[2026] IEHC 416

AN ARD-CHÚIRT
THE HIGH COURT

[2020 No. 113S]

BETWEEN:

SUPERMAC'S IRELAND LIMITED

PLAINTIFF

AND

WATCHFORD LIMITED

DEFENDANT

JUDGMENT of Mr. Justice David Keane delivered on 30 June 2026

Introduction

1. The plaintiff, Supermac's Ireland Limited ('Supermac's') claims damages for breach of contract against the defendant, Watchford Limited ('Watchford'). Watchford counterclaims damages for unjust enrichment against Supermac's. At all material times, Watchford operated a Supermac's franchise at two premises in Limerick, one on the Ennis Road and the other in Dooradoyle. In broad terms, Supermac's claim is for unpaid franchise fees, together with ancillary fees for franchise-related goods and services, and Watchford's counterclaim is for overpaid restaurant equipment fees.

Background

2. Supermac's is a well-known 'fast food', or 'quick service', restaurant business established by Pat McDonagh in Ballinasloe, County Galway, in 1978. There are in excess of 100 Supermac's restaurants in Ireland. Of those, approximately 40% are operated by Supermac's directly and 60% are operated by franchisees. In consideration for the ongoing payment of a franchise fee, a franchisee gets the benefit of Supermac's brand name and marketing, as well as various forms of operational support, including access to maintenance services and stock items at competitive rates.

3. The Supermac's franchise fee is based on a percentage of turnover, net of VAT. The point of sale or accounting software provided at each Supermac's restaurant provides Supermac's with the details of that restaurant's daily turnover. At the end of each month, Supermac's issues a franchise fee invoice to each franchisee, calculated as the relevant percentage of the restaurant's turnover for that month. The relevant percentage depends on whether or not the restaurant premises is owned by Supermac's. Where Supermac's owns the restaurant premises in which the franchise operates, it fits out the restaurant and from time to time refurbishes it, charging a franchise fee of 10% of turnover net of VAT. Where the franchisee owns the premises or rents it from someone else, Supermac's franchise fee is either 6% or 7% of net turnover, depending on what is negotiated at the outset.

4. Watchford is a company that was incorporated in 1992 and is owned or controlled by John Lyons and Mary Lyons, a married couple. John Lyons began working for Supermac's in its restaurant at Eyre Square, Galway, in 1984. In 1986 or 1987, he began to operate a Supermac's restaurant in Gort, County Galway, as a franchisee. He later went to Australia for a time and then returned to work for other employers in Ireland before accepting a role as manager in a new, larger Supermac's restaurant that was being

developed at Eyre Square. That larger restaurant premises opened in 1990 and was a major success. Mr Lyons then took over as manager of the Supermac's branch in Ennis, County Clare. After that, Mr Lyons became the franchisee of a new Supermac's restaurant at O'Connell Street, Limerick and, for a time, John Lyons or his company Watchford was franchisee of Supermac's restaurants in Charleville, County Cork, and Shannon, County Clare.

5. John Lyons had a role in the acquisition and development by Pat McDonagh of a premises on the Ennis Road in Limerick, part of which subsequently opened as a Supermac's restaurant on St Patrick's Day, 1995. It seems that Pat and Una McDonagh were the landlords of that Supermac's premises and John and Mary Lyons were the tenants, although no formal tenancy agreement was ever executed.

6. While Supermac's acknowledges that, in other proceedings (with which this judgment is not concerned), it may have misdescribed John Lyons as the franchisee of the Ennis Road Supermac's restaurant and that, in replies to particulars raised on the plenary summons in these proceedings, it did describe Supermac's or Pat McDonagh as the franchisor and Watchford or John Lyons as the franchisee there, it now presents its claim on the basis that Supermac's was at material times the franchisor and Watchford at all material times the franchisee. It does not appear to be in dispute that, from the commencement of the franchise in or about 1995, Supermac's issued the relevant invoices to Watchford, which discharged them, and that Watchford recorded the business income from the franchise in its financial statements and, presumably, in its corporation tax returns.

7. For its part, Watchford raises no point on the issue, beyond asking the court to note the resulting uncertainty about whether its counterclaim should be one for damages for breach of contract or damages for unjust enrichment. There is, of course, a need to be vigilant to ensure that no prejudice is caused to Watchford by that misdescription. However, as Supermac's does not raise any such pleading point on Watchford's counterclaim, nothing turns on the question for the purpose of the present judgment. Indeed, it was an unsurprising feature of the evidence in this case that, in the business dealings between the parties, Mr McDonagh tended to identify his personal interests with those of Supermac's and Mr Lyons tended to identify his personal interests with those of Watchford, notwithstanding the doctrine of separate legal personality.

8. The Ennis Road Supermac's restaurant was fitted out by Supermac's. From the outset, the monthly fee paid by Watchford for that franchise was 10% of turnover net of VAT. However, a central dispute between the parties is whether that 10% fee was a franchise fee or, instead, an aggregate fee, comprised of a 7% franchise fee and a 3% equipment fee.

9. Watchford was the franchisee of a Supermac's restaurant in Dooradoyle, Limerick from 2003 onwards. That restaurant premises was not owned or fitted out by Supermac's. From the outset, the monthly franchise fee there was 6% of net turnover.

10. Perhaps surprisingly, neither franchise was the subject of a written agreement. Nonetheless, both franchises operated successfully and without incident for many years. In providing particulars of its counterclaim, Watchford acknowledges an aggregate turnover at the Ennis Road Supermac's restaurant of in excess of €47 million between 1995 and 2018, and it is not disputed that Supermac's received significant fees commensurately. Both sides acknowledge that the agreement was profitable to each party from start to finish. It is clear from the evidence that both Pat McDonagh and John Lyons are enterprising and astute businessmen.

11. Problems arose in 2014 when Mr Lyons became understandably anxious to secure the comfort of a formal written commercial lease for himself and his wife as tenants of the Ennis Road Supermac's restaurant premises.

