[2024] IEHC 250

The High Court

[Record No.] 2022/82 MCA

In the matter of Part 47 of the Taxes Consolidation Act 1997 as amended by the Finance (No. 2) Act 2008

Between

Siobhán Dooner

Applicant

And

Michael Fahy

Respondent

Judgment of Mr. Justice Dignam delivered on the 26th day of April 2024.

Introduction

1. This is my judgment in respect of the following two applications:

   (i) an application brought by way of Originating Notice of Motion by the applicant, a Revenue Officer, for the imposition of a civil penalty in respect of the respondent's alleged failure to make income tax and VAT returns for specified years. The relief sought is, inter alia:

"1. A determination pursuant to Section 1077B(3) of the Taxes Consolidation Act, 1997 as inserted by the Finance (No.2) Act, 2008 that the Respondent herein is liable to a penalty of €88,872 pursuant to Section 1077E(3) of the Taxes Consolidation Act, 1997 and Section 116(3)of the Value Added Tax Consolidation Act, 2010 in circumstances where the respondent deliberately failed to deliver a return of income, charges and capital gains in relation to income tax for the tax years 2015, 2016, and 2017 and the Respondent deliberately failed to deliver VAT returns for the taxable periods from the 1st January 2015 to the 31st December 2017;

2. Such further or other Order pursuant to Section 1077C of the Taxes Consolidation Act, 1997 as inserted by the Finance (No.2) Act, 2008 regarding recovery of the penalties in the combined amount of €88,872 the subject matter of this application."

(ii) An application brought by Notice of Motion in these proceedings by the respondent for:

"*1. **A WRITTEN ORDER FROM THE HIGH COURT**: Dismissing the Applicant's groundless application in its entirety, for reasons stated herein and reasons stated in the Respondent's Replying/Grounding Affidavit.*

*2. **A WRITTEN ORDER FROM THE HIGH COURT**: Endorsing the Respondent's **RESCISSION of the prosecutions** (sic) **purported CERTIFICATE OF CONVICTION** from Trim Circuit Court, as the Certificate was unlawfully obtained by the Prosecution's lack of Subject Matter Jurisdiction, use of Coercion, the Threat of Imprisonment, and the failure of the prosecution to clearly establish any intention to commit a Crime and/or any act of criminality (Mens Rea/Actus Reus).*

*3. **AN ORDER FROM THE HIGH COURT**: Ordering the Revenue Commissioners to return the €26,484.12 they stole from the Respondent, by way of an Alleged Attachment order, with the unlawful assistance of Allied Irish Bank, who were coerced by the said Revenue Commissioners, which was carried out in the absence of a Court Order.*

4. ***An Order*** *for Costs/Expenses ongoing, and such further/other Orders as the Court shall deem appropriate.*

5. ***In the alternative to Orders 1, 2 and 3 referenced herein: AN ORDER FROM THE HIGH COURT****: To refer this and all matters referred herein to the Supreme Court of Ireland on Points of Law, which are to be drafted on agreement/consent of all parties concerned and to the Respondents complete satisfaction.*" [Emphasis in the original]

2. It is apparent from the respondent's Notice of Motion that his application is a mixture of a defence to the applicant's application and an application for separate and distinct relief; for example, the first relief is simply an Order dismissing the applicant's application. This approach is also reflected in the affidavit sworn by the respondent at the time of issuing his motion. The affidavit is headed "*Replying Affidavit of Michael Fahy*" but in paragraph 2 it is described as both grounding the Notice of Motion and as being "*a Replying Affidavit to the Application of the Applicant and the Affidavit/Supplemental Affidavit of the applicant Deponent/Affiant Siobhan Dooner.*"

3. The respondent also issued a motion seeking leave to cross-examine the applicant on her affidavits. This also came before me on the hearing date for the above two motions. Before considering those motions (other than the papers being opened to me, which was necessary in order to consider the application for leave to cross-examine), I determined the application for leave to cross-examine and refused to grant leave. I gave a summary of my reasons for that decision and said that I would give my full reasons in this judgment. I will do so after dealing with the other two motions as the reasons will be more clearly understood when the facts in respect of the parties' other respective applications are set out.

4. I propose to set out the affidavit evidence and then deal with the applicant's motion first and in doing so will also deal with those parts of the respondent's Notice of Motion and affidavits which comprise a response or defence to her application. I will then deal with the respondent's application insofar as it seeks specific relief. I will then give the reasons for my decision in respect of the respondent's application for leave to cross-examine the plaintiff.

Factual Background and Evidence

5. In her grounding affidavit the applicant deposes to the following matters.

6. The respondent, Mr. Fahy, registered for Income Tax as a self-employed Sales Consultant on 6th April 1997 and for VAT on the 1st January 2009. The last Income Tax return filed by the respondent was for the tax year 2008 and the last VAT return had been submitted for the period of January/February 2010.

7. The respondent had acted as a self-employed sales agent for two-third party limited liability companies.

8. The respondent did not file income tax or VAT returns for the periods 2015, 2016 or 2017 and by notification of Revenue Investigation dated 25th March 2019, the Respondent was informed that all of his taxes and duties, including income tax and VAT, from the 1st January 2015 to the 31st December 2017 were to become the subject of an investigation.

9. The respondent was advised that the investigation would take place on the 16th April 2019 at 10:30am in the Navan Office of the Revenue Commissioners and he should bring with him all records including linking documentation for the above specified periods, inclusive of a copy of his contract with the two limited liability companies.

10. The respondent did not attend the meeting and did not contact the Revenue Commissioners to inform them that he would not be attending or to reschedule the meeting and, by letter dated 16th April 2019, the Revenue Commissioners wrote to him informing him that based on his non-attendance at the meeting, another meeting had been scheduled for 25th April 2019 at 10:30am at the same office with the request that the same documentation be brought. He did not attend that meeting either and did not make contact with the Revenue Commissioners in relation to it.

11. The Revenue Commissioners then sought and obtained information regarding sums paid to the respondent by the two companies for whom he had acted as a self-employed sales agent (made up of sales commissions plus VAT) from the tax agent for those companies.

12. By letter of the 29th July 2019 the respondent was served with a notice pursuant to section 900 of the 1997 Act to produce certain documentation and information within twenty-one days. He did not do so. On the 23rd August 2019, the Revenue Commissioners issued a letter pursuant to section 906A of the 1997 Act to the effect that

if he did not produce specified documentation (bank statements) within ten days, section 906A notices would issue to the respondent's financial institutions. He did not produce that documentation or information and a notice was served on the respondent's financial institution on the 2nd October 2019. Information was provided by the financial institution.

