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Judgment: approved by the Court for handing down | *Delivered:* **03/05/12**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE MATTER OF 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-

LYNDHURST DEVELOPMENT TRADING SA

First Defendant;

-and-

INNISHMORE CONSULTANCY LIMITED

Third Defendant;

-and-

PUBLIC JOINT STOCK COMPANY UNIVERMAG UKRAINA

Fourth Defendant;

McCLOSKEY J

Introduction

[1] I refer to the court's separate judgment in the recusal application mounted in the course of the contempt proceedings brought by the Plaintiffs against one of the Defendants herein ("*Lyndhurst*") and two individuals said to have been acting as their agents. That satellite judgment and the current substantive judgment are handed down on the same date.

The Proceedings

[2] The subject matter of the Plaintiffs' claims is a series of inter-related purported assignments of a single loan and so-called "supplementary loan agreements" (hereinafter described as "*the impugned transactions*"). The Plaintiffs make the case that the impugned transactions were unlawful and seek relief accordingly, under Article 367 of the Insolvency (Northern Ireland) Order 1989 and otherwise. The Defendants are Lyndhurst, Innishmore Consultancy Limited ("*Innishmore*") and Public Joint Stock Company Univermag Ukraina ("*Univermag*").

The Mareva Injunction

[3] Initially, the court embarked upon the hearing of a contempt motion initiated by the Plaintiffs. The impetus for the contempt motion was an order of this court, in the form of a Mareva injunction, made by me on 23rd December 2011. I shall describe this as "*the injunction*". It was made *ex parte* on the application of the Plaintiffs and is directed to Lyndhurst only, in the following terms:

> "*… The first Defendant including its directors and officers and servants or agents or any of them …*".

For convenience, I shall describe "*directors and officers and servants or agents*" as "*Lyndhurst's agents*".

By the terms of the injunction, Lyndhurst and its agents were restrained from:

(a) Taking any steps to assign, sell or otherwise transfer or deal in any way whatsoever with any of the assigned loan agreements and/or any judgment of any court arising therefrom.

(b) Without prejudice to (a), assigning the legal or beneficial interest in any of the assigned loan agreements or, alternatively,

charging, encumbering or otherwise dealing with or devaluing or taking any steps calculated or intended to prevent or obstruct the Plaintiffs from applying to the court in order to set aside the impugned assignments (from Demesne Investments Limited ("*Demesne*") to Innishmore and then from Innishmore to Lyndhurst).

(c) Seeking to rely upon, demand payment or otherwise enforce any of the assigned loan agreements, to include seeking to enforce the said loan agreements against Univermag or otherwise from receiving payment of any monies pursuant to their terms.

(d) Discharging, using, paying out or otherwise dealing with any monies remitted to Lyndhurst on foot of any of the assigned loan agreements.

The injunction further mandated that Lyndhurst and its agents retain and hold any monies remitted or paid to Lyndhurst or its agents on foot of any of the assigned loan agreements. The latter are described and particularised in an appendix to the injunction. In the usual way, the injunction further provided that Lyndhurst could apply to the court at any time to vary or discharge its terms, upon giving 48 hours minimum advance notice to the Plaintiffs' solicitors. Finally, the injunction specified that the case would be reviewed by the court on 30th December 2011 and again on 5th January 2012.

[4] Under the umbrella "The Effect of this Order", the injunction further provided:

> "*…[2] A defendant who is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way …*
>
> *[4] The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court:*
>
> *(a) The first Defendant including its directors and officers and servants or agents or agent appointed by power of attorney*".

The injunction further recited the affidavits which the court had considered prior to making the order, identifying each deponent and the date of each affidavit. It also recorded the following undertaking given to the court by the Plaintiffs:

> "*If the court later finds that this order has caused loss to the first Defendant and decides that the first Defendant should be compensated for that loss, the Plaintiffs will comply with any order the court may make.*"

Under the rubric "Service of this order and of the documents", the injunction provided:

> "*The court grants leave to serve this order outside the jurisdiction of Northern Ireland by electronic communication for any legitimate and bona fide purpose*".

