

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Mr Mark Orr KC with Mr Aiden Sands (instructed by PJ Flannagan Solicitors) for the Plaintiff
Mr David Dunlop KC with Ms Anna Rowan (instructed by Carson McDowell Solicitors) for the Defendants

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HUDDLESTON J

Introduction

[1] This is the defendant's strikeout application pursuant to Order 18 rule 19(1)(a)-(d) of the Court of Judicature (NI) Rules 1980 ("the Rules") which provides as follows:

> "19.-(1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-
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> (a) it discloses no reasonable cause of action or defence, as the case may be; or
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> (b) it is scandalous, frivolous or vexatious; or
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

[2] Save in respect of 19(1)(a) the court may take into account affidavit evidence and in the present case the relevant affidavit evidence consists of:

(a) The grounding affidavit of Mr Liam McCaffrey dated 5 July 2022;

(b) A replying affidavit of Mr Patrick Anthony Doonan of 26 October 2022 (Mr Doonan's affidavit);

(c) A rejoinder affidavit of Mr McCaffrey on behalf of the defendants dated 15 December 2022.

The affidavits at (a) and (c) are collectively referred to in the remainder of this judgment as the McCaffrey Affidavits.

[3] The case itself is the latest in a long line of litigation which relates to the collapse of the Quinn Group following the banking crisis in 2008-2011. During that period a Community Association was formed (and here I quote from the statement of claim at para 6):

> "In order to safeguard and promote the interests of the local communities in the counties of Cavan, Fermanagh and Leitrim being the communities of people who worked in and relied on the Quinn Group businesses and those related to them. The group is called the Cavan, Fermanagh, Leitrim Community Group or "CFL."

[4] By way of background the Quinn Group of Companies were, at the operative point, financed by three bondholders LCS Global, Brigade Capital QAC Limited

(otherwise Contrarian Capital) and Silver Point Capital Luxembourg Platform SRL (known as Silver Point Capital). Those Bondholders ("the Bondholders") (in summary) acquired the interest of other bondholders and, thereafter, acquired ownership of the former Quinn Group of Companies from its receiver. They ultimately now hold 78% of the shares in Quinn Industrial Holdings Ltd (QIHL) the vehicle used for the restructuring, having given 22% of the shares in that company to the defendants. It is those shares that are now in contention.

[5] The fundamental thesis of the plaintiff's claim is that "CFL members worked continuously, for a number of years, in order to lay the ground work for a future buy out plan of the Quinn Group of Companies for the purpose of protecting local employment and interest in retaining control of the former Quinn Group of businesses within the local community." They say that the work which was carried out by CFL was "instrumental in creating an environment in which the Bondholders were prepared to transfer a 22% shareholding to the defendants for no valuable consideration on the part of [those defendants]." They say the first defendant (QBRC) was formed for the specific purpose of ultimately acquiring the Quinn Group businesses from the Bondholders and that the second, third and fourth defendants were "specifically chosen by Mr Sean Quinn … on the basis that they were business people from the local community who were trustworthy and would command respect from the local community in the counties of Cavan, Fermanagh and Leitrim." The fifth, sixth and seventh defendants (the statement of claim continues) "were asked to become directors of the first defendant as they had a relatively long established and good working relationship with the bondholders."

[6] At para [13] of the statement of claim the plaintiff asserts:

> "In 2014 an agreement was negotiated between the bondholders and QBRC in which the defendants acquired a substantial shareholding in Quinn Industrial Holdings Ltd (QIHL) (ie the holding company for the whole of the Quinn Group) and that as a result:
>
> (a) 11% of the shares in QIHL are held by the first defendant;
>
> (b) A further 11% of the equity in QIHL is held by the first named defendant on trust for the "managers" including the fifth, sixth and seventh defendants."

