

THE HIGH COURT

[RECORD NO. 2016/78 R]

BETWEEN

MICHAEL GLADNEY

PLAINTIFF

- AND -

PETER MCGREGOR SENIOR

DEFENDANT

JUDGMENT of Ms. Justice Niamh Hyland delivered on 6 October 2020

Summary

1. These proceedings concern the entitlement of the Revenue Commissioners to recover the sum of €1,716,811.26 on foot of a summary summons. A certain degree of confusion has attended these proceedings in circumstances where, as part of its application, the Revenue included two supplemental affidavits, one of Bernie Minihan sworn 10 July 2018 and one of David Quinn sworn 10 July 2018 both of which exhibited certificates issued pursuant to s.960J of the Taxes Consolidation Act 1997 (as amended). Those certificates certified that at the time of issue of the proceedings, an assessment to tax was duly made and a Notice of Assessment provided to the defendant, the assessment had become final and conclusive within the meaning of the Tax Acts, the sum of €1,712,253.55 in respect of arrears of tax and interest was due and outstanding and a demand had been made for the outstanding tax. Reliance on those certificates was maintained throughout the proceedings, including in the written submissions filed by the Revenue.
2. It was only on the morning of the hearing on 24 September 2020 that the Revenue withdrew its reliance upon the certificates and maintained that even without the certificates, the sum identified in the Notice of Assessment was due and payable and that all the necessary proofs were before the court. Much of the opposition of the defendant was based on the alleged unlawfulness of the certificates. Given the change of position in that respect by the Revenue, the defence narrowed down at the hearing to an argument that the relief sought should not be granted given that no proof had been adduced that Michael Gladney was, in fact, the Collector-General.
3. That argument was based exclusively on the decision of Clarke J. in *Criminal Assets Bureau v. JMcN* [2017] IESC 30, where he held, in the context of CAB legislation permitting an officer of the Revenue Commissioners to bring proceedings in his or her own name, that the proceedings could not be maintained as there was insufficient proof that the plaintiff was authorised to bring the proceedings.
4. I cannot agree that a similar requirement exists here where there is an explicit statutory basis authorising the Collector-General to bring proceedings to recover tax due and owing and where it has been pleaded in the Summary Summons (and not controverted by the defendant) that Mr. Gladney is the Collector-General. That plea is in my view a sufficient identification of Mr. Gladney as the appropriate plaintiff and evidence is not required in that respect.

5. A further argument was made in the Written Submissions to the effect that the reference in the applicable legislation to "due and payable" was not sufficient to render the debt owing and that the words "final and conclusive" were required for this purpose. Based on my analysis of the relevant statutory framework, I conclude there is no basis for arguing the words "final and conclusive" are required to render a debt due and payable. The Collector-General is entitled to seek judgment for a debt that has been deemed due and payable.
6. Further, the defendant made an argument that he was entitled to further particulars of the debt and discovery in respect of same, and that he was entitled to obtain same to ascertain whether he had an arguable defence. That argument did not withstand the very clear line of case law rejecting similar arguments, particularly the Supreme Court decision of *Deighan v. Hearne* [1990] 1 I.R.499.

The Revenue's entitlement to judgment

7. On 29 July 2015 the Revenue issued a notice of assessment of tax payable (the "Notice of Assessment") to the defendant in respect of Value Added Tax in the amount of €1,530,315.00 as identified in Column 4 of the Schedule to the Notice, being made up of an amount of €40,976 in respect of the period 1 September 2013 to 31 December 2013 and an amount of €1,489,339 in respect of the period 1 January 2014 to 31 December 2014. Column 4 is headed up "Balance of tax due and payable". The Notice described the contents of Column 4 as follows:

"The balance of tax remaining due and payable in relation to each of the said periods is specified in column (4) of the said schedule".

8. The Notice provided in respect of an appeal as follows:

"If you are aggrieved by the assessment you may appeal to the Appeal Commissioners by giving notice to me within a period of twenty-one days from the date of this notice and setting out the amounts or matters with which you are aggrieved and the grounds in detail of your appeal in relation to each amount or matter".

