

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

---

**QUEEN'S BENCH DIVISION (COMMERCIAL)**

---

**DANIEL McATEER**

**Plaintiff**

**and**

**SEAN DEVINE, MARY DEVINE, BRENDAN FOX and JOHN LOWE**  
**Defendants**

---

**WEATHERUP ]**

[1] The plaintiff is an accountant and sues the third defendant solicitor for breach of contract and conspiracy to damage his business. The plaintiff appeared as a litigant in person and Mr Hanna QC appeared on behalf of the third defendant.

[2] Two actions were commenced by the plaintiff in 2009 against Sean and Mary Devine as property developers, Brendan Fox of Cleaver Fulton Rankin as a solicitor, John Lowe of Moore Stephens as an accountant and Stephen McCarron as an estate agent. The two actions were consolidated in 2012. The defendants applied to strike out the plaintiff's claim as disclosing no reasonable cause of action. As a result of that application the case against Stephen McCarron was struck out and the claims against the other four defendants were, in each case, struck out in part.

[3] The claims against the remaining four defendants came on for hearing in 2012. The plaintiff agreed to a stay of the proceedings against Sean and Mary Devine and John Lowe. There remained the case against Brendan Fox. The complaints against Mr Fox were referred by the plaintiff to the Law Society complaints authority and the proceedings against Mr Fox were adjourned pending consideration of the complaints by the Law Society.

[4] The Law Society's complaints authority did not undertake an inquiry into the plaintiff's complaints against Mr Fox. Thus the hearing of these proceedings against Mr Fox resumed in 2014. The plaintiff applied successfully for judicial review of the decision not to examine the complaints lodged by the plaintiff against Mr Fox and the reconsideration of that matter by the complaints authority remains outstanding. Further, the plaintiff also complained about the conduct of the solicitor on record for Mr Fox in relation to communications between that solicitor and the relevant authority. That matter will also be considered by the relevant authority.

[5] I shall refer to Mr Fox as 'the defendant'. In these proceedings a wealth of detail was presented and the hearing lasted many days. I do not intend to set out that detail in this decision. Further, there have been many previous cases involving the plaintiff, some of which have been concluded by judgments given by the Court and some have concluded by agreement between the parties. As I made clear in the course of the hearing I will not go behind the judgments that have been delivered or the terms of any agreements that have been entered into by the parties. Further, I permitted some flexibility in the approach to the formulation of the plaintiff's claim against the defendants because the plaintiff is a personal litigant. Mr Hanna on behalf of the defendant objected on a number of occasions to the flexibility accorded to the pleading of the claim and to the evidence introduced and the submissions made by the plaintiff.

[6] The plaintiff's claim is based on breach of contract and conspiracy. The formulation of the claim appears from the consolidated Statement of Claim and a Statement of Evidence lodged in 2012 and Points of Claim lodged during the hearing in 2014. The consolidated Statement of Claim records that the plaintiff is an accountant, a company director and a businessman based in Derry and he had been the accountant and tax adviser for the Devines and a director of Roe Developments Ltd in which the plaintiff and the Devines were shareholders. The defendant was a solicitor and partner in the firm of Cleaver Fulton Rankin and acted for the plaintiff from June 2000 to July 2001 and for Roe Developments Ltd from 1998 to 2003. The defendant subsequently became the solicitor for the Devines. The defendant is therefore said to have had an intimate knowledge of the plaintiff's business affairs and those of Roe Developments Ltd and later acted as solicitor for the Devines and other former clients and business partners of the plaintiff in proceedings against the plaintiff.

[7] The proceedings undertaken against the plaintiff over the years have related to a variety of matters. There were accounting actions by the Devines requiring the plaintiff to account for money provided by the Devines and similarly by members of the Guram family. There were actions in relation to pub investments involving the Beechtree Bar, the Roebuck Inn and Hennessey's Bar. There were actions concerning property development related to what were known as the Henderson lands and also the Ballymoney lands. There were tax cases related to Mary Devine and another related to Sean Devine known as the EIS case. There were proceedings about legal fees.

[8] The breach of contract alleged in these proceedings includes the defendant acting for Sean Devine Ltd, having previously acted on behalf of the plaintiff and on behalf of Roe Developments Ltd in relation to an action concerning Hennesseys Bar. The alleged breach of confidentiality includes the disclosure of details of the sale of Hennessey's Bar, namely the purchase price, and the misstatement of the time for completion of the purchase. The plaintiff complains that the defendant acted in the Henderson action, the Beechtree Bar action, the Devines' failure to account action, the Gurams' failure to account action, the EIS action and the Roe Developments liquidation. More generally the defendant is said to have misused his professional relationship with the plaintiff to encourage the proceedings that were undertaken against the plaintiff.

