THE HIGH COURT

Record No. 2021 288COS

[2024] IEHC 462

In the matter of the Companies Act 2014 to 2020

And in the matter of Mardon Property Developments Limited

Between

NOEL MARTIN

Applicant

and

BRENDAN O'DONOGHUE

Respondent

Judgment of Mr. Justice Conor Dignam delivered on the 18th day of July 2024

INTRODUCTION

1. The respondent was appointed as receiver to property of Mardon Property Developments Limited ("Mardon") by National Asset Management Agency ("NAMA") pursuant to section 147 of the National Asset Management Agency Act 2009 by several deeds of appointment in April and May 2015.

2. The applicant, a director and member of Mardon, now seeks the following reliefs:

   "(1) An Order for directions, pursuant to s.438 of the Companies Acts 2014-2020, regarding the continuance of the Defendant's Receivership of the Company;

   (2) An Order directing the Defendant to lodge a Form E11 with the Companies Registration Office, discharging him as Receiver over the Company, within such time as this Honourable Court deems meet;

(3) In the alternative, an Order discharging the Defendant as Receiver over the Company."

3. He does so on the basis that the respondent was appointed as receiver over certain specified real property of Mardon and all of that property has been sold and therefore the receivership is exhausted, he has requested the respondent to discharge himself, and the respondent has declined to do so on a basis which the applicant says is not valid.

4. The background to the appointment of the receiver and to this application involves several loan facility agreements between Bank of Ireland and Mardon and the security therefor which consisted of several mortgages or debentures and a guarantee agreement between Bank of Ireland and the applicant and a Mr. Patrick Martin, another director of Mardon. The picture which is given in the affidavits about the details of these loans and the security is somewhat unclear because the applicant and the respondent refer to different facilities and instruments. However, neither party contradicts what the other party says about these matters and the lack of clarity is not material to the current discussion, particularly in light of the basis upon which I have determined the matter. It should also be noted that the security documents in respect of these facilities are not all exhibited to the affidavits. The applicant simply refers to the filing of C1 Forms in the Companies Registration Office in respect of various Deeds of Mortgage and Charge and exhibits those forms rather than the deeds. He does so because, as he states in some instances, he "*cannot locate copies of the relevant Mortgage Deeds*". However he does not dispute that he or Mardon did indeed enter these instruments. In all of those circumstances, I am drawing the background from a combination of the affidavits.

5. It is not necessary to recite all of the details of the background. In summary:

   (a) By debenture dated the 21st May 2007, Mardon charged, inter alia, various lands owned by Mardon at Clanbrassil Street, Dundalk. The precise terms of this debenture and precisely what was charged by it are central to some of the arguments made in this application. At the hearing, a copy of the debenture of the 21st May 2007 was handed in by the respondent. The applicant made the point that it had been stated by Mr. Martin in his grounding affidavit that he did not have a copy of this Deed and yet the respondent only handed in at the hearing. However, he did not have an objection to it being admitted or to the Court having regard to its contents.

   (b) By Deed of Mortgage and Charge dated the 2nd October 2007, Mardon charged its property at 8 Batchelors Walk, Dundalk.

(c) By facility letter of the 14th January 2008 (accepted by Mardon on the 18th January 2008), Mardon borrowed €8.8 million towards the renewal of existing facilities to be secured by first legal charges over the same lands at Clanbrassil Street, a residential property at Batchelors Walk and a debenture over the assets of Mardon, and a guarantee and indemnity to be entered by the applicant and Mr. Patrick Martin (this was entered into on the 3rd April 2008).

(d) By Deed of Mortgage and Charge dated the 6th or 12th April 2011, Mardon charged its property at some of the same addresses and other lands either at Clanbrassil Street or at the rear of addresses on that street.

6. The 2008 loan and the security for it was acquired by National Asset Loan Management Limited pursuant to section 90 of the National Asset Management Agency Act 2009.

7. By a supplemental facility agreement dated the 23rd April 2013 between National Asset Loan Management Limited and Mardon and the applicant and Mr. Patrick Martin, the terms of the 2008 loan were amended so as to provide for further security over a company bank account which the respondent says was established to receive rental income of various properties of the company.