...

Subject to the right of appeal, the Revenue Commissioners will proceed to recover the balance of tax set out in column (4) of the schedule."

9. The supplemental Affidavit of David Quinn of 16 February 2017 avers to the fact that following an investigation by the Revenue into the defendant's activity as a motor dealer, the above Notice was issued to the defendant and his agent on 29 July 2015. He further avers that the defendant failed to lodge an appeal to the Appeal Commissioners against the assessments within the 21 day period allowed. This averment (not contested) is of considerable importance since as the review of the case law set out below shows, once no appeal is lodged, then the sum becomes due and payable.

Relevant legislation

10. Section 111 of the Value-added Tax Consolidation Act 2010 (as amended) sets out the procedure for recovery of VAT. Section 111(1) provides that where the inspector of taxes has reason to believe that an amount of tax is due and payable to the Revenue Commissioners by a person, the inspector may serve a notice on the person specifying the total amount so due and payable. Section 111(2), as it applied at the relevant time, is central to the Revenue's application:
- (2) *Where notice is served on a person under subsection (1), the following provisions shall apply:*
- (a) *The person may, if he or she is aggrieved by the assessment on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners, and*
- (b) *On the expiration of the said period, if no notice of appeal is received ... the amount due ... shall become due and payable as if the tax were tax which the person was liable to pay for the taxable period during which the period of 14 days from the date of the service of the notice under subsection (1) expired or the appeal was determined by agreement or otherwise, whichever taxable period is the later.*
11. Section 119 of the same Act provides that the provisions of the Income Tax Acts relating to an appeal, including the extension of time for giving notice of appeal, shall apply to an appeal under s.111 subject to any necessary modifications.
12. The notion of a sum being "due and payable" is a critical one, since it is that which entitles the Collector-General to issue these proceedings and seek judgment for that sum.
13. Section 960C of the Taxes Consolidation Act 1997 provides:
- Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.*
14. Section 960D of the Taxes Consolidation Act 1997 provides:
- Tax due and payable to the Revenue Commissioners shall be treated as a debt due to the Minister for Finance for the benefit of the Central Fund.*
15. Section 960 I (1) of the Taxes Consolidation Act 1997, provides:
- (1) *Without prejudice to any other means by which payment of tax may be enforced, any tax due and payable or any balance of such tax may be sued for and recovered by proceedings taken by the Collector-General in any court of competent jurisdiction.*
16. The above extracts demonstrate that the procedure for recovery of VAT is a simple one. A Notice of Assessment is sent. If not appealed, the sum becomes tax due and payable to

the Revenue Commissioners. Tax due and payable may be sued for and recovered by the Collector-General.

The Proceedings

17. No payment was received following the Notice of Assessment and on 13 April 2016 the plaintiff issued a Summary Summons. It was pleaded at paragraph that the plaintiff was the Collector-General of the Revenue Commissioners whose address is at Sarsfield House, Francis Street, Limerick. At paragraph 2 it was pleaded that the plaintiff's claim was for the sum of €1,716,811.26 due by the defendant to the Minister for Finance for the benefit of the Central Fund, full particulars of which had already been furnished to the defendant and payment of which sum had been demanded prior to the proceedings. At paragraph 3 it was pleaded the defendant had not paid the sum or any part thereof despite demands. The breakdown of the sum of €1,716,811.26 was set out as follows:

PARTICULARS OF AMOUNT DUE

Description	Period	Tax Type	Amount	Interest	Total
VAT	1-09-13 to 31-12- 13	Section 111 Assessment	€40,976.00	€8,981.94	€49,957.94
VAT	1-1-14 to 31-12-14	Section 111 Assessment	€1,489,339.00	€177,514.32	€1,666,853.32
Totals			€1,530,315.00	€186,496.26	€1,716,811.26

