THE HIGH COURT

COMMERCIAL

[2026] IEHC 423

2024 No. 3071 P

BETWEEN

GERARD LANE and VICTORIA LANE

PLAINTIFFS

AND

DENIS CONNOLLY, MEZEN CONSULTANCY SERVICES LIMITED and

POINTSETTER LIMITED

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered 30 June 2026

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Introduction

1. A chance meeting in a hotel bar in Tinakilly Country House Hotel ("**Tinakilly**") in May 2013 resulted in the business relationship at the heart of these proceedings. This judgment, whose length reflects the fifteen day hearing, addresses the legal status of that relationship and how its accepted irretrievable breakdown should be managed in light of the circumstances which arose in the years following that meeting.

2. The first named plaintiff ("**Mr Lane**") claims that he and the first named defendant ("**Mr Connolly")** assumed fiduciary duties to each other as parties to a partnership concerning the property and business of Tinakilly, which partnership it is claimed was later extended to include, or was alternatively followed by a separate partnership on the same terms in relation to, the property and business of a Spanish hotel, Finca Monasterio near Sotogrande, Marbella, Spain ("**Monasterio**"). An alternative plea of a joint venture (giving rise to the same fiduciary duties) was advanced by Mr Lane. These pleas are denied by Mr Connolly who claims that the relationship between him and Mr Lane comprises no fiduciary duties owed by one to the other. He says the relationship between them is solely one of common shareholders in various corporate entities and that this status, rather than any partnership or joint venture, should dictate how matters are brought to an end as between them.

3. For all the reasons set out in this judgment I have concluded that the relationship is properly characterised as a partnership.

The parties to these proceedings and other relevant entities

4. Mr Lane is a successful entrepreneur and businessman, now aged 80. He was born and raised in Ireland but left Ireland in his early twenties. For much of his life he has lived between Manila in the Philippines and Sydney, Australia. He continued however to maintain strong links with Ireland and has family living near Tinakilly. The evidence was that he visited Ireland two or three times every year and, on those visits since about 2005, he stayed with his wife at Tinakilly – a place that both of them have a deep affection for. Mr Lane is not tax resident in Ireland.[1]

[1] Day 3 page 139 line 16

5. The second named plaintiff ("**Mrs Lane**") has been married to Mr Lane for fifty years. She is a successful businesswoman in her own right and is also involved in Mr Lane's extensive business operations in the Philippines.

6. Mr Connolly is a 64 year old experienced businessman with expertise in the hospitality sector. Since 2013 he has resided in a residential property ("**Cúl an Tí**) on the grounds of Tinakilly. Mr Connolly has been responsible for the day to day operation of the business in Tinakilly since 2013. It was clear from the evidence that he, too, has a deep affection for Tinakilly.

7. The second named defendant, Mezen Consultancy Services Limited ("**Mezen**"), is an Irish registered limited liability company (incorporated on 16 May 2013) and is the entity through which the management and operation of the Tinakilly business is undertaken. Mr Connolly is a director of Mezen and Mr Hatt is the company secretary.[2] Mr Connolly is registered as owning 99% of the shares in Mezen and his brother Mr Barry Connolly is registered as owning the balance of 1% of the shareholding – which he holds on trust for Mr Connolly. Therefore Mezen is wholly owned by Mr Connolly. Mr Lane is neither a director nor a shareholder of Mezen although Mr Connolly confirms that he is holding 49% of the Mezen shareholding on trust for Mr Lane. Mezen, through a Transfer of Trade Agreement, purchased all the non-property assets of the Tinakilly business from receivers in 2013. No dividend has ever been declared by Mezen.

8. The third named defendant, Pointsetter Limited ("**Pointsetter**") is a company which was incorporated in the British Virgin Islands ("**BVI**") on 13 March 2013, by company service providers instructed by Mr Lane. It is the company which acquired the freehold interest in Tinakilly when it was sold by receivers in July 2013. Pointsetter was registered as owner of Tinakillly on 6 February 2014. Mr Lane and Mrs Lane are the directors of Pointsetter, both

[2] There was some evidence on day 10 that Mr Hatt may also have recently become a director of Mezen.

having been appointed on 1 July 2013. Mr Connolly became aware that Mrs Lane was a director in 2015 but he agreed on cross-examination that he took no issue with that matter at the time.[3] The certificate of incumbency lists the entirety of the shareholding of 50,000 shares in the name of "*Gerard Lane and/or Virginia Lane in Joint Tenancy with Rights of Survivorship*". At the time of the purchase of Tinakilly the agreed shareholding of Pointsetter was to be 51% Mr Connolly and 49% Mr Lane, with Mr Lane to hold Mr Connolly's shares on trust. Mr Lane accepts that he holds a percentage of Pointsetter shares on trust for Mr Lane, but seeks an increased equity share beyond his original 49% in the circumstances set out in this judgment.