8. It is claimed that Mardon defaulted on its repayment obligations and by several Deeds of Appointment dated the 24th April 2015 and the 6th May 2015 the respondent was appointed as statutory receiver pursuant to section 147 of the 2009 Act over various properties belonging to Mardon. He was also appointed as statutory receiver over properties which had been mortgaged between the applicant and Mr. Patrick Martin and Bank of Ireland.

9. It appears that following his appointment, the respondent instituted two separate sets of proceedings (*Brendan O'Donoghue v Patrick Martin and Noel Martin High Court Record Number 2016/9712P* and *Brendan O'Donoghue v Patrick Martin, Noel Martin and Ben Gilroy High Court Record Number 2016/1115P*) in which injunctive relief was sought and obtained against the defendants to prevent them trespassing on certain properties over which he had been appointed receiver. Those two sets of proceedings were consolidated. Ultimately a Second Amended Defence and Counterclaim was delivered by the applicant and Mr. Patrick Martin in which it is claimed that the respondent reduced rental income, incurred unnecessary and/or uneconomical expenditure, conducted sales or disposals for less than full value, and failed to discharge monies to a company named Drumgoan Developments Limited. In general it is claimed that "*the purported appointment of the Receiver over the Properties [which definition includes the Mardon Properties], and the*

subsequent [in]action on the part of the Receiver, has caused and continues to cause significant loss, damage and expense to the Borrowers and Mardon, including but not limited to the reduction in the annual rent roll and destruction of a number of buildings comprised within the properties, together with the resulting loss in value of the Properties, as more fully particularised and set out below."

10. National Asset Loan Management Limited issued a bankruptcy petition against the applicant and Mr. Patrick Martin and I understand that application is still ongoing.

11. In a further set of proceedings, another company of which the applicant and Mr. Patrick Martin are shareholders and former directors, Drumgoan Developments Limited (which is referred to above), is suing the respondent, claiming that Drumgoan was engaged in the managing, maintenance, repair and letting of properties on behalf of the applicant and Mr. Patrick Martin, Mardon and, on rare occasions, other parties. It is claimed that Drumgoan provided these services in respect of 83 properties owned by Mardon and the Martins and that 67 of those properties contained goods and chattels belonging to Drumgoan. That company sues the receiver for the delivery up of those goods and chattels and damages for trespass to goods or for conversion or negligence and breach of duty.

12. These details of these proceedings are set out in the respondent's replying affidavit. The pleadings themselves are not exhibited but the applicant did not take issue with the description of the claims in those sets of proceedings given by the respondent.

13. Ultimately, on the 19th April 2018, the respondent sold the real properties over which he had been appointed as statutory receiver.

14. There then followed correspondence between solicitors for the applicant and the respondent or solicitor for the respondent. This commenced in 2021 after the respondent lodged Form E9 Extracts in the Companies Registration Office. A number of issues were addressed in this correspondence, including, insofar as relevant to the current application, whether the respondent should discharge himself as receiver over the assets of Mardon. In a letter of the 28th January 2021, the applicant's solicitor wrote, inter alia:

> *"For what reason will you not discharge yourself as receiver of the assets of Mardon as set out in the Debenture of the 21st May 2007 – are there outstanding book debts, uncalled shares, was the debenture a charge created that would require registration as a bill of sale or are there any Patents, Trade Marks or Copyright vested in Mardon? If not with the greatest of respect to your legal advice you have no entitlement to remain registered as a receiver to assets of Mardon. Further the floating charge crystallised on your appointment nearly six years ago so there can hardly be any other assets secured by a fixed charge on the event of crystallisation which have not been disposed of to date; if there are please identify what those assets are in*

your response to this correspondence and what their market value is and what steps have been taken to realise the proceeds of sale for the benefit of Mardon."

15. By reply of the 16th February 2021, the respondent's solicitor stated, inter alia:

> *"The Receiver is a party to litigation with Patrick and Noel Martin as you are aware, and the Clanbrassil Street properties including the interest held by Mardon Property Developments Limited, form part of the subject matter of those legal proceedings (High Court Record Number 2016/11154P). It is envisaged that the Receiver will be discharged once these proceedings are determined."*

The proceedings referred to are one of the sets of proceedings described in paragraph 9 above.