18. A notice of motion was issued on 7 June 2016 seeking liberty to enter final judgment in the sum of €1,716,811.26, grounded on the affidavit of Bernie Minihan of the Revenue Commissioner sworn 26 May 2016 whereby she averred that the defendant had no defence to the plaintiff's claim.
19. On 21 November 2016, the defendant swore a replying affidavit whereby he accepted he might have a VAT liability in respect of a small number of motor vehicle sales but that that liability was a very small fraction of the sum claimed in the proceedings. He says he did not know how the plaintiff came to quantify his claim and that to defend the proceedings he would need discovery of the documentation on which the plaintiff is relying. He averred he had a bona fide defence to the claim where he never made the volume of transactions meriting the sum claimed.
20. In response, Mr. Quinn of the Revenue Commissioners swore a supplemental affidavit of 16 February 2017 where he refers to the Notice of Assessment, to the defendant's failure to lodge an appeal to the Appeal Commissioners against the assessments within a 21-day period and his failure to pay the amount he believes due despite having admitted to having a VAT liability.

Decision

21. It is common case that no appeal was lodged to the Appeal Commissioners against the Notice of Assessment. Under s.111(2), once a Notice of Assessment has been raised and no appeal is brought, then at the expiry of the relevant time period, the monies become due and payable.
22. Therefore, under the legislative regime, the sum of €1,716,811.26 is due and payable to the Revenue Commissioners and may be sued for by the Collector-General, Mr. Gladney. The only defence put up by the defendant in his affidavit is that he does not know how the sum has been calculated and requires discovery to understand this and says he will furnish a supplemental affidavit when this material is provided to him. In the Submissions and at the hearing, arguments were advanced as summarised at the start of this Decision to the effect that Mr. Gladney had no entitlement to bring the proceedings and that the term "final and conclusive" was required to be used if the debt was to be treated as owing to the Revenue Commissioners.

The Certificates

23. Before I consider the above arguments, I should address the relevance of the certificates exhibited in the two further supplemental affidavits filed by Mr. Quinn and Ms. Minihan of 10 July 2018 certifying that the assessment has become "final and conclusive". As may be seen from s.111(2)(b) quoted above, the assessment becomes "due and payable" once no appeal is lodged rather than "final and conclusive". Had those certificates been a necessary proof, this may have caused a difficulty for the plaintiff in seeking summary judgment. Counsel for the plaintiff submitted that the certificates are not a necessary proof given the terms of the legislation identified above, which explicitly specifies that the amount in a Notice of Assessment becomes due and payable on the expiry of the relevant period where no appeal is lodged. No objection was taken to this approach by the defendant. I am satisfied that this is the case, given the explicit terms of legislation identified above, specifically s. 111(2)(b) and s.960(C) and (I).

Discovery and particulars of amount

24. I turn now to the defence of the defendant i.e. that without discovery and particulars of the debt he cannot understand the calculation of the amount in the Notice of Assessment and so, implicitly, is not liable to pay the amount sought.
25. In *Deighan v. Hearne*, the Supreme Court considered the manner in which a taxpayer may contest an assessment carried out by Revenue, outside of the statutory code. At page 506 Finlay C.J. stated:

"The learned High Court judge decided that having regard to the provisions of the income tax code and the procedure for assessment in default of the making of returns which has been outlined in the decision of the Court that the Court could only intervene to set aside or vary an assessment otherwise than under the procedure provided by the Income Tax Acts it is were established either that the

procedure carried out was ultra vires the statutory provisions or that one or other of those statutory provisions was invalid having regard to the provisions of the Constitution. The court could not try an issue of fact arising from an assessment made in default of a return otherwise than through the appeal procedure provided in the income tax code.

That decision, in my view, was correct. The plaintiff had ample opportunity on the facts as found by the High Court to challenge the validity of the assessments in respect of which he now complains, and to proceed by the procedure of appeal through the Special Commissioners and through the courts, which is available in such circumstances. In particular, it is of considerable significance that before instituting these proceedings and up to the time they came to hearing the applicant had not even sought an extension of time to appeal against the assessments which can be obtained in the discretion of the Inspector of Taxes or on appeal from him to the Special Commissioners at any time. In these circumstances the learned High Court judge was correct in the decision which he reached, and I am satisfied this ground of appeal must fail”.