[7] The essence of the plaintiff's claim is that the defendants took that shareholding "upon an *express agreement* that the said shareholding would be held upon trust for the benefit of the local community in the area in which the Quinn Group of Companies was based" and that the acquisition was "expressly done to promote the well-being of the area." [Emphasis upon the word express]

[8] Whilst the affidavit evidence forms a basis for the court's consideration, I want to make it clear that this is not a "mini trial" of factual issues (which I agree would more properly be left to a full trial) but do form the basis upon which the court can undertake a proper assessment if the case should be struck out.

[9] This particular question was very helpfully considered by Humphreys J in the recent case of *McIlroy Rose v McKeating* [2021] NICh 17 – where, on the facts of that case, he determined that the defendant did not have any "legal entitlement to advance the cause of action pleaded." At para [24] he states:

> "[24] A cause of action is a factual situation the existence of which gives rise to an entitlement on the part of one person to a legal remedy against another. In order to disclose a reasonable cause of action, the pleaded case must set out each element required to constitute a particular cause of action."

He continues at para [25]:

> "[25] Under the inherent jurisdiction and grounds (b)-(d), evidence by affidavit or otherwise is admissible and the court can explore the facts fully, but should do so with caution. In *Mulgrew v O'Brien* [1953] NI 10 Black LJ made clear that on such an application, the court will strike out:
>
> > '…if it is manifest that the plaintiff's case cannot possibly succeed or if it is clear that the action is an abuse of the process of the court. In exercising this inherent jurisdiction the court is not confined to what appears on the face of the pleadings. Extrinsic evidence is admissible of the facts which it is contended should induce the court to act.'"

[10] The principles governing strikeout applications are comprehensively set out in the case of *Three Rivers District Council v Bank of England No.3* [2001] UKHL 16 as follows:

(i) Strikeout is only appropriate for plain and obvious cases.

(ii) Judges should not rush to find findings of fact on contested evidence at a summary stage.

(iii) If an application to strikeout involves a prolonged and serious argument, the judge should, as a general rule, decline to proceed with the argument unless

he not only harbours doubts about the soundness of the pleading but, is also satisfied that striking out will remove the necessity for a trial or will substantially reduce the burden of preparing for or the burden of the trial itself.

(iv) Judges hearing strike out applications should not conduct mini trials involving protracted examination of the documents and facts.

(v) A judge may refuse to hear a strike out application if:

(a) It is unlikely to succeed; or

(b) Will not be decisive or appreciably simplify the eventual trial.

[11] With all of that guidance in mind, I turn now to look at the defendant's case for strikeout.

The defendant's case

[12] The defendant's case is that the pleadings filed fail to disclose a cause of action in either fact or law and/or amount to proceedings that are scandalous, frivolous and/or vexatious or an abuse of process. They go so far as to say that the pleadings are "unintelligible." The core reasons which they advance for this are as follows:

(a) To the extent the claim is grounded on a "purported trust", they say that it must fail as, legally, "the matters pleaded cannot give rise to any form of Trust in law."

(b) They say that the evidence filed discloses "a wider strategy by the plaintiff" and assert that "Mr Doonan has made unjustified and false allegations in his affidavit entirely gratuitously [equating] to vexatious conduct" and assert "the proceedings are simply brought to scandalise the defendants", ie that the proceedings amount to an abuse of process.

[13] The plaintiff in this action was incorporated on 11 October 2022. In the exchanges between the parties in the skeleton arguments and affidavits it is presented as a representative body which acts in succession to CFL. In that capacity it seeks (on the face of the Writ):

(a) A declaration that 11% of shares in QIHL held by the first-named defendant are held on trust for the plaintiff for the benefit of the local community situate in countries Cavan, Fermanagh and Leitrim;

(b) A declaration that the 11% equity in QIHL held by the fifth, sixth and seventh named defendants is held on trust for the plaintiff for the benefit of the communities in counties Cavan, Fermanagh and Leitrim;

(c) An order that the defendants execute a transfer of all shares and equities held by them in QIHL to the plaintiff as a community interest company; and

(d) an order that the defendants execute and transfer all the shares and equities held by them in Quinn Business Retention Company Ltd,

together with an account and enquiry in respect of rents, profits and income received etc. The claim advanced, therefore, is very clearly one based on trust law.

