Neutral Citation No. [2012] NICh 9

Ref:	**McCL8465**

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

Delivered:	**30/03/12**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

_____

BETWEEN:

QUINN FINANCE,
IRISH BANK RESOLUTION CORPORATION LIMITED,
QUINN HOTELS PRAHA AS
-and-
DEMESNE INVESTMENTS LIMITED

Plaintiffs:

-and-

GALFIS OVERSEAS LIMITED

Defendant:

_____

McCLOSKEY J

The Plaintiffs' Claim

[1] These proceedings are brought by originating summons which, in its final amended form, challenges the legality of a series of assignments and "addendum agreements" and seeks the following relief:

> *"By this summons the Plaintiffs claim against the Defendants for*:
>
> *1. An Order declaring that the Assignment Agreements and Addendum Agreements exhibited hereto at Appendix One ("the Agreements") are void and are not capable of retrospective validation on the following grounds:*

(a) *The Agreements were backdated in a material respect*

(b) *The Agreements were executed without the authority of Demesne Investments Limited ("Demesne") and without the signature of any person authorised on behalf of Demesne;*

2. *An Order declaring that Demesne is solely entitled to the benefit of all rights purportedly transferred by the Agreements.*

3. *In the alternative, An Order pursuant to Article 367 of the Insolvency (Northern Ireland) Order 1989 setting aside and further declaring that the Agreements are null and void ab initio and shall have no further cause or effect;*

4. *An Order that Galfis, by its Receiver and/or by any other party claiming to have authority to act on its behalf, on any demand being made by the Plaintiffs or by any one or more of them, co-operate with any application to register the Demesne in Russia as the party entitled to the rights purportedly created by the Agreements and, to the extent it may become necessary and to make this Order effective outside Northern Ireland do execute such documents and take all steps reasonably required by Demesne to give effect to this Order;*

5. *In the event that the Galfis fails to act and in order to enable this Court's Orders to become effective in Russia, Belize or elsewhere, an Order authorising Demesne to act in the name of the Galfis in any respects necessary to make this Court's Orders effective and, in particular, without prejudice to the generality of the foregoing, issue such Powers of Attorney as Demesne considers necessary to ensure that the Court's Orders are enforced.*

6. *Liberty to the Plaintiffs to apply to the Court in respect of any matter connected with the enforcement of the Court's Orders, including to the extent that it may become necessary, any application to join any further parties.*

7. *Such further or other relief as the Court deems appropriate;*

8. *Damages;*

9. Costs."

On 21st December 2011, the court acceded to the Plaintiffs' application for a Mareva injunction, which remains in force. The basic effect of this order was, and remains, to prohibit any assignment, sale or transfer of any of the impugned assignments.

The Parties

[2] There are four Plaintiffs:

(a) Quinn Finance.

(b) Irish Bank Resolution Corporation Limited (formerly the Anglo Irish Bank Limited – "*the Bank*").

(c) Quinn Hotels Praha AS.

(d) Demesne Investments Limited ("*Demesne*").

When these proceedings were initiated, there were two Defendants, namely Galfis Overseas Limited ("*Galfis*") and Demesne. By order dated 21st March 2012, the court acceded to the Plaintiffs' application that Demesne should become an additional Plaintiff. As a result, the only Defendant is Galfis. By order of the Supreme Court of Belize dated 19th January 2012, Mark Hulse (Certified Public Accountant) was appointed Receiver of Galfis (hereinafter "*the Receiver*"). On 27th January 2012, solicitors practising in this jurisdiction (Messrs. Elliott Duffy Garrett) entered an Appearance in the following terms:

> "*Please enter an Appearance for Galfis Overseas Limited (acting by its Receiver, Mark Hulse) sued as Galfis Overseas Limited in this action*".

[3] Ultimately, the Plaintiffs' application for the relief set out above was unopposed. At the substantive hearing (conducted on 28th March 2012) the court received, and duly considered, a skeleton argument submitted by counsel representing Galfis (acting by its Receiver). Furthermore, counsel attended the entirety of the hearing. The position adopted on behalf of Galfis is ascertainable from the following passages extracted from the aforementioned skeleton argument:

> "***Steps taken Following Appointment***
>
> ***[10]*** *The steps taken by the Receiver following appointment are set out in his affidavit of the 15th February 2012. These include:*
>
> *(a) His investigation of the Assignment Agreements between Demesne and the First Defendant, whereby*

Demesne assigned the benefit of the 29 loan agreements made between Demesne and a number of other companies (see paragraphs 7-9);

(b) The steps taken by the Receiver in respect of bankruptcy proceedings in Russia, involving Finansstroy, Logistica and Red Sector (see paragraphs 10-11);

(c) His investigation of the circumstances in which the First Defendant was formed, and the circumstances in which the said loans were assigned to the First Defendant, in order to determine the interest if any of the First Defendant in the original loans (see paragraphs 15 – 18, and 20 – 22);

(d) The contact made by Mr Gurniak and the Receiver's investigation of his relationship with the First Defendant (see paragraphs 19, 21-22).