The first substantive paragraph in the injunction was entitled "Notice to the First Defendant" and stated:

> "*(1) This order prohibits you from doing the acts set out in this order. You should read it all carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the court to vary or to discharge this order.*
>
> *(2)* ***If you disobey this order you may be found guilty of contempt of court and may be sent to prison or fined or your assets may be seized***."

[My emphasis].

The next succeeding paragraph is couched in the following terms:

> "*An application was made on 22nd December 2011 by counsel for the Plaintiff to the judge. The judge heard the application and read the affidavits referred to in Schedule 1 and accepted the undertaking in Schedule 2 at the end of this Order*".

The form and appearance of the injunction are in accordance with the customary formality and solemnity. Furthermore, the first page of the injunction bears the formal stamp of the Court of Judicature of Northern Ireland; records that the matter was heard in the High Court of Justice in Northern Ireland, Chancery Division; recites the Insolvency (NI) Order 1989; identifies the assigned judge; and bears the date of the hearing (23rd December 2011).

The Evidence

[5] I shall, firstly, provide a resume of the affidavit evidence considered by the court *ex parte* when making the injunction. This evidence included, in particular, an affidavit sworn by Robert Dix, who describes himself as a director and the chairman of Quinn Finance, an unlimited company incorporated in Ireland. He is also a director of other companies belonging to the Quinn International Property Group ("*the Quinn Group*"). One of these companies is Demesne, while another is Quinn International Property Management Limited ("*QIPM"*). He explains that until 14th April 2011 the Group was under control of members of the Quinn family, financed by borrowings from Irish Bank Resolution Corporation Limited ("*IBRC*") or its predecessor. As part of the financing arrangements, IBRC held securities over certain assets of the Quinn Group, together with certain share charges. Quinn Finance operated as a treasury vehicle for other members of the Quinn Group, arranging loans and finance for them as and when necessary. Demesne is registered in Northern Ireland and is a wholly owned subsidiary of Quinn Finance. Members of the Quinn Group have properties in various foreign jurisdictions, including the Ukraine. As part of a comprehensive review of the assets, liabilities and financial viability of members of the Quinn Group, it was established that Demesne's principal assets and liabilities were, respectively, debts due to it by other companies in the Group and vice versa. As of 31st March 2011, one of the debts due to Demesne was in the sum of almost £29,000,000, owing by Univermag, a company registered in the Ukraine and the owner of a shopping centre in Kiev with an estimated value of USD63,000,000.

[6] Enter Innishmore: the latter is described as a company registered in Northern Ireland. Its sole director and legal owner of the entire issued share capital is Peter Quinn, a nephew of Sean Quinn. On 6th April 2011, Demesne purportedly assigned to Innishmore its rights under a series of loan agreements. As a result, Innishmore became a creditor of Univermag. This impugned assignment is not documented in the books or records of Demesne, while its consideration is unstated. The individuals who executed this impugned assignment were Sean Quinn (on behalf of Demesne) and Peter Quinn (On behalf of Innishmore). The authenticity of this impugned assignment is challenged by the Plaintiffs. The next protagonist in the affair is Lyndhurst, a company registered in the British Virgin Islands. On 7th October 2011, Innishmore purportedly assigned to Lyndhurst the Univermag debts. The effective assignor was the aforementioned Peter Quinn, while Mr. Zaitsev purported to act as attorney for Lyndhurst. It is asserted that the first of these assignments, from Demesne to Innishmore, involved a deprivation of assets for something considerably less than their true value, making it impossible for Demesne to repay its financial liabilities of some £51,000,000 to Quinn Finance. It is claimed that IBRC will, in consequence, suffer a significant detriment. In short, it is contended that the assets of Demesne

have been severely depleted to the detriment of its creditors, including Quinn Finance. The Plaintiffs' case is that these transactions have been executed for the purpose of placing assets beyond the reach of Demesne's creditors. The Plaintiffs impugn the two aforementioned assignments of debt and two related "supplementary loan agreements". It is contended that no rational commercial explanation for any of the impugned transactions is evident.