[14] The statement of claim (as quoted extensively above) provides the history of the involvement of CFL and incorporates an allegation (repeated literally) that based on "the work carried out by CFL … the three bondholders who had taken control of the former Quinn Group … was prepared to transfer to a 22% shareholding to the defendants for no valuable consideration" pursuant to a 2014 agreement between the bondholders (i) and QBRC (ii). At para [16] of the statement of claim it puts its claim thus:

> "Although the shareholding was transferred to the first named defendant at all material times the defendants and each of them expressly took the said shareholding in QIHL upon an *express agreement* that the said shareholding would be held upon Trust for the benefit of the local community in the area in which the Quinn Group of Companies was based." [emphasis added]

[15] Particularising that case, they say:

> "(a) That the acquisition of the shareholding was expressly done to promote the well-being of the area;
>
> (b) That the making of the said agreement was designed to ensure the goodwill and co-operation of the local community could be harnessed;
>
> (c) That no valuable consideration was paid for the shareholding;
>
> (d) That the second, third and fourth defendants referred to themselves as sponsors in correspondence with local businesses;

(e) That the second, third and fourth defendants publicly acknowledged that they have no personal interest in the said shareholding;

(f) That the first defendant issued a mission statement on 3 March 2014 which was circulated to a substantial number of businesses suggesting that it was focused "solely on ensuring that this industrial base remains intact and headquartered in the Fermanagh/Cavan area and is thereby positioned to profitably maintain and increase employment within these businesses (ie the Quinn businesses) while creating the necessary environment for strong future career growth for local people."

[16] They continue that, in an email of 2 March 2015, the fifth defendant stated:

> "… the sole motivation driving this initiative is to protect the economic well-being of the local area ensuring that the former Quinn Group Business is locally managed and controlled for the benefit of this community and, most importantly, kept whole and not disposed of piecemeal."

[17] In terms of the claim made by the plaintiff it claims (in the alternative) that "a common intention constructive trust arose in which the defendants have…… attempted to take advantage of the informality of the arrangements between them in order to hold a beneficial interest in the trust property for themselves' (para [18] of the statement of claim). As a further alternative the plaintiff claims "the defendants and each them [hold] the shares in QIHL upon a charitable trust for the benefit and advancement of the local community." Three claims based squarely on trust law principles are advanced.

[18] At paras [19] and [20] of the statement of claim they continue:

> "19. In the circumstances, the defendants and each of them were subject to a duty to act honestly and in good faith, in relation to the entitlement of the beneficiaries of the trust to receive its share and profits and receipts in respect of its shareholding in QHIL.
>
> 20. The defendants and each of them have conducted themselves in a manner which is contrary to the express declarations of trust made by them. More recently (on 15 November 2021) the solicitors acting for the plaintiff wrote to the defendants asking them to publicly declare and confirm the shares were held on trust and/or to

> transfer the shares to the plaintiff but that no response was received and that, accordingly, the plaintiff takes the view that the 'defendants and each of them have acted contrary to the terms of the trust on which they hold the trust property.'"

[19] It is clear from a simple reading of the statement of claim, therefore, that one can quite rightly expect that the factual elements which underpin such claim(s) must either be pleaded or set out in the grounding affidavit(s). In short, the elements that are relied upon to satisfy the requirement of (a) an express trust; (b) a "common intention constructive trust" and/or (c) "a charitable trust" or, indeed, any other form of trust must be sufficiently cogently expressed at least to proceed to a plenary trial.

[20] What is initially remarkable, however, is that as a starting point in this analysis the plaintiff itself does not actually seek to fully identify the nature of its own operation or constitution, nor indeed the *actual* nature of the trust it asserts - but that is a point to which I shall return. On both points it leaves the matters to the court.