[9] The conspiracy alleged in these proceedings includes the defendant's agreement with others to harm the plaintiff by means that include unwarranted legal proceedings and the disclosure of information designed to harm the plaintiff's interests such as that in relation to the purchase of Hennessey's Bar, the disclosure by Michaela Brunton, later Michaela Diver, a solicitor working with the defendant, of various documents on 25 March 2009 to others including a Mr Pierce, the disclosure of accountant's reports and details of other litigation, contacts with the Legal Services Commission and the plaintiff's professional body to perpetuate rumours about the plaintiff and to occasion damage on his business interests.

[10] In addition it is alleged in the Statement of Claim that the defendant interfered with the plaintiff's entitlement to Legal Aid by communicating with the Legal Services Commission and that includes providing false and misleading information that caused legal aid to be withdrawn for a time. Further, the plaintiff contends that the defendant undermined the confidence of the plaintiff's co-shareholders in Roe Developments Ltd. In addition it is alleged that the defendant acted with a Colin Duffy and a Michael Desmond in relation to business interests in the Republic of Ireland and a company known as Savanne Ltd and a planned development in Kerry involving Patrick Pierce, a business partner of the plaintiff in Kerry.

[11] The plaintiff's Statement of Evidence of 8 June 2012 provided further particulars. The Points of Claim dated 10 November 2014 contained a total of 29 points which the plaintiff believed were included in his allegations against the defendant, of which 15 points were allowed as having been included in the claim.

[12] The plaintiff places the commencement of the defendant's conspiracy at a meeting in May 2002 in the Inn on the Cross. Prior to that the defendant had acted as solicitor for the plaintiff and relations were reasonably good, even extending to social events they attended together. The defendant acted for the plaintiff personally and for Roe Developments Ltd. The defendant had been retained to act for the plaintiff, first of all in an action in relation to Andy Cole's Bar and the case settled in March 1998 with the plaintiff recovering the sum of £287,000. A second action in

2000 involved proceedings by Connor Developments Ltd against the plaintiff and his professional accounting partner, Mr Magill, in relation to a property known as the Celtic Bar. This action was heard by Girvan J who gave judgment on 28 June 2001. The plaintiff and Mr Magill were unsuccessful and judgment was given against them both in the sum of £56,000.

[13] There were two further actions in which the defendant acted for Roe Developments Ltd. The first concerned Hennessey's Bar in 1999 and involved Jim McVeigh, the owner of the Bar at a time when Roe Developments Ltd was the tenant of the Bar. There was a claim by the landlord for rent and a claim by the tenant for repairs. The outcome was an agreement that Roe Developments would purchase Hennessey's Bar from Mr McVeigh for £437,000 to be completed by 12 January 2001. The second action also related to Hennessey's Bar and concerned a Michael McLaughlin who was then a sub-tenant of Roe Developments Ltd and the action concerned arrears of rent. The action was taken over by Harrisons Solicitors in 2003.

[14] By 2001 relations between the plaintiff and the defendant had cooled. There was a dispute over fees, which were paid eventually by the plaintiff in January 2002. There had also been a complaint against an employee of the defendant who had acted as a process server and who had appeared in the plaintiff's office and had, according to the plaintiff, behaved in an intimidatory manner involving the display of a legally held firearm.

[15] The defendant was asked by Mr Devine to attend the meeting at the Inn on the Cross which was also attended by Mr Love. Mr Devine had a number of concerns. One of those concerns was that £500,000 had been advanced to the plaintiff for investment purposes and Mr Devine was concerned to establish what had become of that money. Secondly, Mr Devine had made a payment of £675,000 for the purchase of Hennessey's Bar, which Roe Developments Ltd had acquired for £437,000, and Mr Devine was expressing concern about the price he had paid. Thirdly, the transaction known as the Henderson lands involving Mr Devine's attempts to purchase the lands, with advice furnished by the plaintiff, had not been completed for reasons that were unclear to Mr Devine.

[16] I am satisfied that at this stage Mr Devine had lost faith in the plaintiff and had engaged Mr Love as an accountant to advise him and Mr Devine also proposed to engage the defendant to advise him on the legal aspects.

[17] The first matter concerning the £500,000 resulted in the Devine's failure to account action. The second matter concerning the payment for the Hennessey's Bar resulted in the second Hennessey's action. The third matter concerning the Henderson lands resulted in the Henderson action.

[18] I should say a word about the various actions that were undertaken. A flavour of what transpired appears from a selection of proceedings.

The Devine failure to account action against Mr McAteer was begun by Writ issued on 18 June 2002 with L'Estrange & Brett on record and the defendant came on record in October 2003. The case was withdrawn in 2004. Mr McAteer was awarded costs from 27 November 2003.

The Beechtree Bar action involved Sean Devine Ltd and Roe Developments Ltd whereby Sean Devine Ltd sought a rescission of a contract to purchase the Beechtree Bar from Roe Developments. The Writ was issued on 21 November 2002 by L'Estrange & Brett and the defendant came on record in September 2003. Mr Magill and Mr McAteer were joined as defendants and the action settled in November 2004. Mr McAteer considered there to have been ambiguity in the way in which the Order of the Court was phrased. The Order provided that liability for a £150,000 payment would fall on Mr McAteer and Roe Developments. The payment was made by the company and not by Mr McAteer.