13. By Notices of Assessment dated 26th November 2019, the applicant raised Income Tax Assessments in respect of the periods 2015, 2016 and 2017 totalling €55,711.42 and by Notices of Assessment of the 20th December 2019 she raised VAT assessments for those periods totalling €37,161.

14. These assessments were not appealed by the respondent. It is worth pausing at this stage to note that the 1997 Act provides that a person may appeal against any assessment to income tax and in default of doing so the assessment made on the person shall be final and conclusive. The 2010 Act similarly provides that a person may appeal against any assessment to VAT and in default of doing so the assessment is final and conclusive (see, for example, section 933 and 959AF of the 1997 Act and section 111 of the 2010 Act).

15. The respondent was issued with a Notice of Opinion pursuant to section 1077B of the 1997 Act dated the 24th March 2020 and a further Notice of Opinion dated 12th August 2021. He was then issued with an Amended Notice of Opinion of the 5th October 2021 which supersedes those earlier Notices of Opinion.

16. The Amended Notice of Opinion dated 5th October 2021 set out, inter alia, the opinion that the respondent was "*liable to a penalty pursuant to Section 1077E of the Taxes Consolidation Act 1997 and Section 116 of the Value Added Tax Consolidation Act, 2010*" and the circumstances in which he was said to be liable to the penalty were stated as:

> "*You deliberately failed to deliver Income Tax returns for the tax years 2015, 2016 and 2017 and VAT returns for the periods 01/01/2015 to 31/12/2017. The tax liabilities have been quantified and assessed. The amount of the difference is €88,872. Furthermore, you failed to pay the tax arising.*"

17. The notice also expressed the opinion that the amount of the penalty was 100% of the difference between the tax paid (zero) and the amount that should have been paid (€88,872). It also requested that the respondent agree in writing with the opinion and in

the event he did not agree "…AND *make a payment of the amount of the penalty as set out above within 30 days after the date of this notice an application to the appropriate Court may be made by the Revenue Officer for the Court to determine whether a liability to a penalty arises and such Court will determine the amount of the penalty. This Opinion shall be disclosed at the hearing of the application*."

18. A further letter was sent on behalf of the Revenue Commissioners to the respondent on 17th January 2021 informing him that an application would be made to the appropriate Court, reminding him of the consequences of failing to agree with the figures set out in the Amended Notice of Opinion and failing to make a payment in the amount of the penalty calculated. It states:

> "...*There is no requirement that a further letter issue warning you of the making of this application to Court. However, unless you now agree with the opinion contained in the notice and make payment of the amount of the penalty specified in the Amended Notice of Opinion within twenty-one days of the date of this letter than the application will be made to the High Court…"*

19. The applicant issued the Originating Notice of Motion on the 25th March 2022, grounded on the affidavit of the applicant sworn on the 16th March 2022.

20. The applicant swore a supplemental affidavit on the 29th November 2022. In that affidavit she referred to a criminal prosecution brought by the Director of Public Prosecutions against the respondent for failure to file Income Tax returns for the periods 2009-2012 (i.e. different periods) and stated that the respondent had been convicted and a suspended sentence had been imposed on condition that, inter alia, the respondent file all income tax and VAT returns from 2009 to 2020 within three months. It seems that by email dated 12th May 2022, the respondent wrote to the Revenue Commissioners requesting an adjournment of these current proceedings on the basis that the Revenue were seeking "*estimated figures for years 2015, 2016 and 2017*" but the "*liquidated figures*" would be available within three months (on foot of the condition in the sentence that he would file all outstanding returns). It seems the matter was adjourned on that basis on the 16th May. The respondent subsequently filed various tax returns, including Income Tax returns for 2015, 2016 and 2017 and VAT returns for May/June 2016 and January/February 2017.

21. The respondent issued his Notice of Motion on the 13th January 2023 and swore an affidavit on the same day. This serves as a reply to the applicant's two affidavits as well as a grounding affidavit for the respondent's own motion.

22. In relation to the contents of the applicant's affidavits, while the respondent states that "…*ALL points raised and/or stated in the applicant's "Originating Notice of Motion", the "Affidavit of Siobhan Dooner" and the "Supplemental Affidavit of Siobhan Dooner", are categorically denied*", he does not specifically deny any of the factual matters set out in the applicant's grounding affidavit. For example, he does not specifically deny that he was a self-employed sales agent, the averment that he did not file income tax or VAT returns for the periods 2015, 2016 or 2017, or that he failed to attend either of the two scheduled meetings (nor does he offer any explanation for not attending them); and he does not specifically deny receipt of Revenue's demands or notifications for documents or information, the Notices of Assessment of the 26th November 2019 or 20th December 2019 (nor does he claim to have appealed or challenged them in any way), the Notices of Opinion or the amended Notice of Opinion of the 5th October 2021. Nor does he specifically deny any of the factual matters contained in the applicant's supplemental affidavit. In his affidavit (and in the body of his Notice of Motion) he does raise a number of complaints and points and sets out the facts relating to them, including about the lawfulness of his conviction referred to in the applicant's supplemental affidavit. I return to these points in detail because they are the basis for the respondent's opposition to the application and for his own application for reliefs.

23. The applicant swore a further supplemental affidavit on the 26th January 2023 (which was in reality a replying affidavit) in which she joined issue with the points made by the respondent.

24. I should note that the respondent also issued a subsequent motion seeking that the applicant be held in contempt. This was grounded on an affidavit of the 14th April (though this was also stated to be a replying affidavit). I previously determined this application in an ex tempore judgment dated the 14th July 2023. As the affidavit was also described as a 'replying affidavit' I have also considered it for the purpose of this application. The applicant swore a further supplemental affidavit on the 9th June 2023 (which is in substance a reply to this affidavit of the respondent). The respondent also swore a further supplemental affidavit on the 3rd July 2023. It is not necessary to recite the contents of these affidavits as they were either dealt with in that ex tempore judgment or do not contain any new relevant substantive factual matters or contain repetition of factual matters. The respondent's affidavit of the 3rd July 2023 sets out a

number of arguments (particularly in paragraphs 16 – 30) to which I will return. I have, of course, considered all of these affidavits fully.