[21] What we have (in Mr Doonan's affidavit) on behalf of the plaintiff is an assertion that "unknown to our organisation (CFL) [the defendants] entered into the … agreement of 16 December 2014 in which they were awarded 22% of the shares in QIHL at no consideration." He does thus identify December 2014 as a date of significance.

[22] He then explains in his affidavit that the rationale for the incorporation of the plaintiff (in October 2021) was to corral the support which previously existed through CFL and two other similar unincorporated organisations – Concerned Irish Citizens (CIC) and Concerned Irish Businesses (CIB). This, he says, led to the incorporation of the plaintiff on 11 October 2021 and the lodgement of a sum of £48,000 "on account of costs." There is no clarity given as to the exact source of those funds or, indeed, any agreement as to their deployment other than the fact that they were to pay for costs. The writ itself that is the subject of this strike out application was issued on 26 January 2022.

[23] As I have indicated, although the underlying thesis of the claim is one which suggests a trust, neither Mr Doonan – nor indeed the skeleton argument which is lodged in support of the claim - clarifies the exact basis upon which such a trust is claimed, nor the nature of the trust that is asserted.

[24] Looking at the various possibilities, at the point when the disputed shareholding was advanced by the Bondholders (ie 2014) the case is <u>not</u> made that it was already subject to an equitable interest in favour of those whom the plaintiff now purports to represent. There is nothing within the plaintiff's case to suggest

anything other than the fact that the Bondholders were exercising the security rights vested in them, free of any such claims.

[25] That being the case, one would then naturally look for the basis upon which the asserted equitable interest is made within the pleadings and/or Mr Doonan's affidavit, but whilst the allegations (as above) about an "express agreement" (made by the defendants) are made:

(i) They are not, in my view, substantiated with an evidential basis; nor

(ii) Do the various comments made by the defendants and upon which reliance is placed by the plaintiff (such as are contained in mission statements and the emails etc to which I was referred) amount, in my view, to an express declaration on the part of the defendants or any of them either individually or collectively that they felt in any way constrained by the existence of and/or evidenced the creation of such a Trust. Indeed, in the case of the corporate defendant (ie the first defendant) and being cognisant of the corporate governance issues that would attend such a declaration that would present certain additional difficulties – none of which the plaintiff has sought to address.

[26] Indeed, given the corporate reorganisation which occurred in 2014, there is nothing, in fact, to suggest other than that the defendants were entitled to the shareholding which they received absolutely and entirely free from such equitable claims as are now raised. The defendants make the case that it was a "common management buy-out" in which the allocation of the shareholding was made to maintain the loyalty of key personnel and that the allocation was seen as an essential element of the transaction. That seems a logical explanation and one that is not challenged by way of the material referred to by the plaintiff.

[27] As a fundamental question, therefore, there is a lack of an identifiable factual basis upon which the equitable interest is alleged. As a result, there is, in my view, fundamentally no factual basis advanced upon which to ground this claim which is - as per the comments of Humphreys J referred to above in McIlroy Rose (see above) – fatal to its continuance.

[28] Turning to look at the plaintiff, even if the inchoate unincorporated organisation of CFL (which I accept was set up in and around 2011) did have such equitable rights there is, thereafter, no explanation given in either the pleadings or the affidavit evidence as to how those rights might now properly be asserted by the plaintiff. The plaintiff's case is largely based on an assumption that (a) such rights existed and (b) that they now accrue to the plaintiff, but again, one has to make that assumption as to the basis of the plaintiff's case because it is not articulated or explained in either the pleadings or the affidavit evidence. There is no suggestion, for example, of an assignment of such rights at any point either upon the incorporation of the plaintiff or since.