[11] *The Receiver has further instructed Russian lawyers to challenge assignments purportedly made by the First Defendant of its interest in the Loan Agreements with Finansstroy, Red Sector, and Logistica to three further Russian companies, in the Russian arbitrazh courts.*

[12] *As he has deposed, the Receiver is not satisfied, as to the identity of the true beneficial owner of the First Defendant.*

[13] *The Receiver, given the limited information obtained since his appointment, is unable to comment on the rationale for the First Defendant entering into the Loan Assignments, or the reason for the reason for the significant differential between the value of the debts and the consideration paid by the First Defendant.*

[14] *The Receiver accordingly neither consents nor objects to the relief sought by the Plaintiffs in* [this] *application.*"

Mr Brady [of counsel] confirmed this position to the court.

[4] While these proceedings were brought by originating summons, the Plaintiffs compiled and served a Statement of Claim, in accordance with the directions of the court. This pleads that Quinn Finance, the Bank and Quinn Hotels Praha AS were at all material times, and remain, direct or indirect creditors of Demesne. The latter is described as a company registered in Northern Ireland. It is said to be an indirect subsidiary of Quinn Finance Holding, forming part of the group of companies

known as Quinn International Property Group. It is averred that Demesne was "… *principally engaged in operating as an alternative treasury vehicle*" for the latter. Sean Quinn Senior ("SQ") is described as a former director of Demesne and a director of Quinn Finance, until 14th April 2011, when Quinn Finance, as sole shareholder of Demesne, removed him as a director. Against this background, the Statement of Claim contains the following material averments:

(a) At all times material to this action, the Demesne accounts showed that it was due and owing substantial debts from a series of companies registered in the Russian Federation ("*the Russian companies*"). As at the Demesne balance sheet date for 30 March 2011 the amounts due were:-

1) Finanstroy Investments	£29,993,280.51
2) Logistica	£31,428,166.77
3) Red Sector	£2,169,386.67
4) ZAO Metropolis	£21,419,003.39
5) Story Torg Center	£571,039.54
6) OOO Business Parks	£11,825,956.22
7) OOO Avrora	£5,050,144.68
8) OOO Aksay	£934,634.87

(b) Peter Darragh Quinn ("PQ") is a nephew of SQ and was, at all material times, either the General Director of, or a Representative appointed on behalf of, the Russian Companies. The Russian Companies are the owners of Russian property which formed part of the QIPG.

(c) Galfis is a company registered in Belize. Aleman Cordero Galindo & Lee Trust (Belize) ("*Aleman*") is the Registered Agent of Galfis.

(d) By a series of exhibited assignments ("the Assignments"), purportedly dated 4th April 2011, Demesne, for an alleged consideration of US$100 in each case, purported to assign its right to the debts due and owing from the Russian Companies over to Galfis. Also, on 4th April 2011, Galfis purported to enter into Addendum Agreements (the "Addendum Agreements") with the Russian Companies whereby the interest rate provided in the original loan agreements was increased to 30%. At all times material to this action, the assignments were signed by SQ in his alleged capacity as Director of Demesne, Yaroslav F Gurnyak in his alleged capacity as an Attorney on behalf of Galfis and by PQ on behalf of the Russian companies.

(e) After 4th April 2011, the debts purportedly assigned on 4th April 2011 continued to be shown in the records of Demesne as belonging to it.

The books and records of Demesne had no copy of the alleged assignments or Addendum Agreements or of any resolution of the directors approving them or authorising SQ to execute them. Furthermore, the books and records of Demesne show no records of any preparation for the execution of the alleged assignments. Even the purported nominal consideration was not paid or tendered on 4 April 2011 or at any time on or before 14th April 2011. The tender of the purported nominal consideration months after 14 April 2011 was rejected and is of no relevance.

(f) Pursuant to a Norwich Pharmacal Order obtained by the Plaintiffs in separate proceedings in Belize, the Plaintiffs have become aware that it was impossible for the purported assignments to Galfis and the Addendum Agreements to have been executed on 4 April 2011, or in fact at any time prior to July 2011.