12. On 1 May 2014, Mr Lyons' solicitor wrote to Supermac's, setting out the terms of various covenants that Mr Lyons wished to have included in the proposed lease. Under the heading 'repairs', that solicitor wrote:

> 'I am instructed that you previously expended approximately €500,000 in fitting out the demised premises at the commencement of the said oral lease in or around 1996. I am further instructed that this sum was to be recovered by you from my clients by way of an equipment fee of 3% per annum on gross turnover. I am also instructed that my clients, in the intervening years, have paid approximately €1,105,151.16 in equipment fees. I am finally instructed that my clients have spent a further €282,531.81 on repairs to the existing equipment and replacement equipment where needed.
>
> I understand that you acknowledged at [a recent meeting with Mr Lyons] that the equipment and the interior and exterior of [the Ennis Road restaurant premises], which includes the signage, is badly in need of replacement and repair respectively. I further understand that you shortly intend to effect the necessary repairs to the premises and install the applicable new equipment. My clients would be agreeable to such a course of action, in consultation with them, on the understanding the said equipment fee would be waived as my clients believe they have already discharged, through the imposition of the said equipment fee for so many years, the cost of the same.'

13. Thus, through Mr Lyons, Watchford's position was then broadly as follows. First, the 10% monthly fee that Watchford had paid since 1995, comprised a 7% franchise fee and a 3% equipment fee. Second, either the 3% equipment fee was only properly due to Supermac's until the amount paid cumulatively equalled the value of the fit-out and any refurbishment works that Supermac's carried out at the Ennis Road premises or the payment of that 3% fee was subject to the payment of a rebate equivalent to the amount by which it cumulatively exceeded the value of those works at any given point in time. And third, Watchford's agreement to any further fit-out or refurbishment work by Supermac's at the Ennis Road restaurant premises would be contingent on the waiver by Supermac's of that 3% equipment fee from then on.

14. Supermac's opposing position was this. First, Supermac's charged an undifferentiated franchise fee of 10% of monthly turnover net of VAT because – directly or indirectly – Supermac's provided both the premises and the franchise. Second, although Supermac's had assumed an obligation to fit out the premises and to refurbish it from time to time, it had not agreed to a discrete 3% equipment fee for that purpose, much less had it agreed that such a discrete fee was only to remain payable until its cumulative total matched the estimated or assessed value of those fit-out and refurbishment works. And third, that, for those reasons, it was not prepared to agree to waive payment of 30% of the monthly franchise fee due to it as a condition of being permitted by Watchford to refurbish the Ennis Road restaurant premises.

15. The result of this stalemate was that no refurbishment works were carried out on the Ennis Road restaurant premises and the relationship between the parties steadily deteriorated from then on. In 2015, John and Mary Lyons issued proceedings seeking a new tenancy of the premises and, in 2018, the Circuit Court granted them one, on specific terms. Supermac's unsuccessfully appealed to the High Court against the terms – though not the grant – of that tenancy, and there have been two other sets of High Court proceedings between the parties on issues concerning the premises. The parties agree that none of that previous litigation is material to any of the issues that I am required to decide in these proceedings.

16. On 18 August 2018, Watchford wrote directly to Mr McDonagh stating, in material part:

> 'Due to your companies (sic) failure to honour the agreement in relation to the 3% equipment/fixtures and fittings fee, resulting in its failure to replace the equipment in the Ennis Road branch and refurbish the shop in line with all other Supermac outlets since circa 2009/2010, despite numerous requests to do so. Your companies (sic) refusal to do so has allowed the demised premises to become rundown, dilapidated and outdated.
>
> I am formally notifying you that I am ceasing the 3% equipment fee with immediate effect.
>
> As in my other restaurant, Supermac's Dooradoyle, I will renovate the demised premises at my own expense and in line with the Supermac's requirements similar to the operation at Dooradoyle.'

17. Thus, having asserted in correspondence on 1 May 2014, that Watchford would only agree to the refurbishment of the restaurant premises if – what it characterised as – the 3% equipment fee was waived from then on, Watchford was now stating that, because the refurbishment works had not been carried out, it was going to cease paying that fee with effect from 18 August 2018.

18. On 27 August 2018, Supermac's solicitors wrote to Watchford's solicitors, stating in material part:

> 'As your client is well aware, our client had planned to carry out extensive refurbishment of this premises in 2014 at a cost of €500,000.
>
> Your client was kept fully informed of the extent of the refurbishment and for reasons best known to your client he frustrated commencement of this work at the time and now complains that the premises has been allowed to go into disrepair.
>
> Our client is not prepared to delay the refurbishment work any longer and intends to commence work on refurbishment of this premises in the next two months. This work will bring the premises up to a proper standard and in line with the superior standards applied at all Supermac's outlets. Our client will carry out the work causing as little disruption as possible to your client. If your client has preferred dates for commencement of the works you might confirm same.
>
> These refurbishment works are conditional on your client complying fully with the terms of the franchise agreement between the parties including payment of the 3% franchise fee.'

19. It is common case that, from August 2018 onwards, Watchford paid monthly fees of 7% - rather than 10% - of turnover net of VAT.

20. In July 2019, Supermac's terminated Watchford's franchises for both the Ennis Road and Dooradoyle restaurant premises with effect from August 2019. No issue is raised in these proceedings on the lawfulness of that action. Watchford continues to operate restaurants at both the Ennis Road premises, for which John and Mary Lyons hold a lease, and the Dooradoyle premises, of which John and Mary Lyons are the owners, and both restaurants now trade under the name 'The Hungry Lyons'.