The Roebuck Inn action between the Gurams and the McAteers commenced on 26 February 2003 with a claim that a contract had been induced by the undue influence of Mr McAteer. Smyth J gave judgment in favour of the Gurams in 2008. The judgment was critical of Mr McAteer. The Gurams were ordered to pay for the retransfer of the Roebuck Inn. This did not happen. The Gurams were declared bankrupt in Scotland. There is presently an application before O'Hara J to set aside the judgment on the basis of alleged fraud perpetrated by the Gurams.

Mr McAteer sued the Devines and their companies for fees by civil bills issued on 6 May 2003 and judgment was given in favour of Mr McAteer in 2008.

The Mary Devine tax case commenced by Writ issued by L'Estrange & Brett on 15 May 2003. Judgment was given against Mr McAteer in December 2008 by Deeny J and this was appealed successfully in June 2014.

A petition to wind up Roe Developments was presented to the High Court and settled in November 2014.

The Guram defamation action was commenced on 6 June 2003 by Mr McAteer and judgment was obtained against Mr Guram. Eventually in September 2014 Mr Guram acknowledged that there had been no theft of monies by Mr McAteer and he apologised for occasions when he said there had been.

The Hennessey's Bar action commenced on 22 August 2003 against a number of defendants including Mr McAteer. In 2004 Mr Guram agreed to judgment for £125,000. Hennessey's Bar was sold at auction for £500,000. Shortly before the resumption of the trial Mr McIlhenney, solicitor acting as conveyancer in the completion of the transaction, agreed to pay £40,000 damages together with the plaintiff's costs. The plaintiffs were in effect recovering £665,000. Mr McAteer had

received legal aid. The action concluded without further proceedings against Mr McAteer.

The Guram failure to account action against Mr McAteer commenced on 25 June 2004 and concluded in February 2012. Mr McAteer considered that a full reconciliation of the Guram finances had been provided by Babington & Croasdaile long before the matter was finally concluded.

The Henderson action against Mr McAteer on 29 June 2004 by a Devine company concerned difficulties with the purchase of lands and a claim for loss of profits. After a hearing in May 2008 Deeny J found in favour of Mr McAteer.

The Henderson fees action concerned fees due to Mr McAteer. Mr McAteer did not recover fees, which were found to be conditional on an outcome that did not occur.

The Ballymoney action by Mr Devine against Mr McAteer concerned difficulties relating to the purchase of lands. The action was eventually resolved and did not proceed against Mr McAteer. On Mr McAteer's application for costs Deeny J made no order as to costs.

The EIS action commenced on 3 August 2006. Mr Devine sought tax relief on a payment and blamed Mr McAteer when that was not achieved. It was claimed that £100,000 would have had to be deployed by Roe Developments for qualifying purposes within 12 months of eligible shares being issued. Mr McAteer claims that this entire saga was based on a sham orchestrated by the defendant and Ms Brunton. The case went to the Court of Appeal. It is said by the defendant that Counsel for Mr McAteer conceded that when Roe Developments purchased Hennessey's Bar and subsequently sold it on to NRS Bars this probably was a flip transaction. Thus Roe Developments had not traded and the inter-company property transaction could never have been an activity or a trade qualifying for EIS relief. The Court of Appeal reached the conclusion that the transaction was a dealing in land which could not have attracted tax relief.

[19] The tort of conspiracy was stated by Lord Cave in Sorrell v Smith [1925] AC 700 to require -

- (1) A combination of two or more persons wilfully to injure a man in his trade is unlawful and if it results in damage to him is actionable.
- (2) If the real purpose of the combination is not to injure another but to forward or defend the trade of those who enter into it then no wrong is committed and no action will lie although damage to another ensues."

[20] In the present case the issue turns on the alleged intention to injure the plaintiff, which the plaintiff alleges was the purpose of the conduct undertaken by the defendant. On the other hand the defendant says that he undertook justified actions to advance the legitimate interests of others.

[21] Reliance is placed on a contract between the plaintiff and the defendant as solicitor and client. Among the duties imposed on the defendant as solicitor is to avoid a conflict of interest and a breach of confidentiality. The plaintiff alleges a breach of duty arising from the conflict of interest that emerged when the defendant, as solicitor or former solicitor for the plaintiff and Roe Developments Ltd, acted for the Devines, the Gurams and others. Further this was said to involve a breach of confidentiality by the defendant's disclosure of information, including in particular information about the purchase and sale of Hennessy's Bar.

[22] In addition, the plaintiff relies on a decision of the Privy Council in Crawford Adjusters v Sagikor General Insurance [2013] UKPC 17. This was concerned with malicious prosecution and civil abuse of process, which causes of action were not alive in the present proceedings. However the essence of the decision is to the same effect as the plaintiff's allegations of conspiracy, namely, that if the defendant's conduct in the present case was undertaken for malicious and improper purposes then that provides a basis for civil liability against the defendant, provided the plaintiff can prove a loss occasioned by the actions of the defendant.