9. In addition to the named parties to these proceedings there are a number of other entities relevant to this dispute although not parties to the proceedings. These entities include the following:

(1) NOL 2 SL ("**NOL**") is a Spanish registered company which purchased the Monasterio property in or around 2018. It is owned 100% by Mr Connolly – although he says he holds 51% of the shares on trust for Mr Lane.

(2) Monasterio Exclusive SL ("**MESL**") is a Spanish company which operated the business of Monasterio. It is owned 100% by Mr Connolly – although he says he holds 51% of the shares on trust for Mr Lane. No dividend has ever been declared by MESL.[4]

(3) Barry Connolly is Mr Connolly's brother. He holds 1% of the shares in Mezen on trust for Mr Connolly. He was not joined as a party to these proceedings in circumstances where he agreed to be bound by the orders of this court.

[3] Day 8 page 8 line 17
[4] NOL and MESL are not part of the same group as Mezen.

(4) DB Hollowstone Limited ("**Hollowstone**") is a UK registered company with a registered office at Newstead House, Pelham Road, Nottingham. It is the company which was the contractual counterparty to the contract for the sale of Tinakilly (as purchaser). Ultimately, and in accordance with the terms of that contract, Tinakilly was conveyed by its vendors to Pointsetter on completion of the sale. The directors of Hollowstone were Ms Paddy Lavelle, Mr Connolly's then sister-in-law, and Colin Hatt (an associate of Mr Connolly who later became General Manager of Tinakilly). Mr Connolly confirmed in evidence that 100% of the shares in Hollowstone are held on trust for him by Ms Lavelle. Hollowstone is therefore a Connolly entity, although Mr Connolly is not (and never was) registered as either a director or shareholder. Hollowstone was the entity which Mr Connolly confirmed was used by him to conduct some property transactions in the UK. Hollowstone is not a trading company. It held a profit which was utilised in relation to the purchase of Tinakilly. Mr Connolly confirmed in evidence that in 2012 those retained profits were entirely under his control.[5] Remarkably however neither Mr Connolly nor Mr Hatt could give any indication to the court as to the level of those retained profits.

(5) Cassidys Spirits Distillery Limited ("**Cassidys**") is an Irish registered company. Mr Connolly says he is the 100% beneficial owner of Cassidys[6] although the shares are held in the name of Colin Hatt, who is also a director. Mr Connolly is secretary to Cassidys.

(6) Provenance Spirits Company ("**Provenance**") is an Irish registered company. Mr Connolly is a director and the sole shareholder.

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[5] Day 7 page 25 line 26
[6] Day 6 page 154 line 3

(7) Caspian Consulting Limited ("**Caspian**") is also an Irish registered company and a Connolly related entity. Mr Connolly is the director and Mr Hatt is secretary. A Mr Michael Connolly is the sole shareholder.

(8) Monasterevin Whiskey Company Limited ("**Monasterevin**") is an Irish incorporated company. Mr Connolly is the secretary and Mr Hatt is the director. Mr Hatt is also the sole shareholder but the evidence confirmed that he holds those shares on trust for Mr Connolly.

An overview of the claims advanced in these proceedings

10. Tinakilly has become one of the most successful hotels and wedding venues in the country. There is no doubt that both Mr Lane and Mr Connolly regard Tinakilly with pride as a special and beautiful place, which they developed into a successful business following its purchase from receivers in 2013.

11. Despite the growth and success of the business however, it is accepted that the relationship between Mr Lane and Mr Connolly has irretrievably broken down and that was clearly evident to the court at the hearing of these proceedings. Indeed, if anything, the evidence at the trial further fractured the relationship between the parties leading Mr Lane, when being re-examined on day 14 to say: "*…this relationship absolutely has to end one way or another. I will not, for the rest of my life, ever be involved in a business with Mr. Connolly*".[7] The reliefs sought in the proceedings are therefore focussed on formally bringing an end to the commercial relationship and determining how to regularise the respective interests of Mr Lane and Mr Connolly in both Tinakilly and in the proceeds of the sale of Monasterio. Mr Lane seeks an order dissolving the partnership. He also claims to have

[7] Day 14 page 21 lines 4-6

already ended his partnership with Mr Connolly, having done so by correspondence from his solicitors in June 2024.