The pleadings

i. the claim

21. A summary summons issued on behalf of Supermac's on 7 May 2020, claiming the sum of €106,505.02, as monies due and owing as unpaid franchise fees and ancillary fees for the Ennis Road restaurant franchise for the period from September 2018 to July 2019 and unpaid franchise fees and ancillary fees for the Dooradoyle restaurant franchise for the period between July and August 2019, together with interest on that sum either pursuant to statute or pursuant to the European Communities (Late Payment in Commercial Transactions) Regulations 2012 ('the Late Payment Regulations')

22. By order of Murphy J made on 2 March 2021, the action was adjourned to plenary hearing.

23. Supermac's delivered its statement of claim on 19 March 2021, reiterating the matters pleaded in its summary summons.

ii. the defence and counterclaim

24. Watchford delivered its Defence and Counterclaim on 22 February 2022. In it, Watchford required proof of the parties to the franchise agreements, although it admitted that a restaurant business did operate under the Supermac's brand at both the Ennis Road and Dooradoyle premises. Watchford also required proof of the terms of each of the franchise agreements, although it accepted that franchise fees were paid on a monthly basis. Watchford pleaded that the monthly franchise fee payment for Ennis Road was one of 7% of turnover net of VAT, together with an additional separate equipment fee of 3% of turnover net of VAT that was to repay [Supermac's] for the initial fit-out and any up-gradings and renewals which [Supermac's] represented it would carry out. Watchford pleaded that, at all material times, it had discharged the 7% franchise fee when due and that it had discharged the 3% equipment fee up to the cumulative sum of €1,407,513.00 until it ceased doing so on 20 August 2018, following the repeated failure of Supermac's to discharge its obligation to carry out the said upgrades and renewals and because it emerged that Supermac's had only expended approximately €500,000 on the fit-out of the premises.

25. Watchford accepted that it did not pay the equipment fee between 20 August 2018 and 19 August 2019, when the Ennis Road franchise agreement terminated. Watchford denied that it failed to pay any franchise or ancillary fees due in respect of either the Ennis Road or Dooradoyle franchises. Watchford went on to deny that it had received full particulars of the sums alleged to be due and owing or that any such sum was due and owing.

26. Watchford then counterclaimed for a sum of approximately €907,000 as the amount by which the cumulative payments it had made of €1,407,513.00 for the initial fit-out and subsequent up-gradings and renewals of equipment that Supermac's represented it would carry out, exceeded the sum of €500,000 as the approximate cost of the fit-out works that Supermac's did. Watchford pleaded that the monthly equipment fee of 3% of turnover net of VAT was to repay Supermac's for the costs or expenses that it had incurred in carrying out those works.

27. Hence, Watchford was then claiming the sum of approximately €907,000.00 in damages as monies due and owing to it for overpayment of equipment fees under the Ennis Road franchise agreement, together with statutory interest on that sum, as well as an order for any necessary accounts and inquiries.

iii. the reply to defence and defence to counterclaim

28. Supermac's delivered a reply to defence and defence to counterclaim on 5 February 2026, outside the time permitted for doing so under the Rules of the Superior Courts. At trial, Watchford formally objected to any extension of time for that purpose, although it did not assert any prejudice or identify any extraordinary circumstance that would warrant its refusal. By way of special reply, Supermac's set out its claim that monthly franchise fees were payable at 10% of turnover net of VAT, without deduction or set off, and denied that any separate or additional 3% equipment fee was payable. By way of defence to Watchford's counterclaim, Supermac's denied that there had been any overpayment of

fees by Watchford before going on to invoke the Statute of Limitations in respect of that overpayment claim.

The issues

29. There is no real dispute between the parties on the calculation of the relevant figures.

30. In respect of the Ennis Road restaurant franchise, Supermac's sent Watchford invoices, described on their face as 'franchise fee invoices', for each of the twelve consecutive monthly periods between August 2018 and July 2019 (inclusive) in the usual way. Each of those invoices was for a single undifferentiated sum amounting to 10% of the preceding month's turnover net of VAT. However, in August 2018, Watchford stopped paying those invoices by direct debit and began paying them by cheque instead. Moreover, Watchford stopped paying the full amount of each invoice and began paying a figure equivalent to 70% of the amount invoiced (or 7% of monthly turnover net of VAT), thereby withholding, or refusing to pay, 30% of the amount invoiced (equivalent to 3% of monthly turnover net of VAT). The parties agree that total amount left unpaid from the aggregate amount of those invoices is €75,021.00.

31. In addition, the parties agree the following figures. The franchise fee of 10% of turnover net of VAT identified by Supermac's as due and owing in respect of the Ennis Road franchise for the month of August 2019 is €15,105. The fees identified by Supermac's as due and owing for the provision of ancillary goods and services in respect of the Ennis Road franchise amount to €14,428. As against those fees, Supermac's acknowledges that Watchford is entitled to the benefit of credit notes in respect of the Ennis Road franchise to the value of €10,189.

32. Thus, Supermac's contends that the total sum due and owing to it by Watchford in respect of the Ennis Road franchise is €94,365.

33. In respect of the Dooradoyle franchise, the franchise fee of 6% of turnover net of VAT identified by Supermac's as due and owing in respect of the Dooradoyle franchise for the month of August 2019 is €4,589, and the fees due and owing for the provision of ancillary goods and services in respect of that franchise amount to €7,551.

34. Thus, Supermac's contends that the total sum due and owing to it by Watchford in respect of the Dooradoyle franchise is €12,140.

35. Adding the sums that Supermac's contends are due and owing to it by Watchford in respect of each franchise, we arrive at the total sum claimed by Supermac's, which is €106,505. And Supermac's claims an entitlement to interest on that sum under the Late Payment Regulations – that is to say, interest at the rate of 8% above the European Central Bank ('ECB') reference rate – currently calculated in the amount of €75,150.

36. Watchford's opposing position is that Supermac's claim for €106,505 is subject to two separate deductions. The first is for the cost of Supermac's signage that Watchford ordered for the Ennis Road restaurant premises, in respect of which it relies on an invoice dated 24 October 2019 from a business named Newtone Creative Branding Solutions in

the sum of €16,370.57. The second is for a cheque in the sum of €10,241, dated 1 April 2020, drawn on Watchford's account in favour of Supermac's, which was allocated by Supermac's to the credit of John and Mary Lyons, rather than Watchford. In addition, it seems that there are other minor differences between Supermac's records, as reflected in its invoices, and Watchford's records, as reflected in the payments that it made.

37. Consequently, Watchford claims that, in accordance with its records, Supermac's maximum entitlement in respect of monies allegedly due and owing to it is one in the sum of €79,452.