[23] The plaintiff places the defendant as the orchestrator of all the actions that were taken against the plaintiff. The defendant acted as solicitor in the Hennessy action. However at the meeting with Mr Devine at the Inn on the Cross in May 2002 the defendant did not undertake other proceedings against the plaintiff. He referred Mr Devine to L'Estrange & Brett solicitors and to Sam Beckett in that firm and it was he who commenced the other proceedings. Nevertheless, the plaintiff places the defendant in the background in relation to all the proceedings that were issued by Mr Beckett. I am satisfied that the defendant was not influencing the conduct of the litigation undertaken by Mr Beckett when L'Estrange & Brett were on record for the Devines.

[24] However, the proceedings moved to the defendant in October 2003. This occurred after comments made by Girvan J concerning more than one firm of solicitors acting in the various proceedings. It was suggested that one firm of solicitors might take conduct of all proceedings. It was agreed that the defendant would be that solicitor. I am satisfied that Mr Devine preferred the defendant as the solicitor who would take over conduct of all the proceedings. I am satisfied that the defendant did not orchestrate the transfer of proceedings to his firm.

[25] When the defendant took over all the proceedings did that give rise to a conflict of interest or a breach of confidence on the part of the defendant? There is an implied obligation not to act against a former client or an established client where to do so would involve the use of confidential information. The plaintiff makes a

particular complaint about the disclosure by the defendant to Mr Devine of the price paid for Hennessey's Bar, namely £437,000. The plaintiff complains that the defendant disclosed that price to Mr Devine and thus created the suspicion in the mind of Mr Devine that he was not being dealt with fairly when he in turn paid in excess of £600,000 for Hennessey's Bar.

[26] I am satisfied that the information about the price paid for Hennessey's Bar came to Mr Devine from Jim McVeigh in a telephone call prior to the meeting with the defendant in March 2002. When Mr Devine became aware of the prices involved in the respective sales of Hennessey's Bar he was concerned to know whether he had been dealt with fairly by the plaintiff and this was one of the concerns he brought to the meeting with the defendant. The defendant was not the source of Mr Devine's information about the price of Hennessey's Bar.

[27] Was there other information about the plaintiff or about Roe Developments Ltd that was known to the defendant that was used in any of the other actions in which the defendant was involved? The plaintiff's complaint of the use of such knowledge is stated in a very general way. I am not satisfied that any actual misuse of information has been established against the defendant arising from his prior engagement with the plaintiff or with Roe Developments Ltd.

[28] More generally, the defendant acted as solicitor in proceedings against the plaintiff and at that time a complaint was made by the plaintiff that the defendant should not do so. In view of the plaintiff's complaint the defendant obtained an Opinion from Mark Horner QC dated 10 March 2003. The focus of the opinion was on the objection that had been made by the plaintiff relating to the confidentiality of the price paid for Hennessey's Bar. The Opinion stated that Mr Horner had been asked to advise as to whether or not Cleaver Fulton & Rankin in general, and the defendant in particular were precluded from acting for Sean Devine because they had previously accepted instructions from Roe Developments Ltd. The relevant facts were stated to be (i) Mr Fox was instructed by Roe Developments (ii) The issues in the case between Roe Developments and McVeigh related to obligations owed under a lease (iii) In the course of determining those obligations it was agreed there would be a sale by McVeigh to Roe Developments of the Bar for £437,000. These terms were not confidential to the parties but formed part of the order of the court (iv) Subsequently, in an entirely different transaction, Sean Devine bought the Bar on the advice of Mr McAteer and paid £675,000.

[29] Mr Horner concluded, on the basis of the instructions, that the defendant had acquired no confidential information when he acted for Roe Developments Ltd that he could use in acting for Mr Devine against the plaintiff. The only possible information which could be used to embarrass the plaintiff, namely the price at which Roe Developments purchased the bar from Mr McVeigh, was stated to be information that was not confidential but was freely available, having been made an order of the Court. In those circumstances Mr Horner stated that he did not see any



substance to the plaintiff's objection. Accordingly, the defendant continued to act for Mr Devine.

[30] That said, while it did not constitute a breach of his duty as a solicitor, I consider it to have been unwise of the defendant to have become involved in proceedings against the plaintiff after the less than amicable nature of the solicitor client relationship. That less than amicable conclusion was based on a dispute that had arisen about fees, although a payment was eventually made, and a complaint that had been made about the manner in which the process server had presented himself in the plaintiff's office. Indeed, the plaintiff did not consider the defendant to be a former solicitor, but to have remained a solicitor for Roe Developments Ltd.