The Plaintiffs' Statement of Claim

[7] Based on the outline of the evidence provided above, the case made in the Plaintiffs' Statement of Claim is, succinctly, as follows:

(a) On 6th April 2011, Demesne purportedly assigned its right to the Univermag debt of some £29,000,000 for no consideration. The parties to this assignment were Demesne, Innishmore and Univermag. This assignment cannot be traced in the books and records of Demesne.

(b) On 26th September 2011, Univermag and Innishmore purported, by a supplementary loan agreement, to vary the terms of the original loan agreement (dated 24th October 2006).

(c) By a second assignment dated 7th October 2011, Innishmore purported to assign the Univermag debt to Lyndhurst.

(d) By a further supplementary loan agreement dated 4th November 2011 the parties whereto were Innishmore, Lyndhurst and Univermag, a further variation of the original loan agreement was effected so as to entitle Lyndhurst to demand repayment of the Univermag debt before the repayment date.

(e) Mr. Zaitsev, purportedly acting as Lyndhurst's attorney, executed the second assignment and second supplementary loan agreement on their behalf.

(f) Pursuant to this series of transactions, Lyndhurst brought proceedings against Univermag in the Kiev Commercial Court, seeking judgment in the amount of an alleged debt of some USD45,000,000. These proceedings are described in greater detail in the recusal judgment.

(h) On 23rd December 2011, the Kiev Commercial Court duly granted to Lyndhurst the judgment it was seeking. I add that appeals have ensued.

[8] The Plaintiffs attack the impugned transactions on the following grounds:

(i) The first assignment was illicitly backdated to 6th April 2011.

(ii) The first assignment was not validly executed on behalf of Demesne, as Sean Quinn was no longer a director of this company and lacked authority in consequence.

(iii) Further, or alternatively, Sean Quinn executed the first assignment in breach of his fiduciary duty to Demesne to safeguard its property, a breach of which Innishmore and Lyndhurst had, or should have had, knowledge.

(iv) The first assignment being void, the second assignment and supplementary loan agreements were necessarily void in consequence.

(v) Alternatively, the second assignment and second supplementary loan agreement are void as the purported execution by Peter Quinn was not on behalf of Innishmore, a matter whereof Lyndhurst had actual or constructive knowledge.

(vi) Further, or alternatively, the impugned transactions are liable to be set aside under Article 367 of the Insolvency (Northern Ireland) Order 1989 ("*the 1989 Order*").

The Substantive Relief Sought

[9] In the prayer in the Statement of Claim, the following relief is sought:

(i) An order declaring the first assignment void, on one or more of the three grounds adumbrated above.

(ii) An order declaring the second assignment void.

(iii) An order declaring the supplementary loan agreements void.

(iv) Alternatively, an order pursuant to Article 367 of the 1989 Order setting aside the impugned transactions and declaring them null, void and of no effect.

(v) An order declaring that Demesne is solely entitled to the benefit of all rights purportedly transferred by the impugned transactions.

(vi) An Order declaring that all rights purportedly held by Lyndhurst pursuant to the impugned transactions are held on trust for Demesne.

Certain other forms of consequential and ancillary relief are sought.

[10] I make clear that, at this stage of the proceedings, the determination of the court is confined to the Plaintiffs' claim under Article 367 of the 1989 Order. I have acceded to the Plaintiffs' request that, at this juncture, the court adjudicate on this claim only, adjourning the balance of the Plaintiffs' claims for future adjudication, in the event that they are pursued. This course, coupled with the adjournment of the contempt proceedings against Lyndhurst and two of its named agents, is manifestly in furtherance of the over-riding objective enshrined in Order 1, Rule 1A of the Rules of the Court of Judicature. Furthermore, no adjudication of the Plaintiffs' case against Innishmore is required, as this Defendant has consented to the Plaintiffs' entitlement to relief under Articles 367 and 369 of the 1989 Order. The only other Defendant who had actively contested the claim was Lyndhurst. The substantive trial of the Plaintiffs' Article 367 claim was preceded by two days of hearing devoted to the Plaintiffs' contempt motion (detailed at greater length in the associated recusal judgment). On the morning of trial [1st May 2012], the court acceded to an application moved by Lyndhurst's Belfast solicitors and made an order pursuant to RCC Order 67, Rule 5 terminating their representation of Lyndhurst in this, the main, action (though not in the adjourned contempt proceedings).