26. In *Gladney v. di Murro* [2017] IEHC 100, whilst dealing with assessments in respect of income tax, Hunt J. considered the scope of matters that might be raised by a taxpayer in an application for summary judgment and commented that the scope of matters that may be properly raised by a taxpayer had been “conclusively determined” by the Supreme Court in *Deighan*.
27. In finding for the plaintiff, the Court stated that summary judgment proceedings in respect of the claims made by Revenue are different to summary claims brought by other plaintiffs and at paragraph 22 he stated as follows:

“In my view, the defendant in this case is attempting to do precisely that which was found to be impermissible by the Supreme Court. The points of defence raised by the defendant pertain to the form of the assessment, the timing thereof, together with the correctness of the sum claimed and the availability of double tax relief in respect of payments made to the Italian authorities. Determination of each of these matters would require findings of fact relating to the assessment raised by the Inspector, and therefore they lie squarely within the limitation identified by the Supreme Court, and may only be raised on appeal to the specialist tribunal constituted for that purpose, or to the courts where available ... it is also of considerable significance in this case that before attempting to raise such matters by way of defence to a claim for summary judgment, the defendant made no effort to avail of any of the statutory appeal procedures available to him”.

28. In dealing with argument raised by the defendant that he required discovery from Revenue to adequately defend his case, the Court held that the discovery process does not give rise to a permissible ground of defence in summary proceeding in respect of the collection of taxes. Referencing the case of *T.J v. the Criminal Assets Bureau* [2008] IEHC 168, Hunt J. observed that the whole structure of the Irish taxation system is developed

on the basis of self-assessment, and “that the whole basis of self-assessment would be undermined if, having made a return which is not accepted by the Revenue, a taxpayer was entitled to access all relevant information that was available to the Revenue” (paragraph 23) and that:

“nobody is better placed than the taxpayer himself to know what income was received or what gains were made is particularly applicable to the position of the defendant in this case. I can see no practical reason why the defendant could not attempt to discharge the burden of proving that the assessed tax is not payable in a hearing before the Appeal Commissioners. I do not believe that a discovery order would be required to assist in that process” (paragraph 24).

29. Finally, Hunt J. stated at paragraph 25 that:

“the Oireachtas has determined that such factual disputes ought to be determined through the extensive appellate procedure described by Gilligan J., and in my view it is not in the public interest that disgruntled recipients of assessments should be permitted to delay contesting matters of dispute pertaining to either the existence or extent of a liability to tax until the point where the Revenue has moved to enforcement procedures”.

30. In the cases considered above, the court was dealing in each case with income tax statutes although the statements of principle identified above clearly go well beyond income tax and extend to tax collection generally. However, in *Gladney v. Daly* [2017] IEHC 317, Eager J. was considering an application for summary judgment in respect of a VAT assessment. In reviewing the case law and referencing s.111 of the Value Added Tax Consolidation Act 2010 (the same version as is at issue here), the court held as follows:

“The Court accepts and is bound by the principle of the Supreme Court in Michael Deighan v. Hearne and Others [1990] 1 I.R. 499 in that the Inspector of Taxes has a power vested in him to make an assessment, and if the Inspector raises an assessment and the applicant does not appeal within time, the only way that the court could intervene to set aside or vary the assessment otherwise than under the procedure provided by the Income Tax Acts would be if it were established that either the procedure carried out was ultra vires to the statutory provisions was invalid, having regard to the provisions of the Constitution”.

31. That line of case law (not contested by the defendant) makes it clear that defences to notices of assessment must be made exclusively within the statutory mechanism provided. Questions of calculation and documentation required by the tax payer are questions that must be raised and dealt with within the context of the statutory appeal. Moreover, discovery is not appropriate in an application where under the system of self-assessment it is the taxpayer who is best placed to ascertain how much tax he owes to the Central Fund (see *Gladney v. Di Murro*, above).

32. Here, no appeal was brought and no explanation for that course was provided. No attempt was made to invoke the statutory provisions permitting an extension of time for an appeal. Because those choices were made by the defendant, the monies became due and payable and the Collector-General was entitled to seek to recover them by way of summary proceedings.
33. Accordingly, the affidavit of the defendant fails to disclose any matters that could satisfy the threshold necessary for leave to defend.