[31] More broadly, however, the plaintiff contends that the defendant has been orchestrating the events that have occurred in order to damage the plaintiff. I am satisfied that the plaintiff is convinced that that is the position and he has presented, very skilfully, a case to that effect. Mr Magill, his accounting partner, has provided support for the plaintiff. On the other hand the defendant denies that he has been orchestrating events in order to damage the plaintiff. He contends that he has been acting throughout in his capacity as a solicitor to further the interests of various clients. Ms Brunton, who is his assistant, supported the defendant's position. Mr Good QC who acted in some of the actions also supported the defendant's position.

[32] Patrick Pierce owns lands in Kerry and is alleged to have been part of the conspiracy. Mr Pierce and Mr McAteer and others have been involved in the proposed development of lands in Kerry, resulting in disputes that are the subject of legal proceedings in Dublin. The plaintiff's view is that Mr Pierce is part of a conspiracy to do damage to the plaintiff and to prevent this present action proceeding successfully. I find that Mr Pierce was convinced that the plaintiff had acted contrary to Mr Pierce's interests and that he quite frankly regarded the plaintiff as a villain. Whether the plaintiff was at fault or Patrick Pierce was at fault in relation to the dispute about the transactions in Kerry is a matter for the Dublin court. Nothing I say in relation to the present proceedings should be taken to suggest that I have formed or expressed any view in relation to the conduct of the transactions in Kerry.

[33] Mr Pierce has co-operated with others who are said to be conspirators with the defendant. I find that Mr Pierce has done so because of his belief that the plaintiff is to blame for the dispute that has developed in relation to the Kerry transactions. It is his belief that the plaintiff has caused damage to his interests. It is his belief that the plaintiff has done something similar to others as Mr Pierce believes he has done in relation to Kerry. The rights and wrongs of the issues in relation to Kerry are quite a different matter and again I say I express no view. Mr Pierce has given evidence because of his belief that he can support the defendant and contradict the plaintiff by explaining his version of events in relation to the Kerry lands and by providing information to those alleged to be conspiring against the plaintiff. I am satisfied that Mr Pierce's concern in giving evidence was to express his own views of

his treatment by the plaintiff, which he believes, rightly or wrongly, mirrors the treatment of others by the plaintiff. I am satisfied that in so doing Mr Pierce has not been governed by any improper conduct, action, briefing or pressure exerted by the defendant. I am satisfied that Mr Pierce's disillusionment with the plaintiff preceded his contacts with the defendant and the other alleged conspirators. Mr Pierce and the plaintiff effected reconciliation for a time but that proved to be temporary and was driven by the prospect of mutual commercial advantage that could not be sustained.

[34] I am mindful that Mr Pierce's evidence was given in the climate of further disillusionment with the plaintiff and no doubt with an eye to the proceedings pending in Dublin. Mr Pierce has joined with the defendant and others to act against the plaintiff. Mr Pierce has stated his justification for so doing. It is stated to be to stop the plaintiff, as he sees it, damaging others as he believes he has been damaged by the plaintiff. He seeks, as he sees it, to expose the plaintiff by disclosing his conduct in relation to the Kerry lands. He seeks, as he sees it, to prevent the plaintiff doing to others what he believes the plaintiff has done to him. I find that Mr Pierce has cooperated with the others for the reasons that he has advanced and not simply to damage the plaintiff. I find that he has taken the actions he has in the bona fide belief, rightly or wrongly, that he is advancing his own cause and those of others and that he has done so for legitimate purposes and by legitimate means. He may prove to be mistaken but that is a different matter.

[35] Ms Niblock is an accountant. She was engaged to provide accounting evidence for the Gurams in relation to costs applications. In the failure to account action 20 cheques were investigated and that included what was described as 'the Sandhu cheque'. The Gurams wanted to know what had happened to their money. Ms Niblock investigated and considered there to be no straightforward answer. She stated that she found it to be difficult to get information. There was an eventual reconciliation of the finances but that took some time as the case continued until 2009. The plaintiff on the other hand considered that the matter was straightforward and that a full reconciliation had been provided in 2004. This had been prepared through McCollum solicitors to Babington & Croasdaile solicitors. Cleaver Fulton Rankin came on record in 2006 and the claim was reinvigorated, unnecessarily, says the plaintiff. I am satisfied that Ms Niblock believed that the answers she obtained were incomplete and she pursued the plaintiff up to 2009 for answers to various questions. Ms Niblock was not satisfied with the answers that she had received and the Gurams were not satisfied with the answers. Indeed, I am satisfied that the Gurams believed that their money had been misappropriated by the plaintiff. That was not to be the case but at the time the Gurams believed it to be the case.

[36] The plaintiff believed that Ms Niblock was being misled by the defendant. However Ms Niblock had meetings with the plaintiff. If the matter was as simple as the plaintiff believed it to be he might have taken the opportunity to persuade Ms Niblock. He clearly failed to do so for a time. I do not accept that Ms Niblock was being misled by the defendant. I am satisfied that Ms Niblock was pursuing a tracing exercise and that she found it difficult to get the information that she

required. I have not been satisfied that the defendant was orchestrating unnecessary or unnecessarily protracted proceedings.