[29] The issues around the role of the plaintiff itself also raise questions. At a very fundamental level the plaintiff simply advances its constitution (which it expressly accepts encompasses both charitable and non-charitable objectives) as a worthy recipient of any such rights (and thus the shareholding) but does not really articulate the exact basis of how, in 2021, it had an entitlement to advance such a claim – some 10 years after CFL was formed and almost nine years after the reorganisation and/or attempt to deal with any limitation points that may arise. In addition, it does not seek to grapple with the issue of how the plaintiff's status might impact on the nature of the Trust that it now asserts.

[30] The plaintiff in its skeleton argument makes the very fair case that in a strikeout application the court must be satisfied that the case is "unarguable or almost incontestably bad" per *Lonrho Plc v Fayed and others* [1992] 1 AC 448. It makes the plea that if this case is struck out the plaintiff will be "driven from the seat of justice without ever having had the opportunity to provide evidence" in support of its case. With respect, whilst I can understand why they make that argument, in my view, they have had an opportunity both in the pleadings and/or the grounding affidavit and, indeed, in any rejoinder that they wished to file explain the exact basis upon which their claim is based. They have not availed of that very ample opportunity in my view.

[31] They say that "equity follows the intention rather than the form and that, therefore, this court should not be too rigorous in the application of what trust lawyers describe as the "three certainties" as the precursor to the establishment of a non-charitable trust, and simultaneously suggest (in the alternative) that it is always open to the court to conclude that a charitable trust may exist on the circumstances. The plaintiff postulates this ultimate alternative notwithstanding the fact that the plaintiff is not registered with the Charity Commission NI as a charity and, given its current objects is probably unlikely to be so registered. It makes a plea that "the facts surrounding the creation of a trust in this matter are in dispute and cannot be asserted until oral evidence has been heard to determine [the nature of the trust] in support of the non-charitable purpose trust." In that I was referred to *Re Denley's Trust* [1969] Chancery 373 as authority for the proposition that it is entirely acceptable for the beneficiaries of a non-charitable trust not to be capable of precise determination and, in the case of there being a charitable trust, the case of *Re Smith* [1932] Ch 153 where the gift "to my country England" was held to be charitable could apply equally to the broad class of potential beneficiaries (ie the residents of Cavan Fermanagh and Leitrim) that we have here.

The defendant's case

[32] To consider the defendant's case in its specifics:

(a) They say that the "express agreement" which is referred to both in the pleadings and in the affidavit is not particularised in either fact or law;

(b) They point out that the basis of any such agreement is not pleaded, ie there has been no attempt to explain how the fact the defendants (including the first defendant, as a limited liability company) have actually resolved or expressly bound the members to act in such a way that in any way accords with the plaintiff's claim and/or establishes any form of trust;

(c) That it is not pleaded how the plaintiff is either the beneficiary of any such Trust as is alleged or, alternatively, how it purports to have held representative rights asserted (at least until 2021) by an unincorporated association and/or demonstrated how they have been assigned or otherwise accrue to the plaintiff in this case;

(d) As to the definition of the beneficial class of any such alleged trust – asserting (as they do) that the total population of the three counties concerned – the defendants point out that such a beneficial class (based on an approximate head count) would total approximately 169,000; and

(e) That there are no specifics as to the terms of any such Trust.

[33] Based on all of these uncertainties they say that as a fundamental matter of law the pleadings and/or evidence do not demonstrate any (much less all) of the three certainties which are required to establish a Trust, namely:

(i) the intention to create the Trust;

(ii) certainty of its subject matter; and

(iii) certainty in respect of its objectives.

Nor how exactly a trust has been constituted in a manner that is recognizable in law. On the requirements they cite (Lewin on Trusts, 29th edition 3-003).

[34] In the absence of satisfying such fundamental requirements they say the claim should be struck out.

[35] As to the facts at issue the defendants say:

(a) That there is nothing in the pleadings or affidavit evidence to suggest that representations or promises of any caliber - much less those sufficient to create an express trust over or beneficial interests in the shares - were ever given by any of the defendants and that the arrangements were a "common management buyout structure;"

(b) That there is nothing to explain why in 2014 no steps were taken to assert the beneficial interest which is now alleged;

(c) That there is nothing to adequately explain why on foot of a letter dated 20 July 2020 from Napiers Solicitors that the "Quinn family" asserted an interest in exactly the same shares as are the subject of this action.