12. Damages are sought by Mr Lane for what he alleges are breaches of the fiduciary duties owed to him by Mr Connolly and also for conspiracy as between Mr Connolly and Mezen. It is accepted that Mr Lane and Mr Connolly entered into a shareholder's agreement (the "**Shareholder Agreement**") in or around the date of the completion of the sale of Tinakilly (15 July 2013), although the exact date in July 2013 is not specified in the signed Shareholder Agreement. Both parties allege the other has breached clause 6 of the Shareholder Agreement. Mr Connolly asserts a breach by Mr Lane of clause 6 because of the holding of the shares in Pointsetter with his wife with rights of survivorship. Mr Connolly's evidence was that he did not become aware until 2019 that Mr Lane was holding the Pointsetter shares as a joint tenant with Mrs Lane.[8] Mr Lane asserts a breach of clause 6 because of the shareholding of Barry Connolly in Mezen.

13. Mr Lane claims a breach of clause 3 due to Mr Connolly's failure to register Mr Lane as the 49% shareholder in Mezen or to register him as a 51% shareholder in NOL and MESL. Mr Lane also claims that Mr Connolly acted in a breach of clause 8 and conspired with Mezen to pay dividends or profit distributions otherwise than in accordance with the applicable equity percentages.

14. Both Mr Lane and Mr Connolly claimed, relying on clause 5 of the Shareholder Agreement, an entitlement to an increased share in Pointsetter and Mezen (and Mr Lane in NOL and MESL) by reason of certain alleged unmatched capital contributions each alleges they made to the business – although this claim was not pursued at trial by Mr Connolly. Mr Lane claims he has not received equivalent payments to Mr Connolly according to his pro rata share (in breach of clause 8) and he pleads that he has serious concerns about the

[8] Day 6 page 125 line 4

financial records of Mezen claiming resultant breaches of clauses 9 and 13. Mr Lane complains of a longstanding failure by Mr Connolly to provide him with access to financial records, as agreed. Indeed there was, throughout the hearing, a persistent complaint in respect of the lack of financial information made available to Mr Lane including by way of discovery in these proceedings – resulting in a motion to strike out the defence and counterclaim remaining extant at the conclusion of the hearing.

15. In relation to Monasterio, Mr Lane pleads that Mr Connolly acted in breach of the implied term that he would not cause or procure NOL and MESL to sell the business and property of Monasterio without the knowledge or consent of Mr Lane and that the sale of Monasterio by Mr Connolly was a complete disregard of Mr Lane's interest in Monasterio.

16. There are disputes as to the extent of loans made by Mr Lane to the business of both Tinakilly and Monasterio. A considerable amount of evidence was given regarding the manner in which Mr Connolly ran the businesses and in particular the extent to which it was alleged that he had made improper payments to various third parties (including himself or entities related to him) through Mezen.

17. To a large extent, the resolution of these issues depends on the proper characterisation of the business relationship between Mr Lane and Mr Connolly. Mr Lane claims that relationship is one of partnership(s), or alternatively joint venture(s), such that each of Mr Lane and Mr Connolly owe fiduciary duties to the other. Mr Lane accepts that he and Mr Connolly agreed to (and do in fact) hold Tinakilly and held Monasterio through various corporate entities but he says that such arrangement is subject to the overarching fiduciary relationship agreed between him and Mr Connolly. Mr Connolly denies this and contends that the only relationship between him and Mr Lane is one of common shareholders, with Mr Lane's status being that of an investor providing what Mr Connolly described as "soft loans" to the business.

18. I will now consider the evidence adduced at the trial. Although it was not given in this sequence, I propose, for presentation purposes, to outline the evidence and my findings of fact primarily by reference to three separate time periods – recognising of course that the evidence on certain matters may span or evolve over several periods. The first period of time runs from 2013 to February 2017. The evidence in respect of this period is essential to understand the nature of the relationship entered into by the parties. Tinakilly was acquired in that period and many of the now disputed payments were made during that time. Relations were generally good between Mr Lane and Mr Connolly during that period. The second period I have identified is the period from March 2017 until July 2022. This period is one where certain strains in the relationship between the parties started to manifest. It is the period when Monasterio was purchased and the period during which difficulties emerged more clearly regarding the sharing of financial information and the preparation of accounts. This period of time also coincides with the Covid pandemic which caused particular strain for hospitality businesses such as Tinakilly and Monasterio. The final period I consider is from August 2022 to date. This is the period in which the relations between Mr Lane and Mr Connolly broke down entirely. It is also the period in which Monasterio was sold by Mr Connolly and the present proceedings were issued and advanced to trial.