Plaintiff's application – Civil Penalty

25. The applicant seeks a determination that the respondent is liable to a civil penalty in respect of an alleged deliberate failure to make a return of income, charges and capital gains in relation to income tax for the income tax years 2015, 2016 and 2017 and his alleged deliberate failure to deliver VAT returns for the taxable periods from the 1st January 2015 to the 31st December 2017 and seeks a determination of the amount of that civil penalty on the basis, inter alia, that the respondent did not cooperate with a Revenue investigation.

26. The relevant statutory provisions are contained in the Taxes Consolidation Act 1997 and the Value Added Tax Consolidation Act 2010.

Income Tax

27. Section 1077B(2) of the 1997 Act provides, inter alia:

> *"(1) Where –*
>
> *(a) in the absence of any agreement between a person and a Revenue officer that the person is liable to a penalty under the Acts, or*
>
> *(b) following the failure by a person to pay a penalty the person has agreed a liability to, a Revenue officer is of the opinion that the person is liable to a penalty under the Acts, then that officer shall give notice in writing to the person and such notice shall identify –*
>
> *(i) the provisions of the Acts under which the penalty arises,*
>
> *(ii) the circumstances in which that person is liable to the penalty, and*
>
> *(iii) the amount of the penalty to which that person is liable, and include such other details as the Revenue officer considers necessary.*

(2) A Revenue Officer may at any time amend an opinion that a person is liable to a penalty under the Acts and shall give due notice of such amended opinion in like manner to the notice referred to in subsection (1).

(3) Where a person to whom a notice issued under subsection (1) or (2) does not within 30 days after the date of such a notice –

(a) agree in writing with the opinion or amended opinion contained in such notice, and

(b) make a payment to the Revenue Commissioners of the amount of the penalty specified in such a notice, then a Revenue officer may make an application to a relevant court for that court to determine whether –

(i) any action, inaction, omission or failure of, or

(ii) any claim, submission or delivery by, the person in respect of whom the Revenue officer made that application gives rise to a liability to a penalty under the Acts on that person…"

28. Section 1077E provides for the circumstances in which a person will be liable to a penalty. Sub-section (3) provides:

"*Where any person deliberately fails to comply with a requirement to deliver a return or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29, that person shall be liable to a penalty.*"

29. The appropriate penalty is provided for in the following subsection, subsection 1077E(4), which provides, inter alia:

"*The penalty referred to –*

(a) …

(b) in subsection (3), shall be the amount specified in subsection (12),

reduced, where the person liable to the penalty cooperated fully with any investigation or inquiry started by the Revenue Commissioners or by a Revenue Officer occasioning a liability to tax of that person, to

(i) 75 per cent of that amount where subparagraph (ii) or (iii) does not apply,

(ii) 50 per cent of that amount where a prompted qualifying disclosure is made by that person, or

(iii) 10 per cent of that amount where an unprompted qualifying disclosure is made by that person."

30. The provisions relating to "*qualifying disclosures*" (in (ii) or (iii)) do not apply on the facts of this case as there is no suggestion that a "*qualifying disclosure*" was made.

31. Section 1077E(12), which is referred to in subsection (4) provides for the calculation of the penalty. It provides, inter alia:

"*The amount referred to in paragraph (b) of subsection (4) and in paragraph (a)(ii) of subsection (7) shall be the difference between –*

(a) the amount of tax paid by that person for the relevant periods before the start by the Revenue Commissioners or by any Revenue officer of any inquiry or investigation where the Revenue Commissioners had announced publicly that they had started an inquiry or investigation or where the Revenue Commissioners have, or a Revenue officer has, carried out an inquiry or investigation into any matter that would have been included in the return or statement if the return or statement had been delivered by that person and the return or statement had been correct, and

(b) the amount of tax which would have been payable for the relevant periods if the return or statement had been delivered by that person and the return or statement had been correct."

32. Provision is also made for penalties and the calculation of same in the case of careless rather than deliberate non-compliances. I will return to these if necessary.

33. Thus, in summary, the statutory scheme in respect of income tax is that where there is a deliberate or careless failure to comply with the requirements of the Act a penalty may be imposed and the precise amount of the penalty depends on whether the failure to comply was deliberate or careless and whether the person cooperated fully with the investigation. In the case of deliberate failure to comply, full co-operation with an investigation or inquiry reduces the penalty from 100% to 75%.

34. Section 1077C provides, inter alia:

> *"(1) Where a relevant court has made a determination that a person is liable to a penalty –*
>
> *(a) that court shall also make an order as to the recovery of that penalty, and*
>
> *(b) without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax."*

Value Added Tax

35. The statutory regime in respect of Value Added Tax, which is contained in the Value Added Tax Consolidation Act 2010, is virtually identical and it is not necessary to recite the provisions.

General

36. I will also have to refer to some other specific statutory provisions later in this judgment.

37. It was made clear in *Dorr v Lohan [2019] IECA 230* that the making of a determination under the section is a matter for the Court. Peart J said in the Court of Appeal:

> *"9. The mere expression of that opinion by Revenue that the tax payer is liable to the penalties cannot be determinative of the application, as otherwise the Revenue would be in a sense usurping the function of the trial judge under the section, who must make that determination. But the affidavit contains more than*

just the expression of the opinion. It provides an explanation of the background to the formation of that opinion, including by reference to the exhibited documents and records. The trial judge was in a position to consider the evidence adduced. She was entitled to have regard to the opinion expressed by Revenue. She was also entitled to have regard to the fact that the appellant had not sought to contest the opinion, or even to put in a timely affidavit setting out why he considered that his action by delivering incorrect VAT returns for the years in question was neither negligent nor deliberate, and as he had stated in one communication with Revenue that any discrepancies in the returns were capable of explanation."

38. Peart J also held in *Tobin v Foley [2011] IEHC 432* (paragraph 26) that the standard of proof is the civil standard. He said:

"26. There is no doubt in my view that the civil standard of proof - balance of probabilities … is the appropriate standard, even though penalties are, inter alia, the subject of the orders sought by the applicant. These are not criminal proceedings. They are civil proceedings brought in relation to unpaid taxes, interest and penalties under the Act of 1997 in order to collect them."

Discussion and Conclusion

Grounds of Opposition

39. In light of the nature of the specific grounds of opposition raised by the respondent it is appropriate to consider them first.