Due and Payable/Final and Conclusive

34. Separately, in his Written Submissions, the defendant makes the case that the monies are not owing because s.111(2), by providing that the amount is "due and payable" as opposed to providing that the assessment shall be "final and conclusive", does not make participation in the statutory appeal process mandatory. In support of this argument, he says that s.111(2)(a) states that a person "may" appeal to the Appeal Commissioners, thus demonstrating the non-mandatory nature of the obligation. That argument can be disposed of swiftly: the decision to appeal or not is certainly voluntary but the consequences where an appeal are not brought are mandatory: the amount in the Notice of Assessment "shall become due and payable".
35. Second, he argues that, because the amended version of s.111(2)(b) substituted the words "final and conclusive" for "due and payable", an implication must be drawn that the words "due and payable" are not sufficient to exclude a citizen's right of access to the courts, since they are not sufficiently emphatic. Where "due and payable" is used, the plaintiff must prove his entitlement to judgment in the normal way with admissible evidence and cannot simply rely on a failure to participate in the statutory process.
36. That approach ignores both the clear words of s.111(2)(b) and the various provisions of s.960 quoted above. In respect of s.111(2)(b), the sub section makes it clear that if no notice of appeal is received within 21 days, the amount due shall become due and payable. It is hard to read those words as meaning anything other than what they say: the monies are due and payable. That interpretation is supported by s.960 whereby tax is due and payable under the Acts is due and payable to the Revenue Commissioners (s. 960C), tax due and payable to the Revenue Commissioners is treated as a debt due to the Minister for Finance (s.960D) and any tax due and payable may be sued for and recovered by proceedings taken by the Collector-General (s.960). It is quite clear therefore that monies due and payable under s.111(2)(b) are a debt due to the Minister for Finance. The objections of the defendant are really directed to whether or not he is allowed to resist judgment on the basis that he is entitled to interrogate that debt and seek discovery of documents in respect of same in summary proceedings. The judgments discussed above make it quite clear that he is not so entitled having regard to the statutory appeal process and to the special characteristics of revenue collection.
37. The defendant seeks to distinguish those judgments on the basis that in *Deighan v. Hearne*, the provisions rendered an assessment "final and conclusive" in default of appeal.

Similarly, he points to the fact that the assessment in *Gladney v. Di Murrio* was rendered “final and conclusive” in default of an appeal.

38. The context in which the reference to “due and payable” was amended to “final and conclusive” is worth identifying, as it does not disclose that the amendment was made to remedy a deficit in the language of “due and payable” in terms of finality. In the version of the Value-Added Tax Consolidation Act 2010 in force up to 23 December 2014, i.e. prior to the events the subject of these proceedings, s.111(2) provided in relevant part as follows:

(2) Where notice is served on a person under subsection (1), the following provisions shall apply:

(a) *the person may, if he or she claims that the amount due is excessive, on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners; and*

(b) *on the expiration of the said period, if no notice of appeal is received ...the amount due ... shall become due and payable ... (emphasis added)*

39. In the version of the Value-Added Tax Consolidation Act 2010 in force up to 14 March 2016 i.e. the applicable period, it is provided:

Where notice is served on a person under subsection (1), the following provisions shall apply:

(a) *the person may, if he or she is aggrieved by the assessment, on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners; and*

(b) *on the expiration of the said period, if no notice of appeal is received ...the amount due ... shall become due and payable ... (emphasis added)*

40. In the version of the Value-Added Tax Consolidation Act 2010 in force from 15 March 2016, it is provided:

(2) *Where a notice of assessment is served on a person under subsection (1), the following paragraphs shall apply:*

(a) *a person aggrieved by the assessment ... may appeal the assessment to the Appeal Commissioners ...*

(c) *In default of an appeal, in accordance with paragraph (a), being made by a person on whom a notice of assessment has been served-*