19. In addition to those time periods I consider some evidence entirely separately, given the amount of such evidence and/or its relevance to all periods. Specifically I deal separately with the evidence and arguments made in relation to the claim by Mr Lane for an increased equity contribution in both Tinakilly and in Monasterio. I also deal separately with the expert evidence adduced in this case and some factual evidence.

The evidence and findings of fact

Time Period (A): 2013 - February 2017

A (1) Lead up to the chance meeting and the days that followed it

20. Tinakilly had for many years operated successfully as a country house hotel. It was sold by its previous owners, the Power family, to a property development company in 2007. That company, together with related companies, went into receivership in December 2011. The receivers decided to put Tinakilly up for sale in 2012 – by which time Tinakilly and its gardens had deteriorated significantly due to a lack of maintenance and investment since its sale in 2007.

21. Mr Lane learned that Tinakilly was for sale and initially made inquiries with the selling agent CBRE in November 2012. Mr Lane met with Mr Hughes of CBRE at Tinakilly on 8 February 2013 to discuss the sale. Later that month Mr Lane made an offer to purchase Tinakilly (specifically Lot 2 which comprised the hotel, the adjoining house (Cúl an Tí) and 5.86 hectares of land) for €1,000,000, increasing that offer to €1,100,000 in March 2013. This higher offer was accepted subject to contract and Mr Lane paid a refundable booking deposit of €50,000.00 to CBRE on 3 April 2013.

22. Having discussed matters with friends in Manila, who cautioned against the wisdom of trying to run a hotel from the opposite side of the world, Mr Lane (who had no prior hospitality experience himself) decided not to proceed with the purchase. His evidence was that he made this decision very reluctantly. He requested the return of his deposit on 5 May 2013 and this was returned to him shortly thereafter.

23. Mr Connolly was also interested in purchasing Tinakilly and was in fact the underbidder to Mr Lane. His lower bid of €1,050,000 was accepted subject to contract following the withdrawal of Mr Lane's offer.

24. Mr and Mrs Lane stayed as guests in Tinakilly for 6 nights between the 16 and 22 May 2013. It was during that time that the chance meeting took place in Tinakilly between Mr Lane and Mr Connolly leading to their joint involvement in the purchase of Tinakilly.

25. Differing versions of the chance meeting were proffered in evidence by the four parties who were involved in that meeting. That fact alone is not surprising given that the meeting happened almost 13 years ago. Some of the differences are immaterial to the issues the court has to decide. Others however are relevant and will need to be considered in more detail.

26. What is agreed is that the meeting took place in the bar/restaurant in Tinakilly sometime between 16 and 22 May 2013 and more likely in the earlier part of that time period. Mr and Mrs Lane were having lunch and noticed a lifelong friend of Mr Lane, Mr Brendan Murphy, sitting at an adjoining table with Mr Connolly (who Mr Lane says he may have met previously but did not know). Mr Muphy was also a close friend of Mr Connolly and the two had had some business dealings together previously. Mr Connolly had earlier collected Mr Murphy from Donnybrook Hospital (where Mr Murphy's wife was then a patient) and had driven Mr Murphy to Tinakilly as he wanted to show him the hotel he was going to buy.

27. On seeing Mr Murphy, Mr and Mrs Lane joined his table and the four got chatting. What is agreed is that both Mr Lane and Mr Connolly informed the other of their interest in buying Tinakilly. Mr Lane advised that he had just received back his deposit and Mr Connolly advised that he had just paid his deposit. Both deduced that Mr Lane was the "overseas investor" who had originally outbid Mr Connolly. From this point on however there were different versions of events described in evidence.