Not a liquidated amount and not a Summary Summons

40. One of the core points raised by the respondent is that the claim brought by the applicant is fundamentally flawed because it is for "*Estimated*" sums of money and, as such, is not for a liquidated sum. This is put in various terms by the respondent. For example, he states, in his grounding affidavit (paragraph 4), that: "*The applicant/deponent/witness Siobhan Dooner is fully aware, and if not, she ought to be, that no summary application, especially to the Superior Courts, can travel in law, if it cannot be substantiated with a Liquidated Sum; meaning that, any purported application*

in a summary process, is mandated to legal and lawful scrutiny by the Courts, and needs to be clearly demonstrated as being a Sum Certain, which can be categorically proven as owed to the party making such a claim." He also said that the applicant is seeking to have the Court engage in its "*fraudulent application, where nothing is what it seems"* and the civil penalty application should be struck out for this reason. The schedule of Outstanding Tax exhibited is alleged to indicate that the "*outstanding taxes are fictitious estimates, grounded upon nothing more than anomalous figures*" and that the applicant has brought "*an unlawful and fraudulent application and Notice of Motion".* Centrally related to this point is the contention that the claim should have been brought by way of Summary Summons.

41. The factual basis for the respondent's contention that the applicant's claim was for estimated amounts is a print-out from his ROS page dated the 25th August 2016 in respect of outstanding VAT (headed *"Schedule of Outstanding Taxes"*) with the letters "*est*" after them. He says that these '*estimates'* are not '*liquidated sums*'

42. These points have no merit. Firstly, the claim by the applicant is not for a liquidated sum due and owing which requires to be brought by way of Summary Summons. It is for a determination by this Court that the respondent is liable to a civil penalty and for a determination of the amount of that penalty. Indeed, Order 2 Rule 1(1)(c) which provides that the Summary Summons procedure may be adopted in a claim "*on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt* ***other than a penalty***" (emphasis added) would appear to preclude this claim being brought by Summary Summons as it is a claim for a penalty. It certainly is not required to be brought by Summary Summons. Secondly, the basis of the application is not '*estimated sums*' as claimed by the respondent. The applicant explains at paragraph 6 of her affidavit of the 26th January 2023 that the amounts in the Schedule of Outstanding Taxes were estimates which issued pursuant to section 110 due to the respondent's failure to make VAT returns but that they predate and were then displaced by the VAT assessments raised on the 20th December 2019. As noted above, pursuant to section 111 of the 2010 Act assessments are final and conclusive subject to an appeal, and no appeal was brought). Thus, the amounts for outstanding VAT or income tax were not "*estimates*" upon issuance of the assessments. The amounts in the Notices of Assessment form the basis for the Amended Notice of Opinion.

The attachment or theft of monies by the Revenue Commissioners

43. The second point raised by the respondent relates to a sum of money taken by the Revenue Commissioners from the respondent's bank account on foot of what he

describes as an *"Alleged Attachment order"*. The respondent states in paragraph 5 of his first replying/grounding affidavit that the Revenue Commissioners took €26,484.12 from his accounts held in AIB/EBS. He describes this as the Revenue Commissioners stealing this money. He suggests that this somehow disentitles the applicant to the relief claimed and also that the applicant has not accounted for the amount taken in calculating the amount of tax unpaid and therefore in calculating the penalty that should attach.

44. The applicant deals with this in paragraphs 8 and 9 of her second supplemental affidavit (affidavit of the 26th January 2023). She does not dispute that the Revenue Commissioners took a sum of €26,747.94 from the respondent's bank accounts. This is a slightly different amount but no issue was raised about the difference. She explains that she understands that "*…on or about the 12th May 2022, the Collector General attached the Respondent's bank account in the sum of €26,747.65. This sum was then set off against his liabilities to the exchequer. For completeness, €25,700.71 was offset against Income Tax Liability for tax year 2015 and €1,046.94 against Income Tax liability 2016.*" She exhibits correspondence relating to outstanding taxes in the course of which, inter alia, the Revenue stated on the 10th January 2022 that there were taxes due in the amount of €97,672.42, the respondent (by what he calls a Notice/Demand L80) informed the Revenue Commissioners and other public officials that he had informed President Mary McAleese in 2009 that he "*no longer wanted/want to be part of your/Ireland's Coercive Tax system*" and therefore zero monies were owed to the Revenue, and which includes a Notice of Attachment dated the 11th April 2022 addressed to AIB.

45. The point made by the respondent that this disentitles the applicant to relief and that the applicant has failed to take account of this payment confuses the liability for tax and the liability to a civil penalty. The said amount was attached in respect of the respondent's tax bill and it naturally follows that the Revenue would have to credit that amount against the outstanding amount in respect of tax. However, that is not what is at issue in this application. What is at issue is whether there is a liability to a civil penalty and the application of statutory provisions to the calculation of that penalty. Tax that was subsequently recovered by Revenue (either on a voluntary or, as in this case, an involuntary basis) does not go to either of those questions.

46. The respondent suggests that this 'theft' by the Revenue Commissioners disentitles the applicant to the relief. The respondent has not established that the attachment of this monies was wrongful. In any event, as discussed below, that is not an issue which can properly be raised in the context of this Originating Notice of Motion. If

the respondent is of the view that the Revenue Commissioners have acted wrongfully then he must issue appropriate proceedings in relation to that wrongful act.

Headings to sections 1077B and 1077E of the 1997 Act and section 116(3) of the 2010 Act

47. It is contended by the respondent that by proceeding under section 1077B(3) and 1077E(3) of the 1997 Act, the applicant is claiming that incorrect returns were made by the respondent (rather than that returns were not made at all). He says that it is not the case that incorrect returns were made by him and, therefore, the applicant is therefore "*maliciously deceiving the Court.*" The basis for this contention is the assertion that section 1077E only applies where returns are made but they are incorrect because the heading of Chapter 3B of the 1997 Act, which contains sections 1077B and E is "*Penalty for deliberately or carelessly making incorrect returns, etc*" and the argument therefore seems to be that section 1077E only applies where returns are made but they are incorrect. He makes a similar point in respect of section 116(3) of the 2010 Act which is under an identical heading. There is in fact no basis in the express terms of the sections themselves for this contention. Section 1077E(3) does indeed provide for the imposition of a penalty where a person makes a return which is incorrect but it also, at subsection (3), provides for a liability to a penalty where a return is not made at all. Sub-section (3) provides: "*Where any person* ***deliberately fails to comply with a requirement to deliver a return*** *or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29, that person shall be liable to a penalty*" (emphasis added). Furthermore, section 18 of the Interpretation Act 2005 provides that:

> "*Subject to section 7, none of the following shall be taken to be part of the enactment or be construed or judicially noticed in relation to the construction or interpretation of the enactment:*
>
> *(i) A marginal note placed at the side, or a shoulder note placed at the beginning, of a section or other provision to indicate the subject, contents or effect of the section or provision,*
>
> *(i) A heading or cross-line placed in or at the head of or at the beginning of a Part, Chapter, section or other provision or group of sections or provisions to indicate the subject, contents or effect of the section of the provision.*

Inadequate particulars

48. The respondent makes the point that it was held in *Bank of Ireland Mortgage Bank v O'Malley [2019] IESC 84* that the bank should provide "*at least some straightforward account of how the amount said to be due was calculated and whether it includes surcharges and/or penalties as well as interest*" and the applicant has categorically failed this basic test (he says this was followed or implemented in *Havbell DAC v Harris [2020] IEHC 147*; *AIB v McGowan [2020] IEHC 148* and *Cabot Financial (Ireland) Ltd v Wilson [2021] IEHC 443 and [2022] IECA 78)*. These cases are of no application. They were concerned with Summary Summons proceedings claiming a debt comprising of capital and interest. This case concerns tax matters which are provided for in detail by statute. The amount said to be due is based on Notices of Assessment which have not been appealed or challenged. No further particulars are required.

Wrongful prosecution and conviction

49. In his affidavit of the 13th January 2023 grounding his motion (and which is also stated to be a replying affidavit) the respondent deals at very great length with what he claims are defects in the criminal prosecution and conviction in respect of non-payment of taxes for the years 2009-2012. He has, he claims, lawfully "*rescinded the certificate of conviction...which the High Court must now consider and take judicial notice of.*" I do not need to deal with the substance of his complaints about the criminal process. They are not relevant to whether or not the respondent is liable to a civil penalty in respect of a failure to make returns for the years 2015, 2016 and 2017, which is the question which I must determine in this application. The prosecution was in relation to his failure to make returns for entirely different years (2009-2012). Whether or not the prosecution and conviction is fundamentally flawed in the manner claimed by the respondent simply does not have a bearing on the questions relating to whether the respondent is liable to a civil penalty in respect of a failure to make returns for 2015, 2016 and 2017.

50. The respondent made the point that it was the applicant who brought this criminal prosecution into these proceedings because she referred to it in her supplemental affidavit of the 29th November 2022. That is true but that in itself does not make complaints which the respondent might have in relation to the merits or lawfulness of that prosecution and conviction relevant to the Court's consideration of the applicant's application. Furthermore, the context of the applicant's reference to the prosecution and conviction is important. The applicant issued her Originating Notice of Motion on the 28th March 2022. The respondent was convicted on the 11th May 2022. He was sentenced to a two year sentence which was suspended on condition that he file all outstanding

returns from 2009 to 2020 and all VAT returns due for the same period. The respondent sought an adjournment of the applicant's application in May 2022 in light of the fact that he was going to be filing returns for 2015, 2016 and 2017 in compliance with the condition in the suspended sentence and the respondent was of the view that this would have a bearing on matters because the tax liability for those years would then be ascertained rather than "*estimated*." As I understand it, this was the basis of the adjournment in May 2022. The matter was then due back before the Court on the 10th October 2022. In those circumstances, it was entirely proper that the up to date factual position should be put before the Court in light of the long adjournment period. But that does not make the merits or lawfulness of that criminal prosecution and conviction relevant to the determination of whether the respondent is liable to a civil penalty for different tax periods and how much that penalty should be.

51. The respondent also stated that the purpose of the applicant referring to this conviction was to "*paint the Respondent as a purported Convicted Criminal, and to wilfully prejudice these proceedings.*" In circumstances where there was a reason to explain why the matter had been adjourned it seems to me that I could not conclude that this was the purpose for the applicant referring to this conviction. In any event, even if it was, I am satisfied that I am able to disregard the fact of this conviction and decide the current application on the relevant facts and applicable law. I simply can not and have not had regard to the fact that the respondent was convicted of these offences. They relate to different tax years and simply have no bearing on the issues which I have to determine in this application.

Permission of the applicant to bring the proceedings

52. The respondent makes the point that the applicant has not produced the permissions from the Revenue Commissioners to establish her entitlement to maintain these proceedings. I am satisfied that there is no merit to this. The applicant states clearly in her affidavits that she is a "*Revenue Officer of the Office of the Revenue Commissioners*" and that she makes her affidavit "*for an on behalf of the Revenue Commissioners as a Revenue Officer within the meaning of section 1077A of the Taxes Consolidation Act 1997 (as amended)*". Section 1077B of the 1997 Act provides that a "Revenue officer" may make an application to the Court for the Court to determine whether a person is liable to a penalty under the Acts.

Second set of proceedings

53. At the hearing, the respondent said that proceedings had been issued against him by the Revenue Commissioners on the 4th December 2023 in which they were making a claim for unpaid tax for the same years, 2015-2017, and that the figures given for unpaid tax were different to the figures in these proceedings. The respondent did not put this on affidavit and did not even seek to do so and it seems to me that I can not deal with it in the absence of evidence. Furthermore, it must be remembered that the figures in respect of unpaid tax for those years that are relied upon in these proceedings are figures which are fixed by unappealed Notices of Assessment. It seems to me that if the Revenue are claiming different figures in separate proceedings that will be a matter for those other proceedings. For example, it may be (and I express no view on this because no evidence has been put before the Court) that the amount claimed in those proceedings takes account of the circa €26,000 which has been attached by the Revenue in respect of unpaid tax for that period.

Letter to the President and the Revenue

54. In his affidavits of the 13th January 2023 and of the 3rd July 2023, the respondent refers what he calls a "Notice/Demand L80" which he sent to the Revenue Commissioners and other public officials on the 24th April 2022. He inserted a copy of this Notice into the body of his affidavit and it is somewhat illegible. However, the point that he makes is that he informed the Revenue and the other public officials that he had written to President McAleese in 2009 to inform her that he did not want to be part of the tax system. The part of the Notice which relates to his letter to President McAleese in 2009 is legible. It reads:

> "*As you are aware and if not you should be that we sent a Notice Letter in 2009 to Ireland's Head of State at the time President Mary McAleese that we no longer wanted/want to be part of your/Ireland's Coercive Tax system, therefore Zero monies are owed to you and should you proceed to carry out your Notice of Attachment to Allied Irish Bank, 7-12 Dame Street, Dublin 2 you will be doing so unlawfully and without the prescribed Courts permission.*"

55. This can not determine the question of whether the law applies to an individual and therefore the question of whether the respondent is liable to a civil penalty for non-compliance with statutory requirements.