38. Turning to Watchford's counterclaim for damages in the sum of approximately €907,000, however originally calculated, it has now been recalculated on the following basis. According to Watchford's financial advisors, the cumulative takings net of VAT at the Ennis Road restaurant premises for the years 1995 to 2018, inclusive, amounted to €42,458,909. The cumulative 3% equipment fee paid on that figure would thus have amounted to €1,273,767. Deducting €500,000, as the estimated fit-out costs of the restaurant premises in 1995, and a further €57,000 as the estimated cost of replacement and updated equipment provided thereafter, Watchford characterises the remaining balance of €716,767 as an overpayment. Applying the logic that when the cumulative payment of the 3% equipment fee reached €513,181 in 2005 all further such payments were an overpayment, Watchford seeks Courts Act interest on the cumulative balance of those payments for each succeeding year up to the present in an amount that currently stands at €422,207.

39. On the basis of those conflicting positions, the issues that the court must resolve are as follows.

40. First, was it a term of the oral franchise agreement between the parties in respect of the Ennis Road restaurant premises that the monthly payment that Watchford was to make to Supermac's was to comprise a single undifferentiated franchise fee of 10% of monthly turnover net of VAT or a franchise fee of 7%, and a separate equipment fee of 3%, of that figure?

41. Second, if it was the latter, was it a further term of that agreement that Watchford's obligation to pay the 3% equipment fee was to cease if and when the cumulative total of those payments reached an amount equivalent to the value of any and all fit-out and refurbishment works carried out by Supermac's?

42. Third, if not, was Watchford entitled to make the waiver of the 3% equipment fee in 2014 a condition of permitting Supermac's to carry out any further refurbishment works or to cease paying that fee in 2018 while continuing to operate and rely on the franchise agreement in all other respects?

43. Fourth, if not, does the sum of €716,764, representing the estimated difference between the aggregate 3% equipment fee paid by Watchford over the period during which the franchise agreement operated and the value of the fitout and refurbishment works done

by Supermac's, on the other, constitute the unjust enrichment of Supermac's at the expense of Watchford?

44. Fifth, is Watchford entitled to deduct from the monies it otherwise owes to Supermac's the cost of the Supermac's signage that it ordered for the Ennis Road restaurant premises, and which is the subject of an invoice dated 24 October 2019 for €16,370.57 from Newtone Creative Branding Solutions to Watchford?

45. Sixth, is Watchford entitled to deduct from the monies it otherwise owes to Supermac's, the value of its cheque in favour of Supermac's in the sum of €10,241, dated 1 April 2020, which Supermac's applied to the credit of John and Mary Lyons, rather than Watchford?

The relevant terms of the franchise agreement

46. In order to resolve each of the first two questions, it is necessary to ascertain, on the balance of probabilities, the relevant terms of the oral agreement between the parties.

47. As a witness on behalf of Supermac's, Pat McDonagh's evidence on the relevant terms of the franchise agreement was broadly as follows. Supermac's charges a different percentage rate of turnover as a franchise fee depending on whether it owns the relevant premises. Where it owns the premises, that rate is 10% to reflect the necessary planning and development work, and the necessary fit-out and refurbishment work thereafter. That rate applies across all of the premises that it owns and applies continuously throughout the currency of any such franchise agreement. Where it does not own the premises, the rate is either 7% or sometimes 6%, as the precise rate is subject to negotiation. Separate fees are charged for the provision of ancillary goods and services.

48. Turning specifically to the Ennis Road restaurant premises, from the outset the rate was 10%. That had been the rate for the Supermac's franchise that John Lyons had previously operated at O'Connell Street in Limerick. It was never part of any discussion that he had on behalf of Supermac's with John Lyons on behalf of Watchford that, once the costs of fitting out the premises had been recovered from a cumulative 3% portion of the 10% franchise rate, the rate would revert to one of 7%. There never came a point where John Lyons or Watchford suggested to him that it was time to stop paying a 10% franchise fee because the cost of the fit-out works had been recovered. That would amount to Supermac's providing Watchford with an interest-free loan for the cost of those works. If Watchford had gone to a bank to borrow the money necessary for the fit-out works, you would expect the bank to charge significant interest. In any case, Supermac's was proposing to carry out extensive refurbishment works at the Ennis Road restaurant premises in 2014, but those works did not proceed because, through Mr Lyons' solicitor, Watchford made clear that it would only facilitate them if the 3% portion of the 10% franchise fee was waived. It was for that reason that no significant refurbishment works were carried out after that.

49. Maeve Noone, an assistant accounts director with Supermac's, gave evidence on its behalf. She began working for Supermac's around 30 years ago, in or about 1995. She is

familiar with the invoicing and accounts arrangements that Supermac's has for its franchisees. In relation to the Ennis Road restaurant premises, all of the invoices she has reviewed were issued to Watchford. All of them are for a single undifferentiated amount, calculated at 10% of monthly turnover, net of VAT. None of them reference separate fees of 7% and 3% of turnover. In her experience, Supermac's generally charges one of two different fee rates, either 10% or 7% (sometimes reduced to 6%). She is not aware of any Supermac's franchise where the monthly fee is broken down between a franchise fee and an equipment fee. She has never encountered the concept of an equipment fee while working for Supermac's. Supermac's has numerous franchise agreements that have been in existence for years where the franchisee pays a monthly franchise fee at the rate of 10% of turnover net of VAT. There has never been any suggestion of which she is aware by any of those franchisees that a 3% portion of that 10% rate is only payable until it has cumulatively covered the actual cost of the fit-out works and any refurbishment works on the premises concerned.

50. John Healy, a forensic accountant, was called as an independent expert witness by Supermac's. He testified that, if the 10% monthly franchise fee for the Ennis Road restaurant premises was made up of a 7% franchise fee and a 3% equipment fee, he would expect to see a breakdown of that sum on each invoice to reflect that fact, whereas no such breakdown appears on any invoice. If it was a term of the Ennis Road franchise agreement that a distinct monthly 3% equipment fee was only to be charged until Watchford had cumulatively discharged the initial fit-out costs of the restaurant, together with any subsequent refurbishment costs, he would expect to find those initial fit-out costs capitalised on Watchford's balance sheet with a matching liability that would reduce over time as the cost of that fit-out was repaid. He could find no such entries in Watchford's accounts. He noted that, in its publicly available, audited annual accounts, Watchford treated the 10% franchise fee as a single payment, without any suggested breakdown between a 7% franchise fee and a 3% equipment fee. On the other hand, he acknowledged that, in its internal management accounts, Watchford did separate out the 10% fee into a 7% franchise fee and a 3% 'fixtures and fittings' fee.