16. The applicant's solicitor replied on the 25th February 2021, stating, inter alia:

> *"We do not understand your point of view as set out in this paragraph. It is common case that he has been appointed receiver over many assets of Noel and Pat Martin and by means of multiple appointments – those receiverships are at issue in the proceedings between the Martins and your client. While it is accepted that the Mardon Receivership is mentioned in those proceedings this still provides no legal reason why he should remain appointed; those proceedings as do all proceedings relate to acts or omissions that have occurred in the past; there is nothing, that the remaining registered as a receiver to Mardon, can affect those historical actions or omissions as of course you (sic) client is sued in his personal capacity and not in some notional, qua receiver, capacity. Again we repeat our prior request please seek instructions from your client that he will lodge a form E11 in the CRO without delay to discharge himself as all the secured assets which led to his appointment have been disposed of and failing receipt of that confirmation our instructions are to make a court application to have him discharged as receiver and, in the circumstances we will be seeking an order for the costs of that application against him."*

17. The respondent's solicitor wrote on the 25th March 2021, inter alia:

> *"We disagree with your analysis as to whether it is appropriate to discharge the appointment insofar as Mardon is concerned. However, should your clients be prepared to waive all claims and complaints, whether past, present and future against the Receiver in respect of his appointment over the assets of Mardon, our client will agree to seek the discharge of his appointment over the assets of Mardon."*

18. The applicant then issued this application.

STATUTORY PROVISIONS

19. The application is expressly brought pursuant to section 438 of the Companies Act 2014. It provides, inter alia:

> *"(1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise, by the receiver, of his or her functions, that is to say:*
>
> *a) (i) the receiver;*
>
> *(ii) an officer of the company;*
>
> *(iii) a member of the company;*
>
> *(iv) employees of the company comprising at least half in number of the persons employed in a permanent capacity by the company;*
>
> *(v) a creditor of the company;*
>
> *and*
>
> *(b) (i) a liquidator;*
>
> *(ii) a contributory;*
>
> *and, on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.*
>
> *(2) An application to the court under subsection (1), except an application under that subsection by the receiver, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed act or omission of the receiver as the court may require."*

20. Section 435 provides, inter alia:

> *"(1) The court may, on cause shown, remove a receiver of the property of a company and appoint another receiver.*

(2) Notice of proceedings in which such removal is sought shall be served on the receiver and on the person who appointed him or her not less than 7 days before the date of the hearing of such proceedings and, in any such proceedings, the receiver and the person who appointed him or her may appear and be heard."

21. Section 147 of the 2009 Act provides, inter alia:

"(1) Where any of the following occurs under the terms of an acquired bank asset:

(a) a power of sale becomes exercisable;

(b) a power to appoint a receiver becomes exercisable;

then NAMA may appoint any person, including an officer of NAMA, as a statutory receiver of the property the subject of the bank asset.

(2) NAMA may remove a statutory receiver and may appoint a new statutory receiver in the place of a statutory receiver removed."

22. Section 148 of the 2009 Act provides, inter alia:

"(1) A statutory receiver has the powers, rights and obligations that a receiver has under the Companies Acts, and the powers, rights and obligations specified in Schedule 1..."

23. Schedule 1 Paragraph 15 of the 2009 Act (referred to in section 148) provides that the receiver appointed under section 147 shall have the power:

"To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in his or her own name and in the name of the chargor in relation to any secured asset which he or she thinks fit."

SUMMARY OF THE PARTIES' POSITIONS

24. It was submitted on behalf of the applicant that he has standing to make the application under section 438 as an officer of the company. He submitted that the receivership is exhausted because the receiver was only appointed over specified lands and has sold all of those lands and that the existence of the other sets of proceedings in which the receiver is being sued and his claimed need to defend himself in those proceedings are not proper

reasons for him to continue as receiver. The applicant says that the application is supported by sufficient evidence that he is being unfairly prejudiced by the respondent's refusal to discharge himself as receiver, which he sets out in his two supplemental affidavits.

25. The applicant's position is that the Court is entitled under section 438 of the Companies Act to make a direction that the respondent lodge a Form E11 with the Companies Registration Office discharging him as receiver of the company. It was submitted (in response to the submission of the respondent that the Court can not make the Order sought under section 438 because section 435 deals with the removal of receivers) that the relief at paragraph 3 of the Notice of Motion is, in the alternative, an Order under section 435 of the Companies Act discharging the respondent so even if the Court does not accept that it can make the Order under section 438, it should make an Order under section 435.