[36] On the question of there being an abuse of process, the defendants take very great exception to a large number of averments in the affidavit evidence which they say are no more than mere allegations on the part of Mr Doonan and which they say breach the provisions of Order 41 on the basis that they amount to "a plethora of unjustified and false allegations … made [entirely gratuitously …] and seemingly under the impression that those allegations will be protected by privilege."

[37] In this specific regard they refer to the judgment of Humphreys J in *The Matter of an Application by Mooreland and Owenvarragh Residents' Association for Judicial Review* [2022] NIQB 40 at para [108]:

> "Evidence is only admissible when it is relevant to issues in the litigation. This is a basic proposition. MORA and its advisers should never have placed before the court material the only purpose of which could have been to attempt to influence judicial thinking in its favour. …
>
> [110] The nature of this evidence is such that little weight could be attached to it."

[38] In the context of the present case the defendants (at para 40 of their skeleton argument) say:

> "The decision by the plaintiff to file an affidavit replete with such serious allegations is plainly intended to use the court as a vessel to promote lurid and unattributed slurs on the defendants' characters protected by the privilege that litigation permits. The court is asked to take a particularly strong view of this abuse of its facilities and take such action as it deems appropriate for its process being so abused."

Consideration

[39] As Humphreys J said in *McIlroy Rose (supra)* any claim if it is to be brought before a court for trial must be based in a factual scenario. As I have already indicated above the factual basis which underlies the present claim is one which is based on an alleged trust but, in my view, the fundamental flaw in that argument is that the plaintiff itself has either not attempted to or cannot articulate the exact basis of the trust which it purports to be or itself seek to represent. It refers several times to 'an express agreement' on the part of the defendants but doesn't explain

adequately in my view how or on what exact basis such 'agreement' was reached or evidenced. It says that that such issues are matters for the court in the trial but given the nature of this action and the claim which it makes in respect of the contested shares the plaintiff must, at the very least, in my view, be able to articulate the essential basis upon which it claims an entitlement to the disputed shares. Fundamentally, however, (a) they have elected to leave open the nature of the trust that the plaintiff purports to be and/or represents; and (b) they have not, in my opinion, been able to demonstrate at a very basic level the origin and detailed basis upon which the plaintiff claims an equitable interest; and (c) (even if I did accept that such an interest did exist) how they accrue to that interest in succession to the CFL. Collectively those, in my view, render the case liable to be stuck out.

[40] Specifically, the plaintiff has not been able to demonstrate that, in the case of a non-charitable trust, there is a sufficient basis to satisfy the three certainties which are required to establish a trust (see above). In the alternative, even if I were to accept the existence of a charitable trust, the plaintiff has not even attempted to demonstrate how they meet the requirements of the Charities Act - particularly given its own concession that its express objectives are mixed. I shall return to these objectives later. In any event, it should not be as the plaintiff suggests, for the court to pick and choose but for the plaintiff at this stage and in these proceedings to be able to set out its case in both fact and law. In my view, it has failed to do so.

[41] In the case of a non-charitable trust, as a basic minimum, the plaintiff must establish that the defendants have by "express agreement" (their words) evinced their interest or have declared or otherwise created a trust in respect of the shareholding and/or be bound by "a common intention trust." Those are factual matters that have not been addressed. In Mr McCaffrey's replying affidavit, he addresses this particular point in the following terms and characterises the plaintiff's actions as follows:

> "I am confused as to what Mr Doonan is trying to say, or what inferences are to be made from the statements he sets out. There is (it goes without saying) a huge difference between saying that we want to deliver for stakeholders including the staff, customers and the community and that equating to me saying that … I somehow owned my shares on trust for the 'community' at large … The stated intention was to deliver a successful and vibrant business which would generate jobs and support the local community is in no way inconsistent with the position that neither myself nor the other directors were holding their shares on trust for anyone, including 'the community.'"