51. Peadar Hogan, who is also a forensic accountant, was called as an independent expert witness by Watchford. He had done the relevant arithmetic, based on figures accepted by both sides, that if 3% of the aggregate turnover of the Ennis Road restaurant premises between 1995 and 2018 was €1,273,767, if approximately €500,000 was spent on the initial fitout of the premises, and if approximately €57,000 was later spent on replacement equipment, then the difference between 3% of aggregate turnover, on one hand, and the value of the fit-out and refurbishment works done, on the other, is 716,765. That arithmetic is in not in dispute.

52. Mr Hogan went on to confirm his view that 'from the commencement of the Ennis Road franchise in 1995 until August 2019, Supermac's charged the [d]efendant a 3% Equipment Fee calculated by reference to turnover, payable on a monthly basis.' Mr Hogan acknowledged that that view was based on his instructions but went on to testify that he had seen evidence for that in the internal management accounts of Watchford and

in an averment of Mr McDonagh in other proceedings. Mr Hogan acknowledged that the publicly available financial statements of Watchford record the payment of undifferentiated franchise fees. Mr Hogan disagreed with Mr Healy's view that if the position was as now contended for by Watchford, you would expect to find the relevant costs capitalised on Watchford's balance sheet, although he accepted that that is the accounting treatment he would advise Watchford to adopt in that regard. Mr Hogan expressed the view that the position was not black and white; that the financial arrangements between the parties were haphazard; and that it would be of great benefit to Supermac's to record the relevant equipment as a fixed asset in its accounts to claim the resulting capital allowances from the Revenue Commissioners.

53. Mr Hogan did not explain why he would expect Watchford to forego a genuine claim of its own in that regard, while facilitating Supermac's in making an incorrect one, save that, insofar as he could see, Watchford had never received invoices from Supermac's for any of the relevant equipment. Mr Hogan did not explain why Supermac's apparent failure to provide invoices for equipment, and Watchford's apparent failure to insist on them, should not be considered a separate factor militating against the view that Watchford was paying Supermac's a separate equipment fee. Mr Hogan accepted that there is no reference whatsoever to a separate equipment fee on any of the invoices that Supermac's provided to Watchford. Each is for a single undifferentiated amount equivalent to 10% of turnover, net of VAT.

54. On the resumption of his cross-examination the following day, Mr Hogan testified that he attributed particular significance to the preparation of Watchford's internal management accounts by a reputable firm of auditors. Mr Hogan expressed the view that whether there was a separate 3% equipment fee was one of practice, as distinct from one of fact, and his opinion was based on the practice on the Watchford side, specifically in its management accounts. I pause here to note that I cannot accept Mr Hogan's view on this point. The relevant question is whether it was a term of the oral franchise agreement between the parties in respect of the Ennis Road restaurant premises that the monthly payment that Watchford was to make to Supermac's was to comprise a single undifferentiated franchise fee of 10% of monthly turnover net of VAT or a franchise fee of 7%, and a separate equipment fee of 3%, of that figure. The unilateral practice of Watchford in its internal management accounts is, at most, a single factor to be weighed in the balance in addressing that question.

55. In the concluding section of his expert report, Mr Hogan states: 'In my view, the [d]efendant [has] made an Equipment Fee overpayment of €716,765.' When asked about the basis for the proposition underpinning that view, i.e. that Watchford's obligation to pay the 3% equipment fee was to end when the cumulative total of those payments reached an amount equivalent to the value of the works carried out at the premises by Supermac's, Mr Hogan quoted the following averment made by Mr McDonagh in an affidavit sworn in other proceedings:

> '[T]he necessity for [Supermac's] to retain control of the renovations and alterations to premises under the Supermac's brand is to allow for uniformity of [Supermac's] 110 premises countrywide, to maintain continuity between the premises, and to maintain and build on [Supermac's] strong brand.
>
> …
>
> [I]n order to limit franchisees' exposure to potential and sudden and unforeseen costs in terms of refurbishments and/or alterations, [Supermac's] provides same at its own expense and …thereafter recoups such costs from the franchisee over an extended period of time.'

56. Mr Hogan accepted that there is nothing in that averment, or anywhere else, that states that, once Supermac's has received an amount in franchise fees or equipment fees that is equal to the amount it has expended on fitout or refurbishment works, or both, the franchisee no longer has to pay the relevant fee.

57. As a witness on behalf of Watchford, John Lyons' evidence on the relevant terms of the franchise agreement was broadly as follows. The parties agreed a 7% franchise fee and a 3% 'equipment', or 'fixtures and fittings' fee. The 3% fee would cover the fitout of the restaurant, and any future works that would be carried out. He has no issue with a figure of €500,000 for the initial fitout. He understood that there was to be ongoing refurbishment because, eventually, shops would have to be upgraded and updated, and equipment would have to be replaced. The 3% fee was to cover all of that.

58. Under cross-examination, Mr Lyons acknowledged that it was never agreed that once the amount paid by Watchford as a monthly 3% fee reached the amount spent by Supermac's on the fitout and any refurbishment of the Ennis Road restaurant premises, the payment of the monthly 3% fee was to cease. The relevant term of the agreement was that Watchford was to continue paying a 10% monthly fee (whether treated as an undifferentiated franchise fee or broken down into a 7% franchise fee and a 3% equipment fee) for the duration of the franchise.