26. The applicant submits that the reasons given by the respondent in the pre-application correspondence and to a certain extent in the affidavit and submissions for not discharging himself and for continuing as receiver are not proper reasons for the refusal to discharge himself.

27. The respondent makes a number of points. Some of these were in the exchange of affidavits but were not seriously pursued at the hearing.

28. As referred to above, it was suggested that the applicant did not have standing to bring the application under section 438 as he had not exhibited any consent on behalf of Mardon though this point was not really maintained in the respondent's written submissions or at the hearing.

29. It was submitted that the Court did not have the power or jurisdiction to make the Orders sought under section 438 in circumstances where in substance the application was for the removal of the receiver and the Oireachtas has made specific express provision for the removal of a receiver under section 435. Thus, it was submitted, the application under section 438 was misconceived. It was also submitted that even if there was an application under section 435, the test either under section 435 or 438 is not met.

30. The respondent raised the question of whether the Court could grant the relief sought under section 438 (or section 435) in circumstances where the respondent was appointed under section 147 of the 2009 Act. The suggestion seemed to be that because section 147 provided for the removal of a statutory receiver by NAMA they could not be removed under the Companies Act. Reference was made to section 147(6) which provides that the powers of NAMA under section 147 (which include the power to remove a statutory

receiver) "*are exercisable by NAMA (and only by NAMA)…*". However, at the hearing, Senior Counsel for the respondent indicated that it was accepted that section 147 is in addition to section 435 and therefore section 147 does not oust the Court's power to remove a receiver under section 435. Section 147 is rather, it was submitted, part of the statutory context for the proper interpretation of section 438 and whether it provides for an Order the effect of which is the removal of a receiver.

31. The respondent submitted that in circumstances where the applicant and Mr. Patrick Martin, the other director and member of Mardon, and Drumgoan, of which they are members, have challenged the respondent's conduct as a statutory receiver, it is appropriate and necessary in the context of the specific provisions of section 148 and Schedule 1 paragraph 15 of the 2009 Act that he continue in his role as statutory receiver in order to defend the actions taken by him in that office, in particular where the defence of those proceedings requires access to the books and records of Mardon. He rejected the case made by the applicant that the fact that the lands have been disposed mean that he must be discharged. He relied on section 148(1) and Schedule 1, paragraph 15 of the 2009 Act which provides that the respondent has the power "*[t]o bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in his or her own name and in the name of the charger in relation to any secured asset which he or she thinks fit.*"

32. It was also submitted that the application was fundamentally misconceived as it was grounded on the mistaken position that the respondent was only appointed as receiver over the specific real property that was sold. He pointed to Clause 4 of the debenture which states "[*T]he Company as Beneficial Owner hereby charges in favour of the Bank all its undertaking, property and assets, whatsoever and wheresoever both present and future including goodwill and its uncalled capital for the time being with the payment of all moneys hereby secured including interest as aforesaid.*" I was also directed to the relevant Deed of Appointment which states "*Accordingly IT IS HEREBY AGREED: in pursuance of the powers contained in the Security Document and every power conferred on it by statute or otherwise, NALM does hereby appoint the Receiver and Manager to be* ***receiver and manager*** *of all the assets referred to and comprised in and charged by the Security Document including,* ***without limitation****, those assets more particularly listed in Schedule 2 hereto and to enter upon and take possession of the same in the manner as specified in the Security Documents and the Receiver and Manager shall have and be entitled to exercise the powers conferred on him by the Security Document and by law."* (emphasis added). The "*assets more particularly listed in Schedule 2*" were specified lands. The respondent relied on these provisions to argue that the suggestion that he was only appointed over those lands was completely wrong. In reply it was argued on behalf of the applicant that even if that were the case, it was clear from the letters

written on behalf of the respondent (quoted above) that there was nothing left in the receivership.

33. The respondent also raised questions about the applicant's motivation in bringing the application and about the suggestion that he would suffer prejudice. He pointed out that Mardon is a hopelessly insolvent company with debts exceeding €8.5 million after the sale of the properties.