[42] In describing what occurred as a "common" management buyout structure he says:

> "The first defendant subscribed thirteen and a half thousand in the capital of [QIHL] as a trustee on a disclosed bare trust for eight members of the Target Management Team including the fifth, sixth and seventh defendant. The process was one that involved several teams of high calibre lawyers for interested parties … There was nothing unusual of the structure and of the form of agreement. It was a 'common' management buyout structure when the management team stay involved both pre and post-sale despite what is being inferred by the plaintiff."

[43] The evidence, in my view, supports that characterisation of events whereas the plaintiff has not actually provided anything to contradict it or to establish the grounds of its own contrary claim. It has suggested the existence of a "common intention constructive trust" where one party acts unconsciously by taking advantage of the informality of an expressly intended transaction but has done nothing to establish the factual basis that would underpin such an assertion – other than in the most general of terms.

[44] At a very fundamental level the plaintiff has failed to establish even the basic elements of an "express agreement" and/or the factual or evidential basis upon which could seriously advance its claim for such a "common intention" and/or how exactly a beneficial interest in respect of the shares arises. I have concluded that it has failed to do so because none exists. The claim falls at the first hurdle because it lacks a factual basis.

[45] Turning then to the question of the objects of the plaintiff's constitution. It is perhaps useful to look at the recorded objectives of the plaintiff company. These are set out (at Clause 3.5) of its Memorandum of Association as follows:

> "(a) To carry out local improvement schemes.
>
> (b) To promote jobs and training within the local community.
>
> (c) To develop sports and recreational facilities.
>
> (d) The advancement and support of former and current employees of the Quinn Group of Companies.
>
> (e) To take ownership and manage QBRC Ltd for the benefit of the community and as a vehicle to further our purposes.

(f) To work as a stakeholder in the community with the objective of integrating a community development trust.

(g) To provide QBRC Ltd sponsors with an exit strategy enabling the shareholder and ownership of QBRC Ltd to be returned to the community.

(h) To provide our continued support to Sean Quinn Senior for the purposes of the expansion and growth of the Quinn Group/Manac Group of Companies.

(i) To work with local landowners and farmers for the release and extraction of raw materials available for the purposes of promoting the objectives."

[46] Those objectives are taken (largely) from the rules of the unincorporated Cavan, Fermanagh, Leitrim community group. It is not for me as part of a strike-out application to determine the exact nature of such objectives – that issue is not before me and, in any event, I have not heard argument on that point (other than as ancillary to the strike-out application) but as the plaintiff itself acknowledges the very best one can say is that those objectives potentially constitute "mixed charitable and non-charitable purposes." The plaintiff, however, as part of this claim asserts that it exists "primarily for the benefit of the communities in [Cavan, Fermanagh and Leitrim]." The plaintiff says (relying on *Re Smith (supra)*) that this is sufficient in terms of the creation of an appropriate class of beneficiaries notwithstanding the defendant's counter argument that taken literally this equates with a beneficial class of some 169,000 people. That appears to be the basis of its claim for a charitable trust. That does not, in my view, obviate the need for it to establish at this stage the basis upon which it asserts (a) it might qualify to be a charity; or (b) how that charity is constituted.

[47] The plaintiff has not either in its pleading or its affidavit evidence sought to grapple with the fundamental question as to:

(a) Whether or not it purports to be a charitable trust?

(b) If it is not a charitable trust, what type of trust it purports to be and if non-charitable how it satisfies the requirements of the three certainties?

(c) the identity of the beneficiaries/beneficial class and/or the terms of the trust?

(d) otherwise how it makes claim to the alleged shares.

> All that it says (at para 19) is that it is the plaintiff's claim "that it is representative of a large number of people in those three counties and can be considered as an appropriate trustee for assets to be held for the benefit of the residents therein."