[37] Mr Braithwaite works for the fraud department of the Legal Services Commission. He became involved with the plaintiff's legal aid in December 2004. He stated that he was approached by an individual about the plaintiff having a number of properties that the legal aid authorities should investigate in connection with the plaintiff's entitlement to legal aid. Legal aid was granted and then revoked by Mr Braithwaite in 2004 and this led to an appeal by the plaintiff.

[38] Mr Braithwaite was investigating matters in 2005 and there was a question mark over whether a payment of £150,000 had been made by the plaintiff. The plaintiff attributes this legal aid issue to the intervention of the defendant. However on 7 April 2005 Mr Braithwaite received a telephone call from a James Green of Cambridge Duffy acting as liquidators and they disclosed information about a payment of £360,000. That amount was mistakenly reported. The actual payment to which reference should have been made was £150,000. There was a question mark over the source of a payment of that amount. Eventually the legal aid appeal committee decided that legal aid should be granted.

[39] The Legal Services Commission took the unusual step of engaging forensic accountants, Harbinson Mulholland, to investigate the plaintiff. Information was provided to the Legal Services Commission by Cleaver Fulton Rankin and passed to Harbinson Mulholland. There was a further revocation of legal aid in 2009, a decision taken, not by Mr Braithwaite but by the Chief Executive Officer of the Legal Services Commission.

[40] A number of allegations were made in relation to legal aid. First of all the plaintiff refers to the defendant meeting the Legal Services Commission in 2005 and providing information with a view to 'torpedoing' the plaintiff's and his wife's legal aid. That concerns the £150,000 which was paid in relation to the Beechtree Bar. There was an issue as to whether the obligation to pay fell on the plaintiff or on Roe Developments. The information was furnished to the Legal Services Commission by Mr Green of McCambridge Duffy and not by the defendant. It transpired that the money was paid by Roe Developments and not by the plaintiff. There was a legitimate issue that warranted investigation as to whether payment was made by the plaintiff or by Roe Developments.

[41] The second matter alleges that information was provided to the Legal Services Commission in 2006 about the Hennessey's action and the Beechtree Bar and Roe Developments dispute. Information was provided in response to the Legal Services Commission's request for information, an entirely legitimate exercise.

[42] The third matter concerns the provision of documentation to the Legal Services Commission in 2009 that had the effect of causing the plaintiff's legal aid to be withdrawn and the defendant's denial of the existence of that documentation in

the discovery process. This involved Ms Diver forwarding information to the Legal Services Commission in relation to Savanne Ltd and Stopside Ltd. Initially the defendant denied that such information had been provided but confirmation emerged when a compliments slip was discovered which showed that the information had been provided by Ms Diver. The documents were described by the defendant as public documents. Mr Braithwaite is entitled in the performance of his duties to request information and to act on information received and to examine the financial position accordingly and he did so. He requested information from Cleaver Fulton Rankin, as he was entitled to do, and further to that request he received the information, which they were entitled to provide.

[43] The fourth matter concerns an alleged conspiracy with Mr Duffy and Mr Pierce and others to provide further information to the Legal Services Commission in 2014 to damage the plaintiff. There certainly has been contact by Mr Pierce with the Legal Services Commission. He has agreed that he is co-operating with the Legal Services Commission. The Pierce contacts involve an on-going investigation and this is a matter for the Legal Services Commission and those parties who have co-operated with any investigation are perfectly entitled to do so.

[44] There are issues about KPMG reports. I am satisfied that the reports were prepared for the purposes of litigation on instructions from Cleaver Fulton Rankin on behalf of Mr Devine. The reports were not prepared for the purposes of the present proceedings but for other proceedings and were critical of the plaintiff.

[45] Emails were sent by Ms Brunton and by the defendant concerning the reports. Ms Brunton's email dated 10 August 2007 attracted complaints about inappropriate contact with an expert witness. The email of 10 August from Ms Brunton to Mr Brown, the author of the reports stated -

"In order for us to be successful in a costs action we need to prove that Mr McAteer's pre-litigation conduct was unreasonable. Accordingly, could you include a comment in your report about the numerous letters that were sent by CFR to McAteer's solicitors and Mr McAteer directly asking for an explanation and that no reasonable explanation was ever received. Also due to the fact that no reasonable explanation was given could you comment on whether Sean Devine had any other alternative but to issue proceedings? Mr McAteer will try to use the fact that John Lowe did not write any letters asking for an explanation as a defence. Could you comment on whether this is something that John should have done since the reason the query arose in the first place was as a result of issues arising in the account action 2002 1690 and it is felt that these issues were already the subject of legal proceedings. In 3.2.5 you mention that the actions of McAteer might be reasonable if he was a business partner, could we just state that his actions were unreasonable and leave it at that."

[46] In one respect the email stated the defendant's position, namely, as to whether he believed he was a business partner. However in other respects the email

seeks to influence the terms in which the expert's opinion is expressed. The report was changed in part as a result of the comments.