28. Mr Lane's evidence was that "*Mr Connolly suggested that we join together as partners to purchase Tinakilly. I ultimately agreed and we shook hands on the new partnership*".[9] He said he believed this was the perfect arrangement as Mr Connolly was in Ireland and he had

[9] Gerard Lane witness statement para 28

some experience in the hospitality business running bars and restaurants while Mr Lane had available funds and a real love for Tinakilly. Mr Lane said in evidence that "*I was ready from the beginning to spend money to restore the hotel to its former glory*".[10] Both men gave evidence of their view that there was a lot of potential in Tinakilly with the right management and investment. On Mr Lane's version of events the partnership deal was done in the bar that day and sealed with a handshake. His oral evidence was that: "*what I'm saying is that we shook hands on, not the possibility of the partnership, as you say, but on the fact that we've just agreed to the partnership*".[11]

29. Mr Lane accepted that there were further discussions in the days that followed to "*iron out the details*".[12]

30. Mr Lane says that Mr Connolly originally proposed a 50:50 partnership but that he (Mr Lane) suggested a 51% interest for Mr Connolly and a 49% interest for Mr Lane to reflect the fact that Mr Connolly would be on the ground running the hotel and should be able to have the casting vote in making day to day decisions. Mr Lane said in evidence that this "*was a massive declaration of trust*".[13]

31. The two men continued to have discussions in the days following the chance meeting and they decided on the structure involving separate corporate entities being used to own and to operate Tinakilly. Both men signed a Memorandum of Understanding ("**MOU**") before Mr Lane departed Tinakilly on 22 May 2013 (most likely the MOU was signed on 21 May). Mr Lane says the MOU was drafted by Mr Connolly while Mr Connolly says it was jointly drafted. In any event both men signed it and it is accepted that the MOU was overtaken by a later shareholders' agreement they both signed in July 2013 (the "**Shareholder Agreement**").

[10] Day 2 page 15 lines 3-4
[11] Day 2 page 50/51
[12] Gerard Lane witness statement para 31
[13] Day 2 page 11 lines 15-16

32. Mrs Lane's witness statement recounts that after the initial lunchtime conversation Mr Lane went to meet Mr Connolly that evening. When Mr Lane returned he told Mrs Lane that he and Mr Connolly had decided to go into partnership together to buy and run Tinakilly on the basis of a 49:51 split which Mrs Lane said she understood was intended to give Mr Connolly operational control. Mrs Lane was not in favour of a proposal her husband told her was made by Mr Connolly that he (Mr Connolly) would purchase the residential house on the grounds with a loan from Mr Lane and this aspect did not proceed. Mrs Lane stated in evidence that she understood Mr Lane had entered into a partnership with Mr Connolly which was based on trust originating from the close and long-term relationship between Mr Lane and Mr Murphy. She proffered the view that that trust was the reason why much of the business arrangements between her husband and Mr Connolly had not been "*properly formalised*".[14] A lot of Mrs Lane's evidence was however hearsay in nature and the court treats it as such.

33. In her oral testimony Mrs Lane could not provide any details of the lunchtime discussion or any other meeting. Although she said that she was at the table she could not recall any of the discussions that took place between her husband and Mr Connolly, saying that she "*wasn't privy to their conversation*".[15] She conceded that she did not recall seeing the two men shaking hands and that she might be confused about the reference in her witness statement to a meeting having taken place in the gardens in Tinakilly that same evening. She was not otherwise involved in the discussions and could report only what her husband told her had happened.

34. Mr Brendan Murphy knew both Mr Lane and Mr Connolly. He expressed his sadness at the breakdown of their relationship. His version of events confirms that at the lunch table the

[14] Virginia Lane witness statement para 19
[15] Day 4 page 53 lines 16-17 and page 67 line 25

sale of Tinakilly came up and the parties came to realise their respective interests in purchasing it. His evidence was that "*[t]he conversation evolved and quickly led to the suggestion that Gerry and Denis should partner up and buy it between themselves. I do not recall who made that suggestion but it came up naturally as the conversation evolved as both Gerry and Denis were interested in purchasing Tinakilly… That conversation continued for a few hours, maybe more, I recall that, at the end of the evening, Gerry and Denis shook hands, agreeing the plans they had spoken about to jointly purchase and develop Tinakilly.*"[16] He later said in his oral testimony that "*[t]here was a lot of handshaking*"[17] but conceded that the "*handshaking wasn't necessarily the partnership being formed*".[18]

35. Mr Murphy gave evidence that he had spoken to Mr Lane and Mr Connolly separately in the days and weeks leading up to the purchase of Tinakilly. His evidence was that he had "*absolutely no doubt that what they were discussing and agreeing to do was to enter a partnership to purchase Tinakilly*".[19] He also said that *"[i]n all my conversations with both Gerry and Denis I never had any indication that they were engaged in some form of shareholder relationship and that Tinakilly was really the business of Denis while Gerry was just a shareholder. They were partners*".[20] He conceded in cross-examination however that he had no information about the actual legal relationship between the two men as he didn't know the full extent of their dealings or the paperwork they had signed. He said that "partnership" was the most common word used in the early stages of the parties coming together, especially by Mr Lane.