The Plaintiffs' Case Considered

[11] The arguments advanced to the court in the submissions of Mr. Moss QC, Mr. Horner QC, and Mr. Dunlop (of counsel) on behalf of the Plaintiffs closely reflected the admirably composed Statement of Claim. The focus of the Plaintiffs' claim for relief under Article 367 of the 1989 Order is the two impugned assignments viz. Demesne to Innishmore and, subsequently, Innishmore to Lyndhurst. The court was reminded that, on 1st February 2012, the Plaintiffs obtained an injunction against Innishmore. Further, on 15th February 2012, this court acceded to the Plaintiff's application for the transmission of a "letter of request" to the Eastern Caribbean Supreme Court for the appointment of a receiver in respect of Lyndhurst. This stimulated the appointment of receivers in the British Virgin Islands on 20th February 2012. Counsels' submissions also reminded the court of the parallel contempt proceedings brought by IBRC against Sean Quinn and Peter Quinn in the Republic of Ireland, in which the aforementioned persons have sworn affidavits accepting that the impugned assignments from Demesne were intended to benefit the Quinn children and to put assets beyond the reach of creditors, in particular IBRC. The Plaintiffs' claim under Article 367 proceeds

on an *assumption* that the first impugned assignment was not backdated, was authorised and was effected prior to 14th April 2011: while there are issues relating to these and other related matters, such issues belong to the balance of the Plaintiffs' action, which stands adjourned.

[12] At the heart of the Plaintiffs' case under Article 367 of the 1989 Order is the assertion that the Univermag debt (of USD45,000,000/£29,000,000) was, via the two impugned assignments, twice assigned for no valuable consideration: firstly by Demesne to Innishmore and secondly by Innishmore to Lyndhurst, an assetless shelf company. The first of the impugned transactions (labelled "Supplementary Loan Agreement"), bearing on its face the date 6th April 2011, records the original loan of some USD44,000,000 to Univermag and recites that, pursuant to an agreement dated 1st June 2009, Demesne obtained all relevant rights and obligations, thereby becoming the lender. By the April 2011 transaction, Demesne purportedly agreed to assign all of the said rights and obligations to Innishmore. The second of the transactions under scrutiny is a supplementary loan agreement, dated 26th September 2011, the parties whereto are Innishmore and Univermag, which purports to effect certain amendments to the original loan agreement. The third of the transactions, upon which most attention was focussed at the trial, is an agreement bearing the date 7th October 2011. This is entitled "Assignment Agreement", the parties whereto are Innishmore and Lyndhurst. By the terms of this agreement Innishmore purported to assign absolutely and irrevocably to Lyndhurst all of the former entities' rights in relation to the repayment of the Univermag debt of USD44.2 million "*under loan agreement dated 24/10/2006 with all supplementary loan agreements*". The assignment of this *prima facie* enormous financial asset does not specify any financial consideration moving from the assignee to the assignor. Rather, it contains the following intriguing and rather opaque clause:

> "*Payment*
>
> *4.1 The parties hereto agree that the proper and sufficient consideration has been provided by the new lender against the assignment of rights and claims stipulated herein …*
>
> *This consideration of the requirements under present agreement consists in transfer in offset of amount of transfer of bank papers debt or securities for the amount of par value USD45,000,000 within 90 calendar days of the date of signing of this agreement*".

This latter clause is strikingly lacking in definition and particularity and its true meaning is enshrouded in obscurity. Evidentially, this impugned assignment is to be evaluated in conjunction with the affidavit of Mr. Orlov,

who describes himself as the owner of Lyndhurst. Taken at their zenith, uncritically and without the benefit of cross-examination, the averments of Mr. Orlov contain the following material assertions or acknowledgements:

(i) On the date when this impugned assignment was executed, there was no agreement between the parties regarding valuable consideration.