Basis of the Application

56. Turning to the question of whether the applicant has established the basis for the relief sought in the Originating Notice of Motion, as noted above, the standard of proof is the civil standard of the balance of probabilities.

57. I am satisfied that the respondent failed to comply with the requirement to deliver a return of income, charges and capital gains in relation to income tax for the years 2015, 2016 and 2017 and VAT returns for the taxable periods from 1st January 2015 to the 31st December 2017.

58. The applicant positively states that the respondent did not make the returns. She states at paragraph 7 of her grounding affidavit that "*Prior to the commencement of the investigation, the last Income Tax return filed by the Respondent was for the tax year 2008 and the last VAT return had been submitted for the period January/February 2010.*" The respondent does not specifically deny this averment. He does, as noted above, state that he denies the contents of the applicant's grounding and supplemental affidavits. However, one would expect that if he seriously disputed something as fundamental as this, he would have specifically denied it. Furthermore, in a number of notices in 2019 and 2020, the Revenue wrote to the respondent stating that he had failed to make returns and there is no evidence in the contemporaneous documentation of the respondent having contested or rejected the statements by the Revenue Commissioners in those notices that he had not filed returns for those periods. For example, a Notice of Assessment dated the 26th November 2019 was served on the respondent in respect of income tax for the year ending 31st December 2015. It states "*I hereby give notice that due to* ***your failure to deliver a return****, you have been assessed to Income Tax for the year ending 31 December 2015…*" (emphasis added). A Notice of Assessment in identical terms was served for each of the years 2016 and 2017 on the same date. By letter of the 27th November 2019 the respondent was informed that assessments had been raised on the basis of income received by him which had been identified by a review of the bank statements which had been obtained from the respondent's financial institution. There is no evidence of the respondent having replied to these Notices or having challenged or contested them in any way. Apart altogether from the fact that as a matter of law the assessments are final and conclusive in the absence of an appeal, one would expect that if the statement that the respondent had failed to deliver a return was not accepted or was denied, the respondent would have contacted the Revenue to say as much. In a similar vein, in the Notices of Opinion, the applicant stated that the respondent "***deliberately failed to deliver*** *income tax returns for the tax years 2015, 2016 and 2017 and VAT returns for the periods 01/01/2015 to*

31/12/2017" (emphasis added). There is no evidence that the respondent replied to any of these to say that he had in fact made returns for the relevant years.

59. I am also satisfied that this failure to make returns was deliberate. Again, in the Notices of Assessment and the Notices of Opinion and Amended Notice of Opinion, the Revenue clearly stated their view that the respondent's failure to make returns was deliberate (see the quotes above) and the respondent did not revert to say that the Revenue were incorrect in that view. Indeed, he did not challenge the Notices of Opinion or Notice of Amended Opinion at all. Furthermore, the respondent offered no explanation either at that time or subsequently in the affidavits in these proceedings for not making returns which could lead the Court to conclude that the failure to do so was careless or anything other than deliberate. It seems to me that the Court is compelled to the conclusion that the failure to make the return was deliberate. Indeed, in circumstances where the respondent sets out in his own affidavit that he wrote to President McAleese (and subsequently to the Revenue Commissioners) to inform them that he no longer wanted to be part of the State's tax system, it would appear that his failure to make returns was deliberate.

60. I am satisfied that there was no agreement between the parties that the respondent was liable to a penalty under the Acts and that the applicant was of the opinion that the respondent was liable to a penalty and gave notice of that Opinion identifying the provisions of the Acts under which the penalty arose, the circumstances in which he was liable to the penalty and the amount of the alleged penalty and then subsequently gave written notice of the amended opinion containing these particulars (as provided for under section 1077B of the 1997 Act).

61. Furthermore, I am satisfied that the respondent did not agree in writing with that opinion or amended opinion and make payment to the Revenue of the amount of the penalty stated in the Notice.

62. Section 1077E(12) provides that the amount of the penalty is the difference between the tax paid by the tax-payer and the amount of tax which would have been payable for the relevant periods if the return had been delivered. The amount paid in this case was zero. The amount payable for the relevant period(s) is, in the absence of the return(s) being made, fixed by the Notices of Assessment. In this case, the Notices of Assessment assess the relevant figures as being €51,711.42 in respect of income tax and €37,161 in respect of VAT (totalling €88,872.42). The difference between zero and this figure is, of course, €88,872.42. Thus, the starting point for the amount of the penalty is that amount. However, that amount is to be reduced in the event of

cooperation with a Revenue investigation. Section 1077E(4) provides that in the case of a deliberate failure to make a return or a correct return the penalty shall be reduced to 75% of the original figure.

63. The next question is, therefore, whether the respondent cooperated with the Revenue investigation. I am satisfied that he did not. The uncontested evidence (other than the general statement by the respondent that he denies all points raised by the applicant) is that he was informed by notification of the 25th March 2019 that there was to be a Revenue investigation into his taxes and duties including Income Tax and VAT for the period 1st January 2015 to 31st December 2017 and the investigation was to take place at 10.30am on the 16th April. The respondent did not turn up and did not contact Revenue. The meeting was rearranged for the 25th April 2019 and the respondent was notified by letter of the 16th April 2019 and he again did not turn up and did not make contact with Revenue. By letters of the 29th July and 23rd August 2019, Revenue called on the respondent (pursuant to section 900 and section 906A of the 1997 Act respectively) to produce certain specified documentation. The respondent did not do so and Revenue then obtained information and documentation from an agent on behalf of companies to whom the respondent had provided services and from his financial institution.

64. None of this is specifically denied. The respondent does not, for example, state that he did not receive these letters. Furthermore, in the letter of the 23rd August 2019 Revenue stated "*Notwithstanding previous requests for information and your failure to respond and co-operate with our investigation…*". There is no evidence that the respondent replied to contest the suggestion that he had failed to "*respond and co-operate with* [the] *investigation.*" Thus, the only evidence is that the respondent did not cooperate with the investigation.