(g) Galfis was incorporated on 14 February 2011. Galfis was only purchased by a professional mediary ("Senat") and ceased to be a dormant shelf company on 6 July 2011, as witnessed by two emails of that date between Yaniseth K. Sullivan and Kavita Rathone. The subscribers to the Memorandum and Articles appointed Fernando A. Gil as first director on the 6 July 2011. Yaroslav F Gurnyak, who is a Ukrainian National, was represented to the incorporators as the ultimate beneficial owner of the first Defendant. He is unlikely to be the genuine ultimate beneficial owner and in Belize the court was subsequently unable to conclude, in a judgment of Benjamin C.J., that he was the ultimate beneficial owner as his evidence was unsatisfactory. The sole director resolved on 6 July 2011 to issue 50,000 bearer shares of USD 1 each. No evidence has been produced that these shares were paid up.

(h) On 20 July 2011 Aleman sent Senat a Power of Attorney executed by Fernando Gil in favour of a Yaroslav F. Gurnyak ("Gurnyak"). The Power of Attorney bears the alleged date of 1st April 2011 but was notarised and apostilled on the 20th July 2011. On the 20th July 2011 Aleman also invoiced Senat for "signing of documents" in respect of the Power of Attorney.

(i) Aleman has provided an explanation for the power of Attorney being dated the 1st April 2011 when it was executed on the 20th July 2011. Aleman has stated that there was a typographical error in the Power of Attorney and that it should have been dated the 20th July 2011. Whether the mis-dating was deliberate or accidental, the Power of Attorney was not executed until 20th July 2011 and Gurnyak was unable to act on behalf of Galfis until that date.

(j) It follows from the Belize discovery that as at 4th April 2011 and up to and including 14th April 2011, Galfis had no director, shareholder or attorney and had not been acquired from the "shelf" for use in the alleged assignments, Addendum Agreements or for any use at all. The alleged assignments and Addendum Agreements were purportedly executed at the earliest on or after 20 July 2011, when Gurnyak acquired his power of attorney for Galfis.

(k) By reasons of the matters as aforesaid, the Assignments and Addendum Agreements and each of them are and were null and void and of no cause or effect on the grounds that:-

1. The Assignments and Addendum Agreements were backdated;

2. The Assignment Agreements were not validly executed on behalf of Demesne, since after 14 April 2011 and on every subsequent date SQ no longer had any authority to execute any document for Demesne, regardless of whether or not he had such authority prior to 14th April 2011, which is not admitted;

3. Further or in the alternative, the Assignment Agreements were executed in by SQ in breach of his Fiduciary Duties to Demesne to safeguard its property, of which breach of fiduciary duty Galfis had, or ought to have had knowledge or notice, particularly as valuable assets of Demesne were being purportedly assigned for nominal value;

4. To the extent that the Assignment Agreements were void the Addendum Agreements were in any event necessarily void also, since Galfis could not contract validly or effectively in relation rights which had not been assigned to Galfis.

5. Further or in the alternative, the Assignments and the Addendum Agreements are liable to be set aside pursuant to Article 367 of the Insolvency (NI) Order 1989.

(l) <u>The Grounds upon which the Assignments from Demesne to Galfis are invalid on the grounds of backdating or were executed without the lawful authority of Demesne</u>

1. The Assignments were not signed on the 4th April and were, in fact, signed on an unknown date on or after 20th July 2011, being the earliest date when Mr Gurynak could allegedly have sought to execute the Assignments on behalf of Galfis;

2. On or after 14th April 2011, SQ was no longer a Director of Demesne and thus, by a date on or after the 20th July 2011, had no power or authority to execute any document on behalf of Demesne which is, or could be binding upon Demesne;

(m) In the alternative, the Grounds upon which the Assignment Agreements were executed in circumstances where SQ was acting in breach of his Fiduciary Duty to Demesne of which Galfis had, or ought to have had knowledge;

1. SQ was a Director of Demesne until 14th April 2011;

2. The Assignment Agreements were manifestly disadvantageous to the interests of Demesne by removing valuable assets for alleged nominal consideration;

3. SQ executed the Assignment Agreements on behalf of Demesne with the intention of causing loss to Demesne and with the intention of benefiting himself or members of his family;

4. Galfis, by its Attorney, Mr Gurnyak, knew or had constructive knowledge or had notice or constructive notice of the intention behind the execution of the Assignment Agreements on the part of SQ and PQ and/or had knowledge of the facts constituting a breach of fiduciary duty by SQ, namely the purported disposal of valuable property of Demesne for nominal consideration;