36. It seems from his witness statement that Mr Murphy learned of the 49%/51% split at a later date than the initial meeting, although he did not specify precisely when. He accepted in

[16] Witness statement of Brendan Murphy para 17
[17] Day 4 page 29 line 21
[18] Day 4 page 30 lines 15-16
[19] Witness statement of Brendan Murphy para 18
[20] Witness statement of Brendan Murphy para 19

his oral evidence that this part of the agreement was likely reached after the chance meeting sometime in May 2013. Mr Murphy did not see any documentation the parties entered into at the time.[21]

37. In his oral testimony Mr Murphy confirmed that he had travelled to Tinakilly earlier that day with Mr Connolly. He confirmed that Mr Connolly had driven him back to Donnybrook later that day. When it was put to him by counsel that it was Mr Murphy himself who had first suggested on the journey back to Donnybrook that Mr and Mrs Lane might be interested in investing with Mr Connolly given their love of Tinakilly, Mr Murphy rejected that suggestion saying: "*I didn't have that conversation. The only conversation would have been, 'This could be a great partnership.' So that's what the conversation was about*".[22]

38. Mr Murphy did not agree with Mr Lane's evidence that the partnership was formed at the meeting in the hotel bar. He said this was not accurate and that "[*i]t took some time and days before they agreed anything… But they were excited about the idea*".[23] Mr Murphy's evidence was that he did not see any documents signed by the parties at that time but that it was possible that there were a few phone calls between the three men in the days following the chance meeting. He accepted that Mr Connolly discussed matters with his own family.

39. Mr Connolly's evidence was that by the time of the chance meeting he had paid his deposit because his bid of €1,050,000 had been accepted. He claims that he was in a position to fully fund the purchase of Tinakilly and had no need to bring anyone else on board. On the evidence I do not accept this to be the case. He said in evidence that: "*I certainly was in a position where I could have completed on the purchase of the property and subsequently I had probably a smaller fund, if you like, to support the operating of the business, yeah*".[24] It was his evidence that the money would have come from Hollowstone and that he could have

[21] Day 4 page 38 line 28
[22] Day 4 page 7 lines 10-12
[23] Day 4 page 29/30
[24] Day 7 page 79 lines 22-25

disposed of assets and that he was well supported by colleagues so that he "*wouldn't have had a difficulty*".[25] When pressed on this on cross examination and having been provided with evidence of eight sets of proceedings against him around 2013 Mr Connolly agreed that he was involved in a lot of litigation at the time of the purchase of Tinakilly and that those proceedings resulted in judgments against him running into millions of euro.[26] He also confirmed that he did not disclose anything in those proceedings to the effect that there were retained profits in Hollowstone that were to his order. In the circumstances, I do not accept Mr Connolly's evidence that he had no need of further financial contribution to purchase and develop Tinakilly. It is clear that he was heavily indebted personally and this likely influenced his requirement that he not be listed as a shareholder in Pointsetter. I reject Mr Connolly's evidence on day 7 of the hearing to the contrary. The court is not aware of the level of funds held by Hollowstone at the relevant time, but it is likely on the facts that the involvement of Mr Lane and his resources would have been an attractive prospect for Mr Connolly.