59. Mr Lyons confirmed that Watchford continued to pay a total monthly fee of 10% of turnover, exclusive of VAT, until August 2018, when it began paying a monthly fee of 7% of that turnover, although it continued to operate the restaurant premises as a Supermac's franchise until August 2019. That was because, in Mr Lyons' view, Supermac's had failed to carry out the appropriate refurbishment works and standards were dropping, although Mr Lyons acknowledged that the restaurant continued to be consistently profitable throughout the relevant period. Mr Lyons acknowledged that his solicitor had written to Supermac's on 1 May 2014 stating, amongst other things, that Mr and Mrs Lyons would be agreeable to the refurbishment of the restaurant premises on condition that the 3% equipment fee would be waived but testified that that was not what he, Mr Lyons, had intended to convey. He had continued to pay the 3% monthly fee. His refusal to permit Supermac's to refurbish the premises at Supermac's expense was not because, if that were done before he and his wife got a new statutory lease on the

premises, the rent fixed in respect of the premises would be higher. It was because he was afraid that, if Supermac's was permitted to refurbish the premises before he got a new lease, it might lock him out of the premises.

60. Mr Lyons acknowledged that, on 27 August 2018, Supermac's solicitors had written to Watchford stating its intention to carry out refurbishment works straight away on condition that Watchford continue to pay the full monthly 10% franchise (or franchise and equipment) fee. But, by that time, Watchford had decided to carry out the relevant refurbishment works itself, in circumstances where Supermac's had unsuccessfully applied to the High Court for an injunction to prevent it from doing so. Mr Lyons accepted that Supermac's terminated its franchise agreements with Watchford for both the Ennis Road and Dooradoyle premises with effect from the end of August 2019 and that it was entitled to do so.

61. On the basis of the evidence I have just summarised, the following are my conclusions on the relevant terms of the oral franchise agreement between Supermac's and Watchford for the Ennis Road restaurant premises.

62. First, I find that, on the balance of probabilities, the monthly payment that Watchford was to make to Supermac's was to comprise a single undifferentiated franchise fee of 10% of monthly turnover net of VAT, rather than the combination of a franchise fee of 7% and a separate equipment fee of 3% of that figure.

63. On that issue, I accept the evidence of Mr McDonagh that, across all of the restaurant premises it owns, Supermac's charges a franchise fee of 10% of turnover (rather than the 6 or 7% franchise fee it charges for any restaurant premises it does not own). It charges that larger fee to reflect the necessary planning and development work, and the necessary fit-out and refurbishment work thereafter, so that the larger fee is charged continuously throughout the currency of any such franchise agreement.

64. I accept the evidence of Ms Noone that all of the invoices that Supermac's issued to Watchford for franchise fees for the Ennis Road premises were for a single undifferentiated amount, calculated at 10% of monthly turnover, net of VAT and that none of them refers to separate fees of 7% and 3% of turnover. I accept Ms Noone's evidence that, across all of its franchises, Supermac's generally charges one of two different fee rates, either 10% or 7% (sometimes reduced to 6%), and that she is not aware of any Supermac's franchise where the monthly fee is broken down between a franchise fee and an equipment fee.

65. I accept the evidence of Mr Healy, that, if the 10% monthly franchise fee for the Ennis Road restaurant premises was made up of a 7% franchise fee and 3% equipment fee, one would expect to see a breakdown of that sum on each invoice to reflect that fact, whereas no such breakdown appears on any invoice. I find it significant that, in Watchford's publicly available, audited annual accounts, it treated the 10% franchise fee as a single payment, without any suggested breakdown between a 7% franchise fee and a 3% equipment fee.

66. While I do not doubt the honesty and sincerity of Mr Lyons' belief that the parties agreed a 7% franchise fee and a 3% equipment, or fixtures or fittings, fee, I am not persuaded that he is correct in that regard. It is perfectly understandable that Mr Lyons would view things in that way, as Watchford was paying a monthly franchise fee of 6% on the Dooradoyle premises he owned and a larger 10% monthly fee on the Ennis Road premises that he didn't, and, as both sides agree, the difference is explained by the necessary planning and development and fit-out and refurbishment works that Supermac's was obliged to carry out on its own premises. While it is obviously possible to unilaterally characterise the difference as 'an equipment fee' or a 'fixtures and fittings fee', it does not follow that, in any such instance, Supermac's is agreeing a 7% franchise fee and a separate 3% equipment fee. Similarly, it is entirely a matter for Watchford how it chooses to characterise the relevant payments when furnishing information to its auditors to enable the preparation of its internal management accounts, no doubt informed by Mr Lyons' own views in that regard, but that is, at best, very weak evidence of the relevant term of the oral franchise agreement between the parties, particularly given that no such characterisation appears in Watchford's publicly available, audited accounts . The contents of the fee invoices that passed between the parties and the unchallenged testimony of Ms Noone concerning the fee arrangements that Supermac's consistently operates across all of its franchises constitute more convincing evidence in that regard.

67. For those reasons, I conclude that the agreed monthly franchise fee for the Ennis Road restaurant premises was an undifferentiated one of 10% of monthly turnover, net of VAT.

68. I should at once add that I do not think anything turns on that conclusion. That is because the key issue is whether it was ever agreed between the parties that Watchford was to reduce its monthly fee payment to one of 7% of turnover, net of VAT, if and when the cumulative payment of the balance of 3% of turnover, net of VAT, reached an amount equivalent to the value of any and all fit-out and refurbishment works carried out by Supermac's. It is only if there was such an agreement that Watchford's counterclaim for an overpayment of equipment fees can stand.

69. On that issue, there is no conflict in the evidence of the principal witness on each side. Mr McDonagh testified that it was never part of any discussion that he had with Mr Lyons on behalf of Watchford that, once the costs of fitting out the premises had been recovered from a cumulative 3% portion of the 10% franchise rate, the rate would revert to one of 7%. And Mr Lyons acknowledged that it was never agreed that once the amount paid by Watchford as a monthly 3% fee reached the amount spent by Supermac's on the fitout and any refurbishment of the Ennis Road restaurant premises, the payment of the monthly 3% fee was to cease. Rather, the relevant term of the agreement was that Watchford was to continue paying a 10% monthly fee (whether treated as an undifferentiated franchise fee or broken down into a 7% franchise fee and a 3% equipment fee) for the duration of the franchise.