5. Galfis was aware, or ought to have been aware that in executing the Assignment Agreements, that SQ was acting in breach of his fiduciary duties as a Director of Demesne ;

6. Galfis sought to benefit from the breach of Fiduciary Duty by SQ (of which Galfis had knowledge) and has sought to claim the benefit of the debts due by the Russian Companies pursuant to the Assignment Agreements;

(n) The Grounds upon which the Assignment Agreements are liable to be set aside pursuant to Article 367 of the Insolvency (NI) Order 1989;

1. At all times material to this Action the Assignment Agreements were entered into for the purpose of putting

assets beyond the reach of the Plaintiffs or any one or more of them and/or the purpose of prejudicing the Plaintiffs or any one or more of them in relation to any claim they were making or which they might make at some time ;

2. The consideration, or alleged consideration of US$100, for each of the the Assignment Agreements was a substantial undervalue;

3. At all times material to this Action, SQ and PQ have sought to use the Assignment Agreements and the Addendum Agreements to the detriment of the Plaintiffs and in particular to disadvantage IBRC and to undermine IBRC's security over the Russian properties held by the Russian Companies;

(o) Three of the Russian Companies - Finannstroy, Logistica and Red Sector - relying on the debts claimed by Galfis, pursuant to the Assignment Agreements, have each been placed into "self bankruptcy" in the Russian Federation. For the reasons set out above, Demesne is due and owing any monies owed by the Russian Companies as provided for within the Assignment Agreements and claims that any interest in the said debts acquired by Galfis pursuant to the Assignment Agreements or the Addendum Agreements is held upon Trust to the benefit of Demesne.

[See paragraphs 4 – 18 of the Statement of Claim]. Accordingly, the Plaintiffs challenge a series of assignments and closely related addendum agreements. I shall, for convenience, describe all of these as "*the impugned transactions*".

[5] As appears from the foregoing, the gravamen of the Plaintiffs' case is that the impugned transactions are unlawful on the following grounds:

(a) They were not validly executed on behalf of Demesne since, from 14th April 2011, Sean Quinn had no legal authority to execute anything on behalf of Demesne.

(b) They were backdated to a date when Galfis could not lawfully execute them .

(c) Further, or alternatively, Sean Quinn was acting in breach of his fiduciary duties to Demesne to safeguard its property, of which breach Galfis had, or ought to have had, knowledge or notice.

(d) Galfis could not lawfully contract in relation to rights not lawfully assigned to it.

Grounds (a) – (d), reflect the Plaintiffs' **primary** case against Galfis. The Plaintiffs' **secondary** case against Galfis is founded on Article 367 of the Insolvency (Northern Ireland) Order 1989 ("*the 1989 Order*"), which provides:

> "***Transactions defrauding creditors***
>
> ***367.*** *– (1) This Article relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if –*
>
> *(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;*
>
> *(b) he enters into a transaction with the other in consideration of marriage* ***[F1*** *or the formation of a civil partnership****]****; or*
>
> *(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.*
>
> *(2) Where a person has entered into such a transaction, the High Court may, if satisfied as mentioned in paragraph (3), make such order as it thinks fit for –*
>
> *(a) restoring the position to what it would have been if the transaction had not been entered into, and*
>
> *(b) protecting the interests of persons who are victims of the transaction.*
>
> *(3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose –*
>
> *(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or*

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In relation to a transaction at an undervalue, references in this Article and Article 368 to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in Articles 368 and 369 the person entering into the transaction is referred to as 'the debtor'."

[6] The case made on behalf of the Plaintiffs acknowledges that, at the inception of these proceedings, their claim was based on Article 367 of the 1989 Order. It is contended that, as a result of disclosures during the course of the proceedings, the Plaintiffs have acquired evidence to the effect that the impugned assignments were backdated *and* were executed by Sean Quinn (Senior), purportedly on behalf of Demesne, without authority. It is further contended that the impugned assignments were designed to remove from the potential control of the second-named Plaintiff the Bank Demesne assets and to deprive the Bank of its security. The Plaintiffs' primary case, based on the evidence said to substantiate the alleged want of legal authority and backdating, is that the impugned assignments were not the acts of Demesne and are nullities in consequence. The constituent elements of the Plaintiffs' primary case are the following:

(a) Demesne, prior to the 14th April 2011 was a company controlled by SQ as part of a property empire belonging to the Quinn family. Peter Darragh Quinn ("PQ"), SQ's nephew, was involved with the underlying properties in Russia.

(b) On the 14th April 2011 the first Plaintiff, by virtue of the appointment of share receivers in the Quinn property group, ousted SQ, who ceased to be a director of Demesne.