[47] The email from the defendant was dated 18 September 2007. In part it read "Furthermore, I think you should also provide a chronology or indeed should list all the letters that we sent to Mr McAteer. .... but we really do need to emphasise this point if we are to succeed in our costs for we can only get them if we can show that Mr McAteer's actions pre-proceedings were totally unreasonable. At the present time you have only covered this in one paragraph which will not suffice."

[48] The first part relates to a factual matter. The latter part is seeking to influence the manner way in which the expert's opinion is expressed. The report was changed in part as a result of the comments.

[49] From time to time issues have arisen in the Commercial Court about the contacts between solicitors and experts. The expert's primary duty is to the Court and he or she is obliged to provide an independent opinion within their expertise. A new Practice Direction on Experts came into effect on 1 June 2015 in the Commercial Court which in part dealt with the solicitor/expert relationship. While there are issues about the disclosure of solicitor/ expert communications when the report is prepared for the proceedings in question that does not arise in the present case where the reports were not prepared for this litigation. For present purposes the concern is with the solicitor/expert communications in other proceedings impacting on this plaintiff's cause of action against this defendant. It has not been established that what was written finally in the reports was other than the author's own opinion on the issues discussed. While the reports were critical of the plaintiff I have not been satisfied that any changes were made that altered the import of the reports.

[50] However it was unwise of Ms Brunton and the defendant to write to the expert witness in the manner they did seeking to influence the opinion expressed by the expert.

[51] A statutory demand was issued by the defendant who attended the plaintiff's office for service. The process server against whom a complaint had earlier been made by the plaintiff was also present. The defendant's explanation for his presence at the plaintiff's office was that he happened to be in Derry at the time. It was unnecessary for the defendant to be present for the service of a statutory demand. It was unwise of the defendant to attend the plaintiff's office for this purpose. It was unwise to send the process server who had drawn the previous complaint. It was unwise to accompany the process server to the office.

[52] Mr Devine instructed KPMG through Cleaver Fulton Rankin and the fees charged by KPMG for the reports amounted to £124,000. A bill was issued on 13 September 2006 for £29,000 which was attributed to the Hennessey's Bar action. Mr Devine paid £15,000 and the rest was attributed to the Roe Developments liquidation. Another bill issued for the Beechtree Bar action, with the plaintiff and

Roe Developments paying the fees of £3,400. I find no evidence of inappropriate fees being charged to the plaintiff. There is certainly an issue about the payment of the reported fees of £124,000. That is an issue between KPMG and Cleaver Fulton Rankin and Mr Devine. It has not been established that any of this will impact on the plaintiff.

[53] The plaintiff alleged that the defendant withheld papers for the purposes of manipulating proceedings. One such circumstance related to an option in relation to Hennessey's Bar. There were perhaps two options, if indeed 'option' is what each item can properly be called. One arose between Roe Developments and Mr McVeigh and the opportunity for Roe Developments to buy the Bar. The second arose between Roe Developments and NRS Bars Ltd with NRS Bars having the opportunity to buy the Bar for £550,000. Thus there was provision for a chain of transfers of the Bar. The operation of this process was examined in the Hennessey's case. The plaintiff raised a question mark over the relevant paperwork not being included in the papers and having been withheld by the defendant. The plaintiff stated that the second page of the option was not included in the court papers. The defendant stated that it was included. The parties were represented at the hearing and there was an opportunity for all to examine all the papers at the time and to raise any issue about absent papers in the course of the proceedings. I am satisfied that there was an opportunity for all issues to be examined during the hearing. I will not examine the conduct of the proceedings.

[54] A second issue about the withholding of papers related to the EIS case. A letter of 1 March 2001 stated that solicitors were in receipt of cleared funds. This was taken by the plaintiff as an indication that money had been allocated to the required purpose within the required time for the purposes of tax relief. However the EIS case did not fail on the basis of the availability of cleared funds but on there not being a qualifying transaction. The transaction was a flip property deal that did not attract tax relief and the presence of cleared funds did not determine the character of the transaction. The absence of the letter was not to the point.

[55] Mr Devine called the meeting at the Inn and the Cross with the defendant. I am satisfied that at that time Mr Devine had real concerns about certain transactions and that he had lost faith in the plaintiff. The plaintiff says that the Devine failure to account action could have been settled by a letter from Mr Love at the beginning asking what had happened to the Devine money. I do not doubt that a meeting would have been helpful to avoid litigation. However Mr Devine and also Mr Guram each thought that their money was missing and the reality is that it took years to obtain a satisfactory account of the money. I am satisfied that the tracing of the funds need not have taken the time that it did and in each case both sides are to blame. I am satisfied however that Mr Devine genuinely distrusted the plaintiff and thought that he had taken his money and eventually was satisfied that he had not. Similarly, Mr Guram believed that the plaintiff had taken his money and eventually he was satisfied that that was not the case.