(i) *the assessment shall be final and conclusive, and*

(ii) *the amount due shall be due and payable ... (emphasis added)*

41. The evolution in the wording can be explained as follows. The first version was adopted in circumstances where the statutory appeal in a VAT context was limited to an appeal against quantum. If a taxpayer wished to challenge some other aspect of the notice, for example its validity, the route was by way of judicial review rather than statutory appeal. The failure to appeal could not therefore make the notice final and conclusive since it could be judicially reviewed if the complaint was one not relating to quantum. However, the decision not to appeal a notice of assessment did render the quantum due and payable as no further avenue was available in respect of the quantum determination in the notice of assessment.
42. At that time, in the income tax context, the statutory appeal was far wider, permitting any kind of appeal against the Notice of Assessment including but not limited to appeals against quantum. In the next version of the Act, applicable after 23 December 2014, that approach was taken for VAT appeals also. This was partly reflected in the wording of s. 111 as it refers to a person being "*aggrieved by the assessment*" rather than claiming that "*the amount due is excessive*". This meant that any decision not to appeal meant the assessment was final and conclusive. However, presumably due to some oversight, s.111(2)(b) continued to refer to a failure to appeal the assessment as meaning the amount was "due and payable" but not that the assessment would be "final and conclusive". This might have the consequence that if a person sought to judicially review an assessment under that version of the Act, the Revenue could not rely upon the failure to appeal since the Act does not provide that the assessment is final and conclusive here in the absence of an appeal. But that deficit in the section is not material here, where the dispute is exclusively concerned with quantum.
43. Finally, one can see that in the next version, applicable from 15 March 2016, this inconsistency was remedied, with s.111 referring as it does to a person being aggrieved by an assessment, the assessment being final and conclusive and the amount due being due and payable.
44. In those circumstances, the reference to "due and payable" as opposed to "final and conclusive" does not carry an implication that no consequences arose from a failure to appeal. The wording of s.111(2)(b), the provisions of s.960 and the legislative history set out above all make that clear. The Notice of Assessment does not have to be "final and conclusive" to prevent it being substantively challenged in these proceedings: it is enough that the amount in the Notice of Assessment is due and owing under s.111(2)(b) to render it tax due to the Revenue Commissioners.
45. Further, the dicta in the decisions of *Deighan* and *Gladney v. Di Murrio* remain applicable to the instant case, despite the fact that they are concerned with legislation that provided for assessments "being final and conclusive" rather than "amounts due and owing". The extract from the judgment of Finlay C.J. above focused on the opportunity to challenge the validity of the assessments and to appeal to the Commissioners, and the failure of the applicant to do so, or even to seek an extension of time. No emphasis was placed on the wording of "final and conclusive" as being decisive in excluding the right to use the

summary summons procedure to an alternative route of challenge. A similar approach was taken in *Gladney v. Di Murro*, where Hunt J. noted that part of the challenge including the correctness of the sum claimed and that determination of this matter would require findings of fact relating to the assessment raised by the inspector, therefore lying squarely within the limitation identified by the Supreme Court in *Deighan* and could only be raised on appeal by the specialist tribunal constituted for that purpose. Again, the “final and conclusive” wording was not relied upon as a basis for the conclusion in this respect.

46. For the same reasons, the arguments made in the written legal submissions (which were not expanded upon in oral argument) in respect of the alleged inadequacy of particulars, insufficient specification of the make-up of the sum due and owing or the lack of interest calculations must fall away.

Capacity of Mr. Gladney to bring the proceedings

47. Finally, the defendant complains that the plaintiff has not been adequately identified in the proceedings, despite s.960 which identifies the Collector-General as the proper plaintiff and the endorsement of claim, which identifies that Mr. Gladney is the Collector-General. He does so solely on the basis of the decision in *Criminal Assets Bureau v. JMcN*. There, under the CAB legislation, it was provided that an officer of CAB could bring proceedings in their own name if they obtained a nomination but no such nomination had been provided. Clarke J. held as follows:

"5.4 Section 966 has a number of important subsections at least some of which are designed to make proving essential facts in certain types of tax collection cases a lot easier. The basic provision to be found in the s.966 is that contained in subs.(1) which allows an officer of the Revenue Commissioners "authorised by them for the purposes of this subsection" to sue in his or her own name for the recovery of tax. Clearly Revenue Bureau Officer 32, using the name CAB, would be entitled to bring these proceedings if it could be shown that he was an officer of the Revenue Commissioners and that he was authorised, under s.966(1), to bring proceedings of this type in his own name. However, it is of relevance to note that s.966(1) is stated to be "without prejudice to any other means by which payment of the sums due" can be enforced. It seems clear, therefore, that s.966(1) is permissive and does not necessarily require that any proceedings for the collection of relevant tax must be brought in the manner contemplated by that subsection.5.5 Section 966(3) provides that "in proceedings pursuant to this section" a certificate signed by a Revenue Commissioner to the effect that a specified person is an officer of the Revenue Commissioners and has been authorised for the purposes of subs.(1) can be taken as evidence of those facts until the contrary is proven. It follows, therefore, that a certificate in the appropriate form signed by a Revenue Commissioner would provide prima facie evidence that an individual was an officer of the Revenue Commissioners and authorised to sue in his or her own name thus, again on a prima facie basis, establishing an entitlement to sue.

...

5.9 *The absence of a certificate under s.966(3) is not, however, of no relevance. It means that that relatively easy way of establishing that a person is entitled to sue in their own name by virtue of s.966(1) was not, and therefore cannot, be relied on. The presence of such a certificate would provide prima facie evidence which would entitle both the Master and the Court to conclude that the individual concerned was entitled to sue. The absence of such a certificate means that the entitlement to sue must be demonstrated in some other way.*

...

6.1 *The ordinary function of collecting tax is conferred, by s.851 of the 1997 Act, on the Collector General. However, section 851(3)(a) permits the Revenue Commissioners to nominate persons to exercise on behalf of the Collector General any or all of the powers and functions conferred on the Collector General by revenue legislation. Likewise, section 851(3)(b) indicates that such powers and functions may be "exercisable on his or her behalf" by nominated persons. The reference to "his or her" is to the Collector General.6.2 It is clear, therefore, that, at the level of principle, any officer of the Revenue Commissioners can be nominated by those commissioners to carry out "on behalf of" the Collector General, any of the powers and functions of the Collector General.*

...

6.6 *For those reasons it does not seem to me that a general authorisation to act on behalf of the Collector General allows a nominated person to go further and bring proceedings in their own name as opposed to taking actions necessary to bring proceedings on behalf of the Collector General. To take any other view of the section would be to render s.966(1) redundant which, in turn, would be contrary to principle.*

6.7 *It seems to me to follow, therefore, that the only means by which an individual, other than the Collector General, can be authorised to bring proceedings in their own name (as opposed to on behalf of the Collector General) is section 966(1). However, for the reasons already identified, it does not seem to me that a certificate under s.966(3) is the only means by which an authorisation under s.966(1) can be established. It can, in principle, be established by any legitimate evidential means."*

48. The decision in JMcN does not support an argument that the Collector-General is required, as part of the proofs for summary judgment, to prove his identity by evidence. The above extracts make it clear that the ordinary function of collecting tax was conferred upon the Collector-General. By way of exception, an officer of the Revenue Commissioners could bring proceedings in their own name provided they were authorised to do so, either by certificate or by some other means. Therefore, evidence of that authorisation was necessary.

49. On the other hand, in this case, s.960 makes it abundantly clear that it is the Collector-General who is entitled to bring the proceedings. There is no requirement for him to prove he has been authorised. I must simply be satisfied that Mr. Gladney is indeed the Collector-General. I am so satisfied given this is pleaded in the Summary Summons and has not been controverted by the defendant in his affidavit. I might add that it is clear from the judgments discussed above that Mr. Gladney is indeed the Collector-General of the Revenue Commissioners. Accordingly, I do not consider this argument provides the defendant with an arguable defence.

Conclusion

50. For all the reasons above, I am satisfied that the amount in the Notice of Assessment became due and payable once the time to appeal expired. The defendant not having established an arguable defence, the plaintiff is entitled to judgment in the sum of €1,716,811.26.