(c) Galfis relies on a series of assignment agreements relating to assets of Demesne in the nature of claims against various Russian companies, all purportedly executed on the 4th April 2011. In the case of each purported assignment, it is purportedly executed by SQ on behalf of Demesne, a Mr Gurnyak on behalf of Galfis (a Belize company) and PQ on behalf of the Russian debtor company. Each purported assignment is stated to be for USD 100 consideration.

(d) Mr Gurnyak purports to be the ultimate beneficial owner of Galfis but the evidence suggests an inference that he is in fact a nominee for one or other or both of the Quinns.

(e) As a result of the aforementioned Norwich Pharmacal action in Belize, the Plaintiffs are satisfied that the purported assignments were not executed on the 4th April 2011 but probably on or after the 20th July 2011 and in any event after the 14th April 2011, when SQ's authority on behalf of Demesne ceased."

(f) Demesne's books and records show no preparation for the sizeable transactions, which are alleged to have occurred on the 4th April. The affidavit of Robert Dix[1] further shows that the monthly accounts of Finanstroy Investments (one of the Russian companies owing monies to Demesne) continued to show the debt remaining due to Demesne until at least the 23rd May"

(g) By reference to the affidavits sworn by Mr. Woodhouse, prior to 6th July 2011 Demesne's books and records show no preparation for the sizeable transactions, which are alleged to have occurred on the 4th April. The affidavit of Robert Dix further shows that the monthly accounts of Finanstroy Investments (one of the Russian companies owing monies to Demesne) continued to show the debt remaining due to Demesne until at least 23rd May 2011. As set out above, Mr Gurnyak applied in Belize to set aside the receivership ordered by the Belize court in respect of Galfis but the Belize court rejected this application and ordered Mr Gurnyak to pay the costs personally

In argument, it was emphasized on behalf of the Plaintiffs that they vigorously dispute the veracity of certain key averments in the affidavits sworn by Sean Quinn and Peter Quinn in the presently uncompleted Republic of Ireland proceedings.

[7] The evidential foundation of the entirety of the Plaintiffs' case against the Defendant is constituted by a series of affidavits and exhibits, which the court has considered. There was no challenge on behalf of Galfis to any of this evidence and no application to the court that any of the deponents should be cross-examined. I summarise the salient features of the evidence on which the Plaintiffs rely as follows:

(a) The Demesne Balance Sheet of 31st March 2011 demonstrates that it was owed substantial debts by a series of Russian registered companies. These range from around £1 million to £31.4 million and totalled approximately £100 million. The debtors included Finanstroy Investments ("*Finanstroy*" – circa £30 million), Logistica (£31.4 million), ZAO Metropolis (£21.4 million), OOO Business Parks (£11.8 million), Red Sector (£2.1 million) and Story Torg Center (£571,000).

[These are, purely for convenience, minimally rounded figures]. These debts total some £97 million.

(b) As confirmed by the documents themselves, all of the impugned transactions are purportedly dated 4th April 2011. There are 29 purported assignments in total, each recording an alleged consideration of US $100, whereby Demesne purportedly assigned its rights to **all** of these debts to Galfis. The effect of the Addendum Agreements, all also purportedly dated 4th April 2011, was to increase the interest rate specified in the original loan agreements to 30%.

(c) On their face, there were three parties to each of the impugned transactions. These were Demesne ["*the lender*"], Galfis ["*the new lender*"] and the identified debtor ["*the borrower*"]. In every case, the signatories of the impugned transactions were Sean Quinn (on behalf of Demesne), one Y. F. Gurnyak (on behalf of Galfis) and Peter Darragh Quinn, or 'PQ', (on behalf of each of the Russian company debtors).

(d) Each of the impugned assignments (as already noted) is purportedly dated 4th April 2011, having immediate effect and contains the following operative clause:

> "***Transfer***
>
> *In accordance with this Agreement the Lender transfers the Assigned Debt to the New Lender. The New Lender agrees that after 4th April 2011 it takes over the Assigned Debt … and pays the Agreed Price* [US $100] *to the Lender*".

(e) It is clear from all the evidence that Galfis is a company incorporated and existing under the laws of Belize, where it has its registered office. It has a sole director, Sr. Fernando A. Gil.

(f) It is also clear from the evidence that one of the protagonists in the events under scrutiny is a firm of attorneys who practice as Aleman,

Cordero, Galindo and Lee Trust (Belize) Limited ("*Aleman*"). These attorneys practice in both Belize City and Panama.