(ii) Several further *inter-partes* meetings, all inconclusive in this respect, followed.

(iii) Ultimately, it was envisaged that a supplementary agreement detailing certain unspecified and unparticularised "*securities*" to be provided by Lyndhurst to Innishmore would be executed by 7th January 2012. This did not materialise.

The 'bottom line' of Mr. Orlov's affidavit is that no consideration has been provided by Lyndhurst to Innishmore for the assignment of the Univermag debt of some USD45,000,000. This is clearly established by the evidence and I find accordingly.

[13] The submissions developed on behalf of the Plaintiffs addressed the distinctive ingredients of what has to be proved to the requisite standard (viz. the balance of probabilities) in a claim under Article 367 of the 1989 Order. With regard to the issue of *purpose*, the following submissions (in which Sean Quinn and Peter Quinn are abbreviated to "SQ" and "PQ" respectively) were advanced:

- The obvious inference to be made is that the purported Demesne to Innishmore assignment was made by SQ for the purpose of putting assets which would otherwise have enured to the benefit of IBRC out of its reach for nominal consideration, for which there is no evidence of payment. Demesne was controlled by SQ, whereas Innishmore was a £100 Northern Irish company controlled by his nephew PQ.

- Moreover, in the contempt proceedings in the Republic of Ireland brought against *inter alios* SQ and PQ, both PQ and SQ have sworn affidavits (on 12 March 2012), dealing briefly with the subject of the purported assignments. The Plaintiffs do not admit the veracity of anything in these affidavits save admissions against the interests of SQ and PQ.

- PQ admits at paragraph 64 of his affidavit that the purported assignment by Demesne to Innishmore "*…was done with the intent of removing the debt …to an entity beyond the reach of Anglo.*"

- SQ appears to accept that he signed the purported assignment to Innishmore (at paragraph 5) "…*with a view to making it more difficult for Anglo to move against foreign assets beneficially owned by my adult children.*"

- Nothing in Lyndhurst's evidence goes to contradict the obvious purpose of the Demesne to Innishmore assignment. In the words of the judgment in the ***Galfis*** case, the assignment "…smacks irresistibly of an orchestrated, elaborate and illicit charade." (paragraph [7])

Regarding the issue of *undervalue*, the following submissions were made:

- Article 367 also requires a transaction to be at an undervalue. In the present case there is no evidence of any consideration in the assignment from Demesne to Innishmore purportedly dated 6th April 2011.

- There is no record in the Demesne accounts of any payment being made to Demesne by Innishmore in consideration of the assignment of the Univermag loan (which, before interest is accounted for, stands at USD $45M).

- There is not even any evidence of any agreement by Innishmore to pay consideration for the original assignment. Moreover, any such promise by a £100 shelf company would have been valueless.

- 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). The purpose of the assignment here was to give PQ and probably the Quinn adult children, an advantageous position against the IBRC,without the provision of any valuable consideration.

- Assuming that the Demesne to Innishmore assignment is otherwise valid, it should be reversed under Article 367 as it was plainly at an undervalue and designed to put assets beyond the reach of the Plaintiffs.

The Relief Sought

[14] Article 367(1) of the 1989 Order provides, in material part:

> "*(1) This Article relates to transactions entered into at an under value; 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 …*
>
> *(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significant less than the value, in money or money's worth, of the consideration provided by himself*".

By Article 367(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*".

Article 369(3) continues:

> "*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*".

Article 369(1) of the 1989 Order empowers the Court to order the re-vesting in Demesne of the claim purportedly assigned to Innishmore and then to Lyndhurst. The introduction to Article 369(2) provides:

> **"***An order under Article 367 may affect the property of, or impose any obligation on, any person whether*

or not he is the person with whom the debtor entered into the transaction…"

This makes it clear that an order for vesting in Demesne can in principle be made against and can bind Lyndhurst, the claim against Univermag and the benefit of the judgment against Univermag. There is however a "bona fide purchaser" defence under Article 369(2):

> **"…***but such an order***-**
>
> (a) *shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances****…."***

The "relevant circumstances" for this purpose are "*…the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.*" (Article 369(3)). The onus is on Lyndhurst to make out any defence under Article 369(2).