40. Mr Connolly's evidence was that that there was absolutely no discussion at the chance meeting about the possibility of himself and Mr Lane buying and operating the hotel together.[27] Mr Connolly says that the first suggestion of Mr Lane coming on board was made by Mr Murphy in the car on the way back to Donnybrook. He said he discussed the possibility with his wife that evening of "*potentially bringing someone in as an investor*".[28] It was only after that time, and using Mr Murphy as an intermediary of sorts, that he and Mr Lane began to discuss getting into a business relationship. He says that happened over the next few days, was focussed on establishing corporate entities to own and run Tinakilly and

[25] Day 7 page 80 line 3
[26] Day 7 page 85 line 23. In fact the evidence on Day 8 was that judgment of €7,116,318.45 was awarded against Mr Conolly on 23 April 2012. That figure was later reduced reflecting property sales by the creditors.
[27] Day 7 page 68 line 18
[28] Day 6 page 113 lines 3-6

that there was no mention of a partnership and no partnership agreement was ever entered into. He says that Mr Lane was very enthusiastic about getting involved (which fact is accepted by Mr Lane) and that Mr Lane's commitment was to provide "soft loans" to the corporate entities (a fact disputed by Mr Lane[29]). Mr Connolly explained in his evidence that he understood soft loans to mean "*a shareholder or an investor would make funds available to a company that are not on demand loans and that they don't necessarily carry an interest or penalty*".[30] When it was suggested that such an offer would make no commercial sense for Mr Lane, Mr Connolly's response was that "*… the reality is that Mr Lane isn't looking at this from a commercial point of view, it's his hobby, it's a passion, it's an interest*".[31]

41. I believe Mr Murphy's evidence of the chance meeting is the most accurate. I do not accept there was a deal concluded that day, as Mr Lane suggests, nor that there was no discussion between the two men on a joint approach, as Mr Connolly suggests.

42. I find, as a matter of probability, that there was some discussion at the chance meeting of the possibility of Mr Lane and Mr Connolly forming a business relationship to purchase Tinakilly. Mrs Lane may have left the table early as Mr Connolly suggests. I find as a matter of probability that the lunchtime meeting did not continue late into the evening. It is likely that Mr Connolly drove Mr Murphy back to Donnybrook later that afternoon. In the time available however I accept that some discussions took place at the lunch – enough to secure an understanding that Mr Lane and Mr Connolly would explore buying and operating Tinakilly together, with Mr Connolly running the business on a day to day basis and Mr Lane being willing to provide funding towards the purchase price and towards the immediate investment both men understood was going to be needed to turn Tinakilly into a high class

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[29] Day 2 page 20 lines 16-23 – "I have never heard of that term being used in business. And so, no, I most definitely did not understand anything about soft loans. This only came up quite recently. It's only in the past few months that he introduced this term *"soft loans"*, but it really does not apply to our understanding, either the MOU or later the Shareholder Agreement".

[30] Day 6 page 118 lines 1-3

[31] Day 7 page 96 lines 25-27

and profitable venue. I accept that Mr Lane, at least, understood this arrangement would be a partnership and that both men drew considerable comfort from the fact that the other was a close friend of Mr Murphy who had a strong friendship and history with each of them. I accept as a matter of probability that the word partnership or partner was used at least in loose terms and that the parties shook hands at the end of the meeting as a gesture of trust and an agreement to explore matters further. I do not believe however that a partnership was formed that day. Rather the parties had something to consider with their respective families and, with the assistance of Mr Murphy, they remained in contact and commenced discussions on the specifics of how they might buy Tinakilly and how their relationship would be structured. The terms agreed between them as at 21/22 May 2013 are reflected in the MOU both men signed around that date. The question for the court is whether the MOU and/or the subsequent Shareholder Agreement and its implementation comprised or evidenced a legal partnership (as alleged by Mr Lane) or a purely corporate shareholder arrangement (as alleged by Mr Connolly).

43. I turn now to consider the MOU that was signed by Mr Lane and Mr Connolly. While there was some attempt by Mr Connolly to cast the MOU as a non-binding document, the parties are otherwise agreed that the MOU reflected the terms agreed between them as at that point in time.

A (2) The MOU and progressing the purchase of Tinakilly

44. The MOU is undated but was likely signed on 21/22 May 2013. It is common case that no legal advice was obtained by either Mr Lane or Mr Connolly before signing the MOU. It is a short document which provides in material part as follows:

"*It is agreed between [Mr Lane and Mr Connolly] to enter into a partnership for the purpose of acquiring and operating [Tinakilly].*

The structure shall be a single purpose vehicle (SPV) holding [Tinakilly].

Shares in the "SPV" shall be held 49% [Mr Lane] and 51% [Mr Connolly].

Under circumstances whereby all shares are held by [Mr Lane] it is agreed that 51% of such shares shall be held on trust to the benefit and/or direction of [Mr Connolly] and at all material times [Mr Lane] shall accept such directions.

It is agreed that both parties shall provide funding to the "SPV" pro rata to their shareholding.