(g) The evidence further makes clear that Galfis was incorporated on 14th February 2011. It is described in certain e-mails as a "*Panama and Belize off shore company*". By reference to the same e-mails, on 6th July 2011 an entity known as "Senat", carrying on business in the UAE, gave instructions to Aleman to purchase Galfis. The clear inference is that Galfis was, from incorporation on 14th February 2011, a dormant "shelf" company. Aleman duly accepted these instructions. In a later e-mail (dated 2nd February 2012) Aleman stated:

> "*We are pleased to confirm that prior to 6th July 2011, when Senat purchased Galfis Overseas Limited, it was a shelf company incorporated by our firm*".

This communication was made in response to a request for confirmation of this fact and that "*… there were no members yet appointed prior to that date*".

(h) By a formal instrument of appointment dated 6th July 2011, the aforementioned Sr. Gil was appointed as the first director of Galfis. This appointment was made by a member of the firm of Aleman in the capacity of "*subscribers to the memorandum and articles of association of* [Galfis]" and "*Authorised Signatory*". It is evident that Aleman were acting as the Registered Agent of Galfis.

(i) On the same date, 6th July 2011, Sr. Gil, as sole director of Galfis, executed a formal resolution that the company issue 50,000 shares each to the value of US $1 and execute an associated share certificate. There is no evidence before this court that this amount was ever paid. The evidence includes the aforementioned Share Certificate.

(j) On 7th July 2011, Aleman invoiced Senat (in the amount of US $800) for "*fees and expenses incurred in the incorporation of the company* [identified as Galfis Overseas Limited]".

(k) Senat is described in the evidence before the court as a management consultancy entity carrying on business in the United Arab Emirates.

(l) Chronologically, the next formal legal instrument which emerges in the evidence is the "Power of Attorney", purportedly bearing the date 1st April 2011. On the evidence before this court, this document was purportedly signed by the aforementioned Sr. Gil. By its terms, it

purportedly appointed Yaroslav F Gurnyak, a citizen of The Ukraine, as the attorney of Galfis –

> "*To do or execute all and any lawful acts and deeds hereinafter mentioned with full authority including but not limited to the following …*
>
> *To sign the assignment of rights agreements (cession contracts) and other documents, necessary for the signature and execution of the said agreements on behalf of the Company …*".

By a letter dated 20th July 2011 from Aleman to Senat, it was stated:

> "*As per your instructions, we are pleased to enclose herewith documents regarding the above-mentioned company* [Galfis Overseas Limited], *duly legalised by the Apostille. We avail ourselves of this opportunity to include our invoice in connection with this matter*".

The enclosed invoice is dated 20th July 2011 and levies a professional fee of $200 in respect of "*signing of documents*", "*Apostille*" and courier fees.

The Plaintiffs' Primary Case: Findings and Conclusion

[8] I begin with three guiding principles :

[a] A corporation can act lawfully only through its duly appointed authorised officers .

[b] A person who was formerly , but is no longer , a corporation's appointed officer has no lawful authority to act on its behalf ; if and insofar such person purports to do so , any resulting act will be null , void and of no legal effect .

[c] The appointee of a power of attorney can act lawfully only in accordance with the terms of the instrument of appointment and following appointment ; if the appointee purports to act otherwise , the resulting acts are null , void and of no legal effect.

[9] I conclude that the Plaintiffs have discharged the burden of establishing their primary case to the requisite standard. Specifically, I find and conclude that all of the key evidential ingredients in the Plaintiffs' case, summarised in paragraphs **[6]** and **[7]** above, are proven. These, accordingly, become findings of fact by the court and it is otiose to rehearse them *in extenso*. For the avoidance of any doubt, I summarise the central findings of the court in the following terms:

(a) The Russian companies identified in the pleadings and above were indebted to Demesne, as of 31st March 2011, in the amount of approximately £100 million.

(b) Galfis had no power to lawfully act on the critical date of 4th April 2011.

(c) While the date or dates upon which the impugned assignments and addendum agreements were actually executed (if at all) is unclear, this was 6th July 2011 at the earliest.

(d) The date borne by all of the impugned assignments and addendum agreements, 4th April 2011, is plainly fabricated. All of the impugned transactions have been unlawfully backdated.

(e) Until 6th July 2011, Galfis was a dormant, recently incorporated shelf company.

(f) Insofar as the power of attorney purporting to appoint Mr. Gurnyak of The Ukraine as attorney of Galfis was lawfully executed, the earliest date when this occurred was 20th July 2011. The impugned transactions could not be lawfully executed before then .

To the above central findings I add the following:

(g) There is no ascertainable reason why Demesne would have divested itself of assets worth approximately £100 million on the date of 4th April 2011.