70. In his evidence, Mr Hogan expressed a completely different view. It is that the purpose of what had been characterised as the 3% equipment fee was to enable Supermac's to recoup whatever monies it spent on the fit-out and refurbishment of the Ennis Road restaurant premises and that to the extent the aggregate fee paid exceeds the monies actually expended, it represents an overpayment. Mr Hogan testified that his opinion in that regard rests on, first, the mathematics, and second, the averment of Mr McDonagh in an affidavit sworn in other proceedings that refurbishments and alterations to restaurant premises are carried out at Supermac's expense and recouped from the franchisee over an extended period of time.

71. I do not accept that Mr Hogan's opinion rests on the relevant arithmetic. Rather, it seems to me that the relevant arithmetic rests on Mr Hogan's opinion.

72. Nor do I accept that Mr McDonagh's averment in other proceedings that Supermac's recoups the cost of refurbishment and alteration works from franchisees over an extended period of time establishes that it is a term of any such franchise agreement – including the oral agreement at issue in this case - that payment of the relevant fee is not to exceed the actual cost of fit-out and refurbishment works, and is to be deemed an overpayment should it do so. I do not accept that the relevant averment falls to be construed strictly and narrowly as a comprehensive description of the relevant term of any such franchise agreement. In my view, the general statement that Supermac's recoups the cost of refurbishment and alteration works from franchisees over time cannot be properly or fairly construed as implying agreement to recoup no more than the actual cost of such works, thereby abjuring any element of interest or profit in the fee charged.

73. Hence, I conclude that the relevant term of the oral franchise agreement between the parties in respect of the Ennis Road restaurant premises was that Watchford was to pay Supermac's a single undifferentiated franchise fee of 10% of monthly turnover net of VAT and that payment of that fee was to continue for the duration of the agreement without regard to the actual cost of works carried out.

Did Watchford breach the franchise agreement?

74. It is common case that between August 2018 and the termination of the franchise agreement with effect from August 2019, Watchford unilaterally reduced the monthly fees it paid in respect of the Ennis Road restaurant premises from 10% of turnover, net of VAT, to 7% of that figure.

75. On that point, Supermac's submits that, even accepting for the purpose of argument that there was a breach by Supermac's of its obligation to carry out appropriate refurbishment works (which it denies), Watchford had no entitlement to partially repudiate the franchise agreement by continuing to operate the franchise without paying part of the agreed fee. To paraphrase the well-known dictum of Lord Reid in *Suisse Atlantique Société D'Armement Maritime S.A. v N.V. Roteterdamsche Kolen Centrale* [1967] 1 A.C. 361 (at 398), where there has been a breach of contract, the innocent party must either affirm or rescind the contract as a whole. You cannot approbate and reprobate by affirming part of it and disaffirming the rest – that would be to make a new contract. Supermac's relies

also on the more recent dictum to the same effect of Akenhead J in *Lanes Group v Galliford Try Infrastructure Ltd* [2011] 1 CLC 937 (at 948).

76. I did not understand Watchford to challenge that proposition of law.

77. It follows that, in unilaterally reducing the monthly franchise fees that it paid in respect of the Ennis Road restaurant premises while continuing to operate the franchise there, Watchford was in breach of the franchise agreement.

78. For completeness, I should also confirm that I reject Watchford's argument that the contractual arrangements between the parties comprised a franchise agreement and a separate, or collateral, equipment agreement. Any such analysis would be inconsistent with the findings that I have already made on the relevant terms of the oral agreement between the parties. I should further add that, even if I could be satisfied that there was a separate and collateral equipment contract (and I cannot), I could not find a breach of that contract by Supermac's in failing to carry out refurbishment works that Watchford would not permit it to carry out.

Does Watchford have a valid counterclaim in unjust enrichment against Supermac's?

79. At the commencement of the trial, Mr Sexton explained that Watchford's counterclaim against Supermac's had been framed as one for unjust enrichment because of some uncertainty in the pleadings about whether Supermac's or Pat McDonagh was the franchisor and whether Watchford or John Lyons was the franchisee, creating a potential issue on Watchford's standing to claim against Supermac's for breach of contract. Nonetheless, whatever its legal characterisation, the substance of the counterclaim as pleaded is that Supermac's is liable to Watchford for the difference between the cumulative total of monthly payments of 3% of turnover, net of VAT, that it received and the actual cost to it of the works that it carried out at the Ennis Road restaurant premises.

80. I have already found that Supermac's could have had no such liability to Watchford under the terms of the oral franchise agreement.

81. At the conclusion of the trial, Mr Sexton sought to advance an unjust enrichment claim on behalf of Watchford on a quite separate basis. As I understand the argument, it is that, from 2014 onwards, Watchford had lawfully repudiated the separate or collateral 3% equipment fee contract that it had with Supermac's because Supermac's had failed to carry out the appropriate refurbishment works on the Ennis Road restaurant premises; that, admittedly, Watchford had suffered no identifiable loss as a result, given that the Ennis Road restaurant premises continued to trade highly profitably; but that, nonetheless, on the authority of the principles identified in *Hickey and Company Limited v Roches Stores (Dublin) Ltd*, (Unreported, High Court (Finlay P), 14 July 1976) and *Vavasour v O'Reilly & Ors.*,(Unreported, High Court (Clarke J), 28 January 2005), [2005] IEHC 16, the court should approach the issue as one of the unjust enrichment of Supermac's and award damages to Watchford on the basis of calculating the gain that Supermac's made, rather than the (limited or non-existent) loss suffered by Watchford.

82. The lesser difficulty with that claim is that it has not been pleaded. The greater difficulty with it is that, as I have already concluded, there was no separate 3% equipment fee contract and, even if there had been, the failure by Supermac's to carry out the appropriate refurbishment works from 2014 onwards was due to Watchford's refusal to permit it to do so unless it waived that portion of the fees due to it under the oral franchise agreement.