[48] In conclusion, the ground upon which I accede to the strike-out application is that it has not been articulated sufficiently to convince me that the plaintiff has got an equitable claim to the shares in the manner that it has tried to plead, ie it has not established any factual basis for its claim. That is sufficient, in my view, for me to accede to the strike-out application (see again, Humphreys J in *McIlroy* supra). In addition, on the legal basis, I am not convinced that the case has been made out that a valid trust has been created – whether charitable or non-charitable – or that the plaintiff is capable of demonstrating (in the case of the former) that it is a charity or (in the case of the latter) that the three certainties can be established should the case be allowed to proceed and/or that an express trust was ever created and/or that there exist the basis for a "common intention trust" in either law or fact. Those failures, in my view, render the claim as "incontestably bad " and satisfy the high hurdle that is required in a strike out case.

Abuse of process

[49] The defendant argues that the claim made is vexatious and scandalous, and that the grounding affidavit contains "allegations [which are] not only irrelevant to the application … [but contain … scandalous and unjustified allegations]." As I have said, on that basis they go so far as to say there has been a breach of Order 41 of the Rules and, indeed, a potential breach of the Bar Code of Conduct citing *Owenvarragh Residents' Association (Supra)*. They say the claim is an abuse of process.

[50] There is no doubt that a substantial number of the allegations which are made in the affidavit evidence submitted by the plaintiff (and which I do not repeat here) are entirely irrelevant to the matters which are germane to a strike-out application. I question the motive in including them.

[51] Regardless of that speculation, those allegations are of such a nature that little, or no weight, could be placed upon them but the fundamental objection I have is that they are largely irrelevant to the matters in issue in relation to the matters which are before the court in this strike-out application.

[52] The one further issue which is worthy of comment however is the point made by the defendant that the present claim is in fact no more than a "regurgitated claim ... of one made by the Quinn family through correspondence from Napier and Sons [dated] but then quickly withdrawn." I have considered that correspondence and it does indeed seem to cover the subject matter of this case ie the contested shares.

[53] The defendants make issue of the fact that P J Flanaghan (as the solicitors to the plaintiff) have also acted for Mr Quinn (in succession to Napiers, who

represented the Quinn family in those initial claims) and have drawn the court's attention to the fact that certain of the correspondence has traces or linkages to the potential of Mr Quinn as being in some way the originator or promoter of the present claim – albeit through the guise of the plaintiff.

[54] That line is, of itself, not particularly persuasive to the court although, equally I do, however, note that Mr Quinn is theoretically one of the intended objects who can derive benefit from the plaintiff (see the current objects set out at [44] above). This inclusion can only make the chances of the plaintiff (as presently constituted) establishing charitable status even more unlikely.

[55] Overall, there is, I feel, a credible argument that the plaintiff has been incorporated (in October 2021) as a litigation vehicle to promote the present litigation collateral to the considerable other litigation which there has been concerning the Quinn Group. There is certainly no clear explanation as to why the origins of the present case (rooted as they are in 2014) have taken almost nine years to come to fruition – and then through a different vehicle who actually (as I have indicated above) cannot, in my view, demonstrate either an equitable interest in its own right in the contested shares or one which it may have accrued by either assignment or succession. It also is a vehicle which arguably operates in succession to the exact same claims made by the Quinn family – a point which has clearly not been resolved.

[56] It will be apparent from what I have said above that I think there is sufficient other grounds to grant the strike out application without determining whether or not there has been an abuse of process.

[57] Fundamentally, I am satisfied that the claim (as detailed in the pleadings) does not disclose a sufficient factual or legal basis for a legal entitlement upon which the plaintiff would be entitled to bring its claim. It is my view that the high threshold that exists on a strike out claim has been reached and, accordingly, I grant the strike out application in the terms sought.

[58] If required I will hear the parties as to the matter of costs or any matter arising.