(h) Equally, there is no ascertainable reason to explain why Demesne would have divested itself of these assets for a total fiancial consideration of the order of £5,000.

(i) There is nothing which can rationally account for the apparent willingness of Demesne's Russian debtors, who owed the company £100 million, to suddenly and collectively commit themselves to the penal interest repayment rate of 30%.

[10] Fundamentally, I conclude that all of the impugned transactions are null, void and of no effect as they were executed without the authority of the creditor, Demesne; one of the parties to the impugned transactions, Galfis, had no legal power or authority to execute same on the date when they were allegedly made, 4th April 2011; the attorney who purportedly and allegedly executed the impugned transactions on behalf of Galfis was not their attorney on 4th April 2011 and could not have lawfully acted on their behalf until, at the earliest, 20th July 2011; and each

of the instruments in question was illicitly backdated, without any legal power or authority. All of the impugned assignments and addendum agreements are shorn of any vestige of legality in consequence. Accordingly, the cornerstone of the Plaintiff's primary case succeeds.

[11] I find and conclude, in the alternative, that if the court's primary findings and conclusions are in any way incorrect, then insofar as the impugned transactions were executed with legal authority and were not backdated, they are manifestly invalidated – and, hence, unlawful – on the ground that Sean Quinn was acting in blatant disregard of his fiduciary duty to Demesne *and* Galfis had actual or constructive knowledge of a series of material facts bearing on this, specifically:

(a) Sean Quinn was a Director of Demesne until the 14th April 2011;

(b) The impugned transactions were manifestly disadvantagous to the interests of Demesne by removing valuable assets for alleged nominal consideration;

(c) Sean Quinn executed the impugned transactions on behalf of Demesne with the intention of causing loss to Demesne and with the intention of benefiting himself or members of his family;

(d) Galfis, by its Attorney, Mr Gurnyak, knew or had constructive knowledge or had notice or constructive notice of the intention behind the execution of the impugned transactions on the part of Sean Quinn and Peter Quinn and/or had knowledge of the facts constituting a breach of fiduciary duty by Sean Quinn, namely the purported disposal of valuable property of Demesne for nominal consideration;

(e) Galfis was aware, or ought to have been aware that in executing the impugned transactions, that Sean Quinn was acting in breach of his fiduciary duties as a Director of Demesne ;

(f) Galfis sought to benefit from the breach of Fiduciary Duty by Sean Quinn (of which Galfis had knowledge) and has sought to claim the benefit of the debts due by the Russian Companies pursuant to the impugned transactions.

The Plaintiffs' Secondary Case: Findings and Conclusion

[12] The Plaintiffs' secondary case is based on Article 367 of the 1989 Order, which reflects Section 423 of the Insolvency Act 1986. In promoting this secondary case, the following submissions are advanced:

(i) At all times material to this action the Assignment Agreements were entered into for the purpose of putting assets beyond the

reach of the Plaintiffs or any one or more of them and/or the purpose of prejudicing the Plaintiffs or any one or more of them in relation to any claim they were making or which they might make at some time;

(ii) The consideration, or alleged consideration of US$100, for each of the Assignment Agreements was a substantial undervalue;

(iii) At all times material to this action, Sean Quinn and Peter Quinn have sought to deploy the impugned transactions to the detriment of the Plaintiffs and in particular to disadvantage the Bank and to undermine the Bank's security over the Russian properties held by the Russian Companies.

[13] In promoting this secondary case, the following submissions are advanced:

(a) Although in each case the section appears under the heading "transactions defrauding creditors", there is no need to prove subjective fraud: ***Chohan v Saggar*** [1992] BCC 306 at 323 A-B. Furthermore acting on legal advice is not a defence: ***Arbuthnot Leasing International Limited v Havelet Leasing Limited (No 2)*** [1990] BCC 636.

(b) After some initial difference of judicial thinking, it is now the accepted view that the purpose of putting assets beyond the reach of creditors (Article 367(3)) only has to be a substantial rather than a dominant purpose of the transaction: ***Hashmi v IRC*** [2002] EWCA Civ 981; ***Kubiangha v Ekpenyong*** [2002] EWHC 1567 (Ch).

(c) Article 367 also requires a transaction to be at an undervalue. In the present case the alleged consideration in each case was nominal and therefore each of the alleged assignments was plainly at an undervalue.

(d) Even a transaction ostensibly at full market value can amount to an undervalue under this provision if the transaction gives the beneficiary of the transaction a "hold out" or "ransom" position as against a secured creditor: ***Agricultural Mortgage Corporation Plc v Woodward*** [1993] BCC 688 (CA).