83. The relevant principles governing claims in unjust enrichment have recently been reconfirmed by the Supreme Court in *Bank of Ireland Mortgage Bank U.C. v Murray & Anor*, (Unreported, Supreme Court, 4 June 2025), [2025] IESC 24. The claimant must establish three things: (1) that the defendant has been enriched; (2) that such enrichment was at the expense of the claimant; and (3) that such enrichment was unjust. As Collins J explained (at paragraph 5 of his judgment):

> 'As to element (3) — whether an enrichment is "unjust" — the claimant must establish an "unjust factor", a legally recognised factor that makes the defendant's enrichment unjust: Goff & Jones, §1–25. Unjust factors are recognised " because they establish that the claimant did not intend the defendant to receive a benefit in the circumstances, either because the claimant never had an intent to benefit the defendant in those circumstances or the intent was vitiated or qualified in some way": *Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1149, [2022] 1 All ER (Comm) 1244 (" Dargamo") per Carr LJ at §58. An unjust enrichment claim is not based " on a wide ranging and open-ended assessment of fairness (or justice) in the round" (Dargamo, §59) and " does not create a judicial licence to meet the perceived requirements of fairness on a case-by-case basis: legal rights arising from unjust enrichment should be determined by rules of law which are ascertainable and consistently applied" (*Investment Trust Companies v Revenue and Customs Commissioners* [2017] UKSC 29, [2018] AC 275 (" Investment Trust Companies"), per Lord Reed JSC, §39). Rigour in identifying the necessary "unjust factor" avoids the danger of "palm tree justice": *Corporation of Dublin v Building and Allied Trade Union*, pages 483–484.'

84. For all of the reasons I have already set out and applying the test I have just described, I can find no unjust factor in the circumstances of the receipt of the relevant payments in this case.

85. Thus, I am satisfied that Watchford does not have a valid counterclaim against Supermac's either for breach of contract or for unjust enrichment.

A deduction for the cost of signage?

86. Watchford claims an entitlement to deduct from the monies it otherwise owes to Supermac's the cost of Supermac's signage – to the value of €16,370.57, as invoiced on 24 October 2019 – that it ordered for the Ennis Road restaurant premises.

87. I can identify no lawful basis for that claim. As I have already described, Mr Lyons gave evidence that Watchford had decided to carry out refurbishment work on the Ennis Road

restaurant premises at its own expense and that, as is common case, Supermac's had tried and failed to injunct it from doing so. Watchford ordered the relevant signage from one of Supermac's approved suppliers. Mr Lyons is understandably aggrieved because, shortly afterwards, Supermac's terminated the franchise agreement for those premises, as it is common case it was entitled to do, and the relevant signage was immediately rendered valueless to Watchford. However, as Mr Lyons acknowledged in his evidence, Supermac's never agreed to pay for that signage. Watchford had assumed that responsibility entirely outside the terms of the franchise agreement and over the objections of Supermac's and, thus, had assumed any and all associated risk.

88. In the circumstances I find that Watchford is not entitled to deduct the cost of that signage from the balance of the fees that it owes to Supermac's under the franchise agreement for the Ennis Road premises.

A credit for Watchford's €10,241 cheque in favour of Supermac's?

89. Watchford claims an entitlement to deduct from the monies it otherwise owes to Supermac's the value of a cheque in favour of Supermac's in the sum of €10,241, dated 1 April 2020, which Supermac's applied to the credit of John and Mary Lyons, rather than Watchford.

90. In her evidence, Ms Noone acknowledged that Supermac's received a cheque for €10,241 written on Watchford's account in April 2020 just before these proceedings issued. Supermac's had great difficulty in reconciling that payment because it came without a remittance slip. They made telephone calls to Watchford and wrote emails to the address they had used for Watchford in the past but without success, so they decided to apply the payment to the credit of the account of John and Mary Lyons, the tenants of the Ennis Road premises, on the basis that their account with Supermac's was still current. They did not receive any communication from John and Mary Lyons in respect of that credit, much less one disavowing an entitlement to it.

91. It is common case that Supermac's solicitors had written to Watchford on 11 November 2019, demanding the sum of €106,505.02 as due and owing, and that Watchford's solicitors had written in response to Supermac's solicitors on 14 February 2020, suggesting that the outstanding balance due was then just €15,162.62 in franchise fees and €11,449.13 for stock, against which Watchford was claiming a credit of €16,370.57 as the cost of signage. Thus, Watchford was impliedly acknowledging, without expressly stating, a debt to Supermac's in the net amount of €10,241.18. Watchford's position is that Supermac's should thus have identified the receipt in April 2020 of a cheque written on Watchford's account in that amount as monies paid by Watchford in partial or whole satisfaction of Supermac's claim against it and not as a payment made by Watchford on behalf of John and Mary Lyons.

92. While I accept that greater clarity in respect of the purpose of this payment in 2020 would have been helpful and that the confusion on the part of Supermac's in that regard at the time was entirely understandable, it does seem to me that the position is now clear – this was a payment made by Watchford to Supermac's in respect of monies due and owing

under the franchise agreement(s) at issue. Although the misallocation of that payment to the account of John and Mary Lyons is readily explicable, it was an error, nonetheless. There is nothing to suggest that Supermac's would have had any right of set-off or combination of accounts in respect of Watchford, much less in respect of the separate accounts of Watchford, on the one hand, and John and Mary Lyons, on the other. Accordingly, I conclude that Watchford is entitled to a credit in the amount of €10,241.18 against the sum of €106,505.02 that I have found to be otherwise due and owing to Supermac's, leaving a balance due from the former to the latter of €96,263.84.

Proposed final order

93. I will grant judgment to Supermac's in the sum of €96,263.84, together with interest on that sum under the Late Payments Regulations. I will hear the parties on the appropriate calculation.

94. The counterclaim of Watchford is dismissed.

95. As this judgment has been delivered electronically, the parties will have two weeks within which to furnish brief written submissions of not more than 1,000 words on the terms of the final order and on costs and any other matters that may arise.

96. The matter will be listed for mention at 10.30 hours on 21 July 2026 for the purpose of making final orders.

Appearances

For the plaintiff, Brian Conroy SC with Cian Henry BL, instructed by Hayes Solicitors LLP, Lavery House, Earlsfort Terrace, Dublin 2.

For the defendant, Andrew Sexton SC with Sheila Finn BL, instructed by Charles C. Daly & Company, 2 Westbourne Place, Cobh, County Cork.