DISCUSSION AND CONCLUSION

34. I have considered all of these points. However, it is not necessary to determine them all.

35. In relation to the question of standing to bring the application under section 438, the respondent did not really maintain the point that the applicant did not have standing on the basis that he had not exhibited the consent of the company. Instead, the point was made that no indication was given as to the position of the other director or shareholder or how the reliefs would be in the interests of the company, its shareholders or creditors. In my view, the respondent was correct not to maintain the position that the applicant did not have standing to make an application under section 438. The section permits an officer of the company to bring an application for directions under that section. It has not been disputed that the applicant is an officer of Mardon. It seems to me that the section is curiously worded. Sub-section 2 requires the application to be "*supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed act or omission of the receiver as the court may require.*" On one view this suggests that only an officer (or one of the other permitted category of persons) who presents satisfactory evidence that he "*is being unfairly prejudiced*" has standing under the section. In *Moran v Hughes [2013] IEHC 522* Laffoy J referred to Budd J's judgment in *Kinsella v Somers (Unreported, 23rd November 1999)*. Budd J said in relation to section 316(1A), the predecessor to section 438, "…*If the application is being made by a director or shareholder then it would appear that a prerequisite is that proof is adduced that the Applicant is being unfairly prejudiced by some action or omission on the part of the receiver.*" This seems to support a position that standing depends on the production of satisfactory evidence of unfair prejudice. However, Laffoy J said at paragraph 29 of her judgment that "*It was not disputed, nor could it be, that the applicant being an officer, which term is defined as a director or secretary, of each of the respondent companies has standing to being an application under s.316 in relation to the receivership of each of the respondent companies.*" This suggests that standing (rather than the entitlement to relief) depends solely on the applicant being an officer. For the purpose of this application, in circumstances where I did not hear detailed argument on this point, I am proceeding on the basis that sub-section (2) does not go to the question of standing to

bring an application under the section but rather to whether the applicant should obtain the relief. That point may require to be determined in an appropriate case and I think it would be better to leave it to when it is fully in dispute and is argued in full. I am satisfied, therefore, that the applicant has standing under section 438.

36. The second point is whether the Orders sought are available under section 438 and I am not satisfied that they are. The application is in substance an application to remove the receiver. Indeed, paragraph 3 of the Notice of Motion expressly seeks the "discharge" of the receiver (though it does not refer to removal). Even under the terms of paragraph 2 of the Notice of Motion, the effect of an Order directing the receiver to file an E11 Form is to discharge or remove him. I accept that the Court's powers under section 438 are very broad (see, for example, paragraph 4.8 of the judgment in *Re H.S.S. [2011] IEHC 497*, *Ardfert Quarry Products v Moormac Developments Limited (In Receivership) [2013] IEHC 572* and *Cunningham v Bank of Scotland plc [2016] IEHC 65)*. However, the section is not open-ended. As Clarke J put it in *Re H.S.S.* "*…it does not seem to me that that section confers on the Court any entitlement to change the proper implementation of the regime for dealing with the assets of insolvent companies as set out in the Companies Acts…*" and "*The section does not, however, give the Court carte blanche to reassess whether the carefully crafted provisions of corporate insolvency law are to apply.*" I do not believe that the section can be interpreted as including the power to make the Order sought in the circumstances of this case, the effect of which is to remove the receiver, where the Oireachtas has already made express provision in section 435 for the removal of a receiver. To interpret it as permitting the Court to effectively remove a receiver would render the power in section 435 or part of it redundant.

37. I do not believe that the fact that the power to remove the receiver under section 435 must be "*on cause shown*" has any bearing on this. It was emphasised on behalf of the applicant that he was not saying in this application that there was misconduct, negligence or a conflict on the part of the respondent. However it seems to me that "cause shown" is broad enough to be capable of covering the situation claimed to arise here, i.e., where a receiver is refusing to discharge himself when the receivership is exhausted and is relying on invalid reasons for his refusal (I make no findings in relation to any of these matters). That this is so is clear from *In re Ballyrider Limited (In Receivership) [2016] IECA 228* in which Irvine J, on behalf of the Court of Appeal, was considering the power to remove a liquidator. Having considered, inter alia, the English decisions of *AMP Music Box Enterprises Ltd v. Hoffman [2003] 1 BCLC 319* and *Finnerty v. Clark [2012] 1 BCLC 286* she said at paragraph 2:

> *"27. Having considered the jurisprudence earlier referred to and other helpful decisions cited by counsel in their written submissions it appears to me that the following principles can be stated to apply on an application to remove a liquidator namely:-*

(i) The burden of proof is on the applicant to show good cause for the removal of the liquidator.