(e) For the purposes of Article 367 one assumes that the purported assignments were not backdated but authorised and that such execution took place before

14th April 2011. Even in that situation, the only possible inference as to the purpose of the assignments was to put assets beyond the reach of the plaintiffs or otherwise prejudice the interests of the plaintiffs within section 367(3). The assignments have in fact been used to trigger bankruptcies in the Russian debtor companies and to try to undermine the Bank's security.

(f) In their affidavits in the Republic of Ireland contempt proceedings, both SQ and PQ appear to admit that they were attempting to take steps to defeat or delay the bank's claims.

[14] The Plaintiffs' secondary case is, necessarily and logically, alternative to their primary case. I have held that the Plaintiffs' primary case is proven. This is the principal conclusion of the court. Insofar as and to the extent that this principal conclusion is incorrect in any material respect, I further conclude, in the alternative, that the Plaintiffs have discharged the onus of establishing their secondary case. The abrupt, unexplained and *prima facie* irrational assignment of company assets (debts) having a value of around £100 million for a total consideration of less than £5,000 speaks for itself. It smacks irresistibly of an orchestrated, elaborate and illicit charade. On the basis of the available evidence, this exercise had no purpose other than to put the assets in question beyond the reach of legitimate creditors and/or to prejudice the interests of such creditors. Furthermore, bearing in mind Article 368(1) of the 1989 Order, the Plaintiffs are plainly victims of the impugned transactions. Finally, insofar as the impugned transactions were based on legal advice I find that this is irrelevant and that the demonstration of subjective fraud is unnecessary.

Overall Conclusion, Order and Costs

[15] (i) For the reason explained, the impugned transactions are unlawful. They are null, void and of no legal effect or consequence.

(ii) In the alternative to (i) the impugned transactions are unlawful as they contravene Article 367 of the Insolvency (Northern Ireland) Order 1989.

(iii) This judgment must be considered in conjunction with the final order of the court, appended hereto.

(iv) The final order makes provision for the costs of the parties, following consideration of their representations on this discrete issue.

APPENDIX . FINAL ORDER

2011/147938

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

IN THE MATTER OF THE INSOLVENCY (NI) ORDER 1989

IN THE MATTER OF DEMESNE INVESTMENTS LIMITED

Between:

QUINN FINANCE

First Plaintiff;

-and-

IRISH BANK RESOLUTION CORPORATION LIMITED

Second Plaintiff;

-and-

QUINN HOTELS PRAHA AS

Third Plaintiff;

-and-

DEMESNE INVESTMENTS LIMITED

Fourth Plaintiff;

-and-

GALFIS OVERSEAS LIMITED

Defendant.

ORDER

THIS ORDER SHALL TAKE IMMEDIATE EFFECT

UPON APPLICATION by the Plaintiffs;

AND UPON READING the reading the documents in the Court file recorded as having been read;

AND UPON HEARING Counsel for the Plaintiffs

AND UPON HEARING Counsel upon behalf of the Receiver of Galfis Overseas Limited ("Galfis")

THIS COURT DOES ORDER:-

1. The Court declares that the Assignment Agreements and Addendum Agreements exhibited hereto at Appendix One ("the impugned transactions") are null, void and of no legal effect or consequences.

2. The Court declares that Demesne is solely entitled to the benefit of all rights purportedly assigned or transferred by the impugned transactions.

3. There will be liberty to apply. Without prejudice to the generality thereof, the Plaintiffs will have liberty to apply to the Court in respect of any matter ancillary or incidental to the judgment of the Court or this Order, including the enforcement of this Order.

4. Without prejudice to paragraph 3 and, particularly, without prejudice to the sustainability or merits of any such application, the Plaintiffs will be at liberty to apply to this court to join further parties as Defendants and, to this extent and this extent only, the balance of these proceedings is stayed.

Costs

5. The Plaintiffs' costs shall be paid by Galfis, to be taxed in default of agreement.
6. The costs of the Receiver shall be provided out of the assets of Galfis.

Note

This Order takes immediate effect, today, 30th March 2012. For the avoidance of any doubt, the Court draws attention to Order 59, Rule 13(1) of the Rules of the Court of Judicature, which provides:

> "*Except so far as the court below or the Court of Appeal may otherwise direct –*
>
> *(a) An appeal shall not operate as a stay of enforcement or of proceedings under the decision of the court below;*
>
> *(b) No intermediate act or proceeding shall be invalidated by an appeal.*"

SIGNED

Proper Officer

Dated this 30th day of March 2012