Both parties agree that no charge debenture shall be put against the "SPV" unless by written mutual consent…

… The purchase price agreed with the vendors is 1,005,000 (sic) euros [amended by hand]…

… It is also agreed that a cash flow fund of 50,000 euros be provided and a refurbishment fund of 100,000 euros be provided at the time of closing.

A deferred payment of 40,000 euro per annum be allowable to [Mr Connolly] for an initial 3 years.

That a floating loan fund of 200,000 be provided for trading and refurbishment purposes and this will carry an interest rate of 6% and can be called upon in lots of 50,000 as and when required and this shall be provided by [Mr Lane] <u>and/or [Mr Connolly]</u> [underlined wording added by hand].

No outlay in excess of 5,000 on capital expenditure shall be undertaken without both parties consent.

A roadmap of operations and development shall be agreed between the parties and the management company.

The management company shall hold all licences and certificates for trading purposes and the shareholding shall be 49% [Mr Lane] and 51% [Mr Connolly] unless otherwise agreed between the parties.

[Mr Connolly] agrees

-to operate the property and work towards a breakeven in trade for year ending 2014,

-to promote best practice and maintain all licences and certificates up to date and in order,

-to provide the "SPV" monthly management reports,

-to ensure all revenue documents are returned on time,

-to act with the best interest of the business at all times.

Both parties agree that any gain made or purchase of adjoining lands made by either party shall be subject to and governed by this agreement unless otherwise agreed in writing.

Should funds not be to hand to complete by [Mr Lane] at time of completion, [Mr Connolly] is entitled to complete on the contract and shall assume 100% of the "SPV" by so doing and this agreement shall be void".

45. It is clear from the MOU that the basic Prop Co/Op Co structure was agreed at the outset with the Prop Co owning the property of Tinakilly itself and the Op Co being the entity to run or operate the business of Tinakilly. The need for both further capital and operating expenditure is noted. There is no reference to "soft" or interest free loans. On the contrary, a commercial interest rate of 6% is specified. The MOU also envisages a form of joint decision-making on matters such as the incurring of capital expenditure over a certain limit.

46. Pointsetter became the "SPV" envisaged by the MOU to hold the title to Tinakilly. Mr Lane confirmed in his evidence that the requirement for him to hold all the shares in his name with 51% held on trust for Mr Connolly was "*at Denis's request. He didn't want his name to appear in a property company and so he asked me if I would hold 51%, his 51% in trust for him, which I did*".[32]

47. While the contract for the sale of Tinakilly was signed by Mr Colin Hatt on behalf of Hollowstone as purchaser, clause 17.5 of the contract provided for the assignment of the property to Pointsetter and this is what occurred on closing. The "management company"

[32] Day 2 page 13 lines 15-18

envisaged by the MOU became Mezen. On 14 June 2013 Mezen executed the transfer of trade agreement with the vendors of Tinakilly and Mr Connolly signed this agreement on behalf of Mezen.

48. Mr Connolly argues that, at its height, the MOU amounts to an intention to form a partnership at some point in the future but that no partnership was actually formed at that stage.

49. The evidence establishes that following the execution of the MOU, Mr Connolly and Mr Lane were both involved in steps relating to the purchase of Tinakilly. For example, both men met on 27 May 2013 with the solicitors instructed in the purchase and Mr Lane continued to engage with those solicitors through to mid July 2013 when the purchase transaction closed (the contract for sale having been signed on 14 June 2013). Both men met with a surveyor at Tinakilly on 28 May 2013. The two men discussed their plans and Mr Lane produced a business plan for Tinakilly which he shared with Mr Connolly on 31 May 2013. Mr Connolly provided comments that same day, noting that the document "*sums up the vision very well*".

50. The evidence also establishes that the purchase price paid for Tinakilly of €1,050,000[33] was contributed to personally by Mr Lane in the sum of €543,212 with the balance of the acquisition costs paid not by Mr Connolly personally but rather on his behalf by Hollowstone. In fact 49% of the purchase price was €514,500 and 51% is €535,500. I am satisfied on the evidence that Mr Lane and Mr Connolly each contributed their pro-rata share to the purchase of Tinakilly. I do not accept the suggestion advanced in evidence by Mr Connolly that Mr Lane agreed to contribute €580,000 in return for a 49% share. Subsequently, Mezen entered into a lease with Pointsetter in respect of the Tinakilly premises

[33] The recorded acquisition