[56] In 2004 Mr Devine stated that he wanted out of the litigation. I do not doubt that that was the case. However the costs that had been incurred to date in the litigation became an issue. That was a real issue that had to be addressed as someone would have to pay the fees. Mr Devine did not want to have to pay and if he had pulled out of the litigation he would have been at risk for substantial costs. Mr Devine was not prepared to walk away when he realised there were financial consequences.

[57] In March 2009 there was a meeting between Mr Devine and Mr Pierce and others at which the KPMG reports were produced. There was a dispute about who telephoned the defendant's office and whether calls were made from the meeting or before the meeting. The KPMG reports had been brought to the meeting. It was Mr Devine's report and his decision whether to release the reports. He was prepared to provide the reports to Mr Pierce, subject to a solicitor advising him there was no problem about doing so. He spoke to Ms Brunton who probably sought approval from the defendant for the production of the reports. The reports had been opened in Court, Mr Devine was entitled to provide the reports to Mr Pierce, this was harmful to the plaintiff because the reports were critical of the plaintiff, the contents of the reports were disputed by the plaintiff, however Mr Devine was entitled to disclose the reports to others for legitimate purposes. I am satisfied that Mr Devine did not agree to release the reports simply to inflict damage on the plaintiff. I am satisfied that he did so because he believed that the contents of the reports were accurate and that they were relevant to Mr Pierce's dispute with the plaintiff, a position he was entitled to hold.

[58] There is a separate issue as to whether the reports may be circulated when the Court intervenes and restricts the use of the reports. The circulation of the reports was raised by the plaintiff with McLaughlin J at an earlier stage of the proceedings. McLaughlin J suggested, without making an order, that there should be limited use of the reports because the contents were disputed by the plaintiff. The issue of the circulation of the reports surfaced again after the settlement of the proceedings against the Devines. The proceedings were stayed on terms that involved a commitment by the Devines not to continue to act against the plaintiff's interests. It transpired that the Devines had again circulated the reports. The plaintiff applied for a removal of the stay. The question then arose as to whether the circulation of the reports contravened the agreement between the Devines and the plaintiff. I was satisfied that there was a contravention of the agreement. I did not remove the stay. Different considerations apply to the use of the reports when an order of the Court is affected. As to the earlier stage when Ms Brunton and the defendant advised as to the release of the reports to Mr Pierce, I am satisfied that the approval of the release of the reports was for legitimate reasons.

[59] The plaintiff has been in almost constant litigation for 12 years. He has not always been well served by his solicitors, there have been delays, there has been non-attention to the cases, there have been misplaced files and there have been changes of solicitors. In all this the plaintiff sees himself as the victim, not only of his

solicitors on occasions but also of a number of former colleagues who have turned against him. The disputes that have arisen I consider to have involved genuine differences between former colleagues. Once parties fall out, the actions of the other are treated with suspicion and that has undoubtedly happened in the present case. I consider the Devine's failure to account action was a genuine attempt to trace funds that it was felt were due to Mr Devine. The plaintiff says it was a straightforward matter that could have been resolved easily but I do not accept that it was. There were similar themes in the Gurams failure to account action. The plaintiff was the one who had the answers and should have provided the explanations but for a very long time he was unable to satisfy the others as to the propriety of all the financial dealings. It was not the case, as he supposes, that all his efforts were being sabotaged by the defendant and the others. Simply put, many of these transactions lacked transparency. Money was moved here and there through various vehicles, no doubt for good reason, but that reason was not always clear. If an explanation does not clarify the position it adds to the difficulty. Once suspicions are raised about such matters it can be difficult to quell those suspicions. The 'Sandhu cheque' is an example of this lack of clarity. Mr McAteer says that it was a very straightforward matter. I did not find it straightforward at all. It was never understood why the plaintiff needed to be involved in the exercise at all, nor why the money was moved around in the way that it was.

[60] I have not been satisfied that the defendant was orchestrating events or that he was responsible for a raft of unnecessary litigation against the plaintiff. I am not satisfied of any conspiracy by the defendant against the plaintiff nor am I satisfied of any breach of contract by the defendant against the plaintiff. Certainly the defendant acted unwisely on occasions in relation to the taking of instructions against the plaintiff, on-going to the plaintiff's office with the statutory demand, on writing to KPMG to seek to influence the opinions expressed in the report. While these were matters that were unwise they did not amount to conspiracy or breach of contract.

[61] In any event I am not satisfied that losses have been sustained by the plaintiff as a result of the actions of the defendant. There are extensive claims for financial loss but no evidence of loss attributable to the actions of the defendant. Accordingly, I am not satisfied that the plaintiff has made out the case against the defendant. In 2014 the plaintiff informed the Court that he was proposing that the proceedings should be concluded and the defendant would not agree to do so. That is a matter that is clearly relevant to the costs incurred. I will return to the issue of costs at a later date. I have not been satisfied as to the plaintiff's claim against the defendant. Accordingly there will be judgment for the third defendant against the plaintiff.