(ii) Whether good cause has been shown is to be measured by reference to the real and substantial interests of the liquidation and the purpose for which a liquidator is appointed.

(iii) ***The Court has a wide discretion as to the circumstances in which it may remove a liquidator and it is not dependant on proof by the applicant of misconduct, personal unfitness or any particular breach of their statutory obligations. What will amount to good cause will depend upon the particular circumstances of each individual case****.*

(iv) Failure on the part of a liquidator to conduct the liquidation in a vigorous, efficient and cost-effective manner may provide good cause, as may a conflict of interest or loss of confidence in the liquidator on the part of one or more creditors. However, in the latter case the creditor/creditors concerns must be real and reasonable.

(v) The fact that a liquidator's conduct has been shown in one or possibly more than one respect to have fallen short of ideal will not afford good grounds to support an application to remove a liquidator.

(vi) The Court, amongst other considerations, ought to pay due regard to the potential impact of the proposed removal on the liquidator's professional standing and reputation. If he has been generally effective and honest, the Court should think carefully before deciding to remove him.

(vii) The Court must bear in mind that in almost any case where an order to remove the liquidator is made the same will likely have undesirable consequences in terms of costs and delay.

(viii) In seeking to strike a careful balance in each case the Court should take into account whether, on the evidence before it, it could be confident that if left in situ the liquidator would not repeat matters complained of and could be relied upon to complete the liquidation in accordance with his obligations." (emphasis added)

38. Nor do I believe that the fact that section 435 provides for the Court to remove one receiver and appoint another has any bearing on whether the Order is available under section 438. It was submitted on behalf of the applicant that in light of the fact that section 435 contains one power – the power to remove a receiver and appoint a replacement – the section is intended for where the receivership will be continuing but

here the Order is being sought to bring the receivership to an end. It was not argued by the respondent that there are two separate powers in section 435 and I have therefore proceeded on the basis that the power in the section is a single power. I do not believe that this impacts on the interpretation of section 438. Assuming the conduct of the respondent would be shown to be sufficient cause for his removal (and I make no finding whatsoever in relation to this) then the appropriate way to proceed, as designated by the Oireachtas, would be to make an Order removing him and appointing a new receiver for the purpose of taking the steps to bring the receivership to an end. This may involve additional expense but it seems to me that this flows from the proper interpretation of the sections.

39. Section 147 of the 2009 Act, which empowers NAMA to remove a receiver and appoint a new one, gives some limited indirect support for the interpretation that section 438 does not encompass the Orders sought. It does so because it is another example, in the same broad area of law, of the Oireachtas making express provision for the removal of a receiver, which suggests that a general provision such as section 438 (which is silent on the point) does not encompass that power. However, I do not believe it to be determinative.

40. As noted above, it was submitted by the applicant that the primary relief sought is an Order under section 438 directing the filing of a Form E11 with the effect of the respondent discharging himself as receiver and that paragraph 3 of the Notice of Motion seeks, in the alternative, an Order under section 435. I have difficulty accepting that this is the case. Section 435 is not referred to in the Notice of Motion (unlike section 438). Furthermore, the way the motion is framed is to seek at paragraph 1 "*an Order for directions pursuant to section 438…regarding the continuance of the Defendant's Receivership of the Company*" and then to specify the directions sought at paragraphs 2 and 3 of the Notice of Motion. Thus, the applicant seeks an Order under section 438 directing the respondent to lodge a Form E11 or an Order under section 438 directing his discharge. In other words, the relief at paragraph 3 is in the alternative to the relief at paragraph 2 and not in the alternative to the relief at paragraph 1.

41. I have considered all of the other points raised but in those circumstances it seems to me that it is not necessary to determine them, and given the possibility that they might be argued in the context of another application, it would be better if I expressed no view on them.

42. I therefore refuse the relief sought.