[15] On the discrete topic of remedy, the submissions developed on behalf of the Plaintiffs were as follows:

(i) At paragraph [67] of his affidavit in the ROI contempt proceedings, PQ avers that the Innishmore to Lyndhurst assignment was "not effected by Innishmore nor was it signed by me." If he is correct, then of course the document itself is a nullity and cannot be relied upon by any party. At paragraphs [68-70] he refers to handwriting evidence which purports to bear out his case.

(ii) This evidence must be treated with suspicion, as PQ may be making this allegation to attempt to avoid a finding of contempt in the ROI contempt proceedings.

(iii) Lyndhurst's evidence disputes PQ's claim of forgery. It is incomplete and contradictory and is also to be treated with suspicion.

(iv) The Plaintiffs have no certain means of knowing whether PQ or the Lyndhurst witnesses (or any one or more of them) are telling the truth (in whole or in part) on this issue. They do not press the Court in either direction and, for the present, assume that PQ's signatures are not forged.

Acquired an Interest: Lyndhurst's Story

(v) The assignment from Innishmore to Lyndhurst purports to identify consideration, but demonstrably does so inefficaciously.

(vi) In Lyndhurst's evidence, specifically in the affidavit of Mr. Orlov, there are in effect admissions that

(a) the assignment was backdated;

(b) the consideration and mode of payment were never finally agreed, and had not been agreed either at the ostensible date of the assignment or by the date it was signed; and

(c) Lyndhurst brought proceedings against Univermag in the Ukraine based on an assignment with a false date, false statement of consideration and false stated means of payment, none of which the parties had agreed.

Value

(vii) The clearest and simplest reason why Lyndhurst cannot establish a defence (regardless of the points above) is that no value was given.

(viii) As far as the oral discussions were concerned, the consideration and means of payment were never even agreed (see below).

(ix) In terms of the purported assignment document itself, Lyndhurst is required to provide (at clause 4.1) bank paper, debt or securities to the value of USD 45,000,000 within 90 calendar days.

(x) The simplest point is that more than that period has elapsed and no valuable paper has been provided. Lyndhurst's evidence does not suggest that it has.

(xi) The statement of consideration was plainly a sham even without resort to Lyndhurst's affidavits. In fact, the affidavits entirely corroborate the fact that the statement of consideration was a sham: not only was no amount or means of payment ever agreed (and in particular not on either the ostensible or actual dates of signing) but the ostensible price of USD 45m bore no relationship to the actual amounts being negotiated or potentially to be paid: see Mr. Orlov's affidavit.

(xii) Even if the statement of consideration were not a sham, a promise made by Lyndhurst, a shelf company, was valueless.

It never had assets worth USD 45m or anything like that sum. The Norwich Phamarmacal discovery in the BVI shows that the nominee shareholders claimed to hold 50,000 shares of USD 1 each on trust for Orlov. The discovered documents disclose no evidence of payment of USD50,000 or any part thereof. Nor is there any evidence produced by Lyndhurst that Orlov could even pay USD 50,000, let alone the millions in the document and the millions being allegedly negotiated as a potential price.

(xiii) There can thus be no question of Lyndhurst having provided value. That by itself is sufficient to prevent Lyndhurst having a defence to the 367 claim.

Good faith

(xiv) The Plaintiffs submit that the affidavits sworn on behalf of Lyndhurst are selective and contradictory and do not establish the requisite element of good faith.

(xv) Those representing and controlling Lyndhurst knew that the Quinns were "*in pressing need of money*" [per Mr Orlov] and that the Bank had security over the shopping centre from which Lyndhurst hoped to make a profit and that if it enforced the security successfully the shopping centre would lose the income stream from which Lyndhurst hoped to profit [per Mr Orlov]. Nevertheless, they started proceedings to recover the debt, against a company (Univermag) which they knew to be in a "*critical financial state*" [per Mr Orlov]. This suggests that the purpose was to try to push Univermag into bankruptcy to avoid the Bank enforcing its security. In the Ukrainian court proceedings, Lyndhurst relied upon an assignment document, without revealing to the court that it had been deliberately backdated and that the statement of consideration and means of payment were materially false (see above).