65. In light of the above, I will make a determination in terms of paragraph 1 of the Notice of Motion. I will also make an Order pursuant to section 1077C that the said penalty may be collected and recovered in like manner as an amount of tax.

Respondent's application

66. In addition to being raised as defences to the applicant's application (for example, relief 1 in the respondent's own motion) some of the matters raised by the respondent also ground his application for reliefs 2 and 3 in his motion.

67. I am satisfied that the respondent is not entitled to those reliefs.

68. He seeks an Order "*Endorsing the Respondent's* ***RESCISSION of the prosecution's purported CERTIFICATE OF CONVICTION*** *from Trim Circuit Court, as the Certificate was unlawfully obtained by the Prosecution's lack of Subject Matter Jurisdiction, use of Coercion, the Threat of Imprisonment, and the failure of the prosecution to clearly establish any intention to commit a Crime and/or any act of criminality (Mens Rea/Actus Reus).*" (emphasis in the original). The nature of this relief and its reference to the Court's "endorsement" of the respondent's own rescission of the Certificate of Conviction is, of course, highly unusual, and I am reading it as seeking an Order quashing the conviction. That is not a relief which is properly sought by way of a Notice of Motion issued within proceedings instituted by an Originating Notice of Motion for the imposition of an unrelated civil penalty which do not even involve the prosecutor in those criminal proceedings, i.e. the DPP. If the respondent wishes to challenge the conviction, that must be done by way of appeal or judicial review proceedings.

69. The relief sought at paragraph 3 of the respondent's Notice of Motion is an Order "*Ordering the Revenue Commissioners to return the €26,484.12 they stole from the Respondent, by way of an Alleged Attachment order, with the unlawful assistance of Allied Irish Bank, who were coerced by the said Revenue Commissioners, which was carried out in the absence of a Court Order.*" This is also not a relief which can be sought within proceedings brought to recover a civil penalty in respect of different tax years. It follows from this that the respondent is also not entitled to an Order within these proceedings directing the Revenue Commissioners to return monies which he alleges they stole from him. He is perfectly entitled to sue the Revenue Commissioners for the return of monies if he believes that they have wrongfully taken those monies. I express no view on such a claim.

70. In the alternative, the respondent seeks an Order referring the matter to the Supreme Court "*on Points of Law, which are to be drafted on agreement/consent of all parties concerned and to the Respondent's complete satisfaction.*" There is no basis for this relief.

Application for leave to cross-examine

71. Very shortly before the hearing of those two motions, the respondent issued a motion for leave to cross-examine the applicant, and this motion also came before me on the same day. I decided that it was necessary to determine that motion first. I also

decided that all of the papers (including the papers in respect of the other two motions) should be opened to me as the question of whether to grant leave to cross-examine the applicant could only be determined by reference to the issues in the underlying motions. The papers were opened and the parties made submissions on the motion for leave to cross-examine.

72. Having heard those submissions I decided that leave should not be given. I gave an outline of my reasons and said that I would provide the reasons for this decision in this judgment.

73. The application was grounded on an affidavit of the respondent dated the 23rd January 2024. This affidavit largely refers to matters which had already been referred to in previous affidavits. At the hearing, he submitted that the reasons why he wanted to (and was entitled to) cross-examine the applicant were set out in his Notice of Motion and the grounding affidavit. These were essentially the points discussed above. The Court asked him to identify the conflicts of fact which he said required cross-examination. He identified the following:

(i) how the figures came about or were calculated; he said that the claim is not for a liquidated sum and he wants to cross-examine the applicant to get to the bottom of how the figures were arrived at;

(ii) to dig down into the issue in respect of the sum of €26,484.12 which he claims Revenue unlawfully took. He described himself as wanting to get into the 'nitty-gritty' of, for example, whether it is part of the €88,872.42; and why it was put down in ROS against 2015 and 2016 and, if that is the case, why it was not taken off the €88,872.42;

(iii) in respect of the criminal case in Trim Circuit Court, saying that the applicant introduced it to blacken his name and that she now has to stand over it.

74. Cross-examination on affidavits is expressly provided for in a number of rules in the Rules of the Superior Courts. Order 40 Rule 1 is the applicable rule (though I will refer to a judgment relating to Order 38 Rule 3). Order 40 Rule 1 provides:

> "*Upon any petition, motion, or other application, evidence may be given by affidavit, but the court may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.*"

75. I was referred by Counsel for the applicant to *Delaney & McGrath, Civil Procedure in the Superior Courts, 5th Ed.*, and to two judgments, *IBRC v Moran [2013] IEHC 295* and *Permanent TSB Plc v Donohoe [2017] IEHC 143*. It is sufficient to refer to the two judgments.

76. In *IBRC v Moran*, Kelly J (at paragraph 12) quoted from his earlier judgment in *IBRC v Quinn [2012] IEHC 510* (in which he quoted at length from and approved the approach of O'Donovan J in *Director of Corporate Enforcement v Seymour [2006] IEHC 369)* and to the judgment of Denham J in *Bula Limited v Crowley (No. 4) [2003] 2 IR 430 at page 458* and went on to say:

> *"14. That passage from the judgment which was cited to me seems to do no more than confirm the discretionary jurisdiction which the court has to direct cross examination in circumstances where there is no absolute right to such. That is precisely the position which obtains here and is reflected in the wording of O. 40, r.1 which provides that…*
>
> *15. It is incumbent upon an applicant for such an order to demonstrate (1) the probable presence of some conflict on the affidavits relevant to the issue to be determined and (2) that such issue cannot be justly decided in the absence of cross examination."*

77. In *Permanent TSB v Donohoe*, McDermott J was considering Order 38 Rule 3 and Order 40 Rule 31 which provide for the reverse of Order 40 Rule 1, i.e. a deponent must be produced for cross-examination unless *"excused"* by *"the special leave"* or *"leave"* of the Court. Nonetheless, McDermott J's judgment is helpful. He said:

> *"28. It is now clear from para. 121 of the affidavit of 5th December 2016 that the defendant wishes to cross examine Ms. O'Brien. I am satisfied that the issues raised in that affidavit and indeed in his previous affidavits are largely concerned with issues of law either as to the admissibility of evidence set out in Ms. O'Brien's affidavits or the sufficiency of the proofs relied upon by the plaintiff in seeking the substantive relief. There are a number of legal issues raised in the affidavit. This is done by way of what I regard as legal submission which is not appropriate to an affidavit. It raises issues about "securitisation", the validity of the indenture of deed and charge, the validity of the registration of the burden, and the*

applicability of and alleged breaches of the Code of Conduct on Mortgage Arrears issued by the Central Bank of Ireland. ***None of these issues gives rise to any relevant conflict of fact between the parties****. The defendant constantly asserts that the plaintiff should furnish affidavits deposing to one fact or another. That is an entirely inappropriate procedure. The plaintiff relies on the proofs contained in the affidavits submitted in support of its case. As previously noted Mr. Donohoe has not addressed the core issues in relation to those facts. He also seeks to advance other somewhat contrived legal issues and non-specific assertions of fraud and perjury which are of a scandalous nature against Ms. O'Brien and other employees of the plaintiff.*

29. The defendant is entitled under O. 38, r. 3 to serve a notice to cross examine in proper form in respect of any deponent whose affidavit is relied upon by the plaintiff in special summons proceedings. This does not mean that the court must as a matter of course always permit such cross-examination to take place. In most cases, a notice to cross-examine is issued on reasonable grounds. However, the court has a jurisdiction to control its own proceedings and to ensure that its process is not subject to abuse or prolonged time consuming litigation which is not addressed to the central issues of the case. I am satisfied that the contents of the affidavits furnished by the defendant in many respects constitute an abuse of the court's process. Apart from the fact that they contain detailed legal submissions (as do some elements of the affidavits filed on behalf of the plaintiff), they also contain a considerable amount of frivolous vexatious and scandalous material which, if allowed to be the subject and basis of a cross-examination of Ms. O'Brien would undoubtedly protract the proceedings unnecessarily and waste the court's time and limited resources. In addition, I am satisfied having considered the affidavits sworn by Mr. Donohoe and the exhibits therein contained, ***that no issue of fact of any relevance or substance upon which Ms. O'Brien could properly be cross-examined has emerged from those affidavits****. I am satisfied therefore that to permit cross-examination of Ms. O'Brien notwithstanding the issuing of a notice to cross examine would constitute an abuse of process.* ***I am also satisfied that the proposed cross-examination is unnecessary in order to determine the issues in the case because of the absence of any evidence in Mr. Donohoe's affidavits relevant to the core issue or constituting a core denial of the central facts relied upon by the plaintiff****. It seems to me that as matters presently stand on the affidavits there is no issue to be determined by way of cross examination…*" (emphasis added)

78. In general, therefore, in order for cross-examination to be permitted there has to be some conflict of fact or the probability of one which requires to be determined in order to determine the issues in the application. There are no such conflicts in this case.

79. The issues to be decided on the applicant's application are set out and discussed above. They include: whether the respondent failed to make returns for 2015, 2016 and 2017 and, if so, whether that failure was deliberate. There is no real conflict in respect of these because the most the respondent has done is to put the applicant on proof of these facts. He has not engaged directly with them at all. The issues also include the amount of tax which was actually paid and which should have been paid. The respondent does not specifically deny that he paid no tax and does not say how much he paid, if anything. In relation to how much tax he should have paid, he makes a number of points questioning how the applicant arrived at the figure of €88,872.42 and whether credit has been given for the sum of circa €26,000 (these points include the reference to them being estimates). However, he does not assert that a different amount should be paid. He simply seeks to raise questions about the applicant's approach and calculations. But in any event, there is no conflict in respect of the amount in circumstances where Notices of Assessment have been served and these were not challenged or appealed by the respondent. The issues on the applicant's application also include whether the respondent cooperated with the Revenue investigation. There is no specific conflict of fact in relation to the investigation. The facts are set out above. The respondent does not claim, for example, that he attended either of the two meetings, or that he contacted the Revenue in relation to them, or had a reason for not attending; nor does he claim to have provided any of the information sought.

80. There is no conflict on the affidavits which requires to be determined in order to determine the points raised by the applicant either as a defence to the applicant's application or as grounds for the relief which he seeks. The question of whether the claim/application should have been brought by Summary Summons is a legal issue and not a factual issue. There is no conflict about whether the Revenue took circa €26,000. The applicant does not deny that Revenue took it. Nor is there a conflict about whether this was credited towards the calculation of the penalty. The applicant does not claim that it was. The dispute is whether it should have been and that is a legal issue. Furthermore, insofar as the respondent seeks to recover this amount as having been wrongfully taken, that is a matter for separate proceedings. Similarly, any conflict which might arise in respect of the criminal prosecution and conviction is not relevant to the

issues to be decided on the applicant's application and I have decided that the respondent is not entitled to bring his claim for relief in respect of that prosecution and conviction in these proceedings and therefore even if there is a conflict, it is not relevant to these proceedings. The headings to the relevant sections in the 1997 Act and the 2010 Act and whether they mean that the proceedings have been improperly brought is a legal question and does not require cross-examination. Finally, the respondent raised a question about whether the applicant is authorised to bring these proceedings. There is no conflict on this. He does not even say that she is not so authorised. He simply says, in various different ways, that she has not placed sufficient evidence before the Court that she is so authorised. She has said in her affidavit that she is a "*Revenue Officer of the Office of the Revenue Commissioners*" and that she makes her affidavit "*for and on behalf of the Revenue Commissioners as a Revenue Officer within the meaning of Section 1077A of the Taxes Consolidation Act 1997 (as amended)*". In my view, all that the respondent has done is to put her on proof and I am satisfied that she has discharged the burden of proof on her in the circumstances of this case.

81. Finally, I should say, that I would not have been inclined to permit cross-examination in circumstances where the application for leave to cross-examine was brought at the very last minute against a backdrop where the respondent had brought a wholly unmeritorious application against the applicant for contempt of Court for failing to swear an affidavit (the subject of my earlier ex tempore judgment), and where the respondent was seeking an adjournment of six months to prepare for any such cross-examination. This strongly suggests that the real purpose of the application to cross-examine the applicant was to delay the determination of her application. That these are relevant considerations is clear from McDermott J's judgment in *Permanent TSB v Donohoe*.

82. In all of the circumstances, I will make an Order in terms of paragraph 1 of the Originating Notice of Motion and an Order pursuant to section 1077C as sought in paragraph 2 of that Originating Notice of Motion that the said penalty may be collected and recovered in like manner as an amount of tax. I refuse the relief sought in the respondent's Notice of Motion of the 13th January 2023.