(xvi) The lack of value is sufficient to preclude Lyndhurst from having a defence.

Notice of Relevant Circumstances

(xvii) The Quinns were well aware of the facts which made the purported assignment to Innishmore voidable under Article 367. Innishmore, of which PQ is a director, has opted not to contest the Plaintiffs' Article 367 claim. It seems unlikely that Lyndhurst/Orlov/Zaitsev would have got involved unless

they were in league with the Quinns. In that case, they would obviously have had notice of the relevant circumstances. They do not allege in their affidavits that the Quinns misrepresented the position in relation to the claim against Univermag and its previous owner, Demesne.

(xviii) Even assuming that Lyndhurst was at the material time controlled by Orlov and/or other Ukrainian individuals, and was not in league with the Quinns, these individuals and their agents saw the Demesne to Innishmore assignment [per Messrs. Orlov and Zaitsev]and, therefore must have appreciated that it was gratuitous and therefore amounted to SQ stripping out an asset, without board or shareholder approval or other supporting documentation, in favour of his nephew, PQ.

(xxix) Many of the above submissions are based on the affidavits sworn on behalf of Lyndhurst.

Ms Puga

(xx) The other party to the various impugned transactions was Univermag, Demesne's debtor, then under the control of Ms Larissa Yanez Puga. Given the circumstances of the without consideration assignments designed to remove the claim against Univermag from Demesne and to prejudice the other Plaintiffs, Ms Puga's participation in the impugned transactions provides grounds for believing that (at least at the time of the purported execution) she was in league with the Quinns (see, in this context, the affidavit of Mr. Miliutin in the BVI proceedings against Lyndhurst, sworn on 15th February 2012). It is not disputed that Ms Puga was put in control of Univermag originally by the Quinns. As PQ admits at paragraph 20 of his affidavit in the ROI contempt proceedings, he himself was on the supervisory board of Univermag until 7 November 2011. At paragraph 62 of that affidavit, he avers that the purported Demesne to Innishmore assignment, which was signed by Ms Puga on behalf of Univermag as General Director, was drafted on behalf of Univermag by lawyers instructed by Ms Puga "*in consultation*" with PQ. The intent of removing the debt "*to an entity beyond the reach of Anglo*" (PQ ROI contempt affidavit) must have been clear to Ms Puga.

(xxi) If PQ's assertion that the Innishmore to Lyndhurst purported assignment was not signed by him is correct, given that Ms Puga is also a signatory she must have been aware that the

purported assignment was invalid. On the other hand, if the signature is PQ's, she must have realised that PQ was purporting to transfer rights said to be worth USD 45m to a shelf company as part of a plan to remove the debt from the Plaintiffs and that the purported consideration was a sham.

(xxii) Ms Puga in turn is connected to Mr. Zaitsev, who held a Power of Attorney for Lyndhurst. When IBRC through its enforcement powers finally removed Ms Puga as General Director of Univermag, via a resolution of its members, Mr. Zaitsev pursuant to a phantom lawsuit took proceedings purportedly on behalf of a minority shareholder, from whom he had no authority, to prevent the registration of the removal of Ms Puga and the registration of a new General Director, in place of Ms Puga. Mr. Zaitsev also had a Power of Attorney to act for Univermag signed by Ms Puga.

(xxiii) All in all, it is inevitably the case that, whoever controls Lyndhurst, they had notice of the relevant circumstances rendering the Demesne to Innishmore assignment invalid under Article 367.

The Article 367 claim: (B) Innishmore to Lyndhurst

(xxiv) It is clear from the above that even if the purported assignment from Innishmore to Lyndhurst were not (a) void because Innishmore had nothing to assign (the assignment from Demesne to Innishmore being void) (b) void because Demesne was restored to the subject-matter of the purported assignment under Article 367 and Lyndhurst could not claim to be a bona fide purchaser for value, then the purported assignment from Innishmore to Lyndhurst would itself be void against the Plaintiffs under Article 367.

(xxv) Taking the criteria in turn, for the reasons set out above, (i) the purported assignment from Innishmore to Lyndhurst was plainly at an undervalue and (ii) the obvious purpose was to put assets beyond the reach of the Plaintiffs or otherwise prejudice them. The position can be restored under Article 367 by declaring the Innishmore to Lyndhurst assignment void and ordering the re-transfer of all relevant rights to Innishmore or directly to Demesne.

[16] I construe the submissions on behalf of the Plaintiffs to resolve to the following core propositions:

(i) Assuming that the purported assignment from Demesne to Innishmore was not vitiated by infirmities such as backdating or lack of authority or forgery of signature, there can be no appreciable doubt that it should be declared void under Article 367 : this has not been contested by Innishmore.

(ii) As set out above, an order re-vesting the asset in Demesne can bind Lyndhurst unless Lyndhurst can make out a bona fide, for value and without notice defence. Lyndhurst has failed to make out any such defence, most obviously on the question of value.

(iii) The court is therefore asked to declare that the purported assignment is void and of no effect. The Plaintiffs ask the court to declare void the Assignment from Demesne to Innishmore purportedly dated 6th April 2011, the supplemental loan agreement between Innishmore and Univermag dated 26th September 2011, the Assignment Agreement dated 7th October 2011 between Innishmore and Lyndhurst and finally the supplemental Loan Agreement dated the 4th November 2011 among Innishmore, Lyndhurst and Univermag. The ancillary agreements must fall with the assignments and/or are also subject to 367 voidness for the same reasons.

Conclusion

[17] I remind myself of the conclusions which this court made in the related case of ***Quinn Finance (and Others) –v- Galfis Overseas Limited*** [2012] NICh 9 :

> *"[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."

The court further concluded:

> "*[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 disadvantageous 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."

I have referred to the above passages in the ***Galfis*** judgment for two reasons. The first is that they illuminate, decorate and explain the overall context in which each of the individual chapters in this wide ranging litigation saga is unfolding. The second is to highlight the contrast between the grounds upon which the Plaintiffs sought relief in ***Galfis*** and the more limited grounds upon which the present claim is, at this juncture, pursued. The Plaintiffs also promoted the more limited case viz. the Article 367 challenge in ***Galfis*** and, in this respect, I refer to, without repeating, paragraphs [12] and [13] of the judgment. There the court made the following conclusion:

> *"[14] … 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. "*

[18] I find that no consideration was provided for either of the impugned purported assignments of the Univermag debt, firstly from Demesne to Innishmore and secondly from Innishmore to Lyndhurst. The evidence to this effect is compelling and I find accordingly. It follows that this case falls squarely within Article 367(1)(a) of the 1989 Order, thereby triggering the court's powers under Article 367(2). It follows further that Lyndhurst cannot avail of the statutory defence enshrined in Article 369(2)(a), as no value was provided for the property which it purportedly acquired from Innishmore. The bona fide, for value and without notice defence has manifestly not been made out. The court's analysis and conclusion in ***Galfis*** (*supra*) apply fully to

the present context. The abrupt, unexplained and *prima facie* irrational assignment of a company asset, the USD45,000,000 debt of which Demesne was the beneficiary, for nothing, or at most something truly minimal, speaks for itself. When considered in conjunction with the other related impugned transactions, it is patent that the participants were indulging in an orchestrated, elaborate and illicit charade. Based on the available evidence, this exercise had no purpose other than to put this asset beyond the reach of legitimate creditors and/or to prejudice their interests. The Plaintiffs are plainly victims of the impugned transactions. Accordingly, the Plaintiffs qualify for the grant of appropriate relief by the court.

Remedy

[19] (a) All of the impugned transactions are null and void and the court declares accordingly.

(b) The court further declares that Demesne is solely entitled to the benefit of all rights purportedly transferred by the impugned transactions.

The full terms of the court's final order are appended to this judgment. Such order makes provision for the costs of the parties, following consideration of representations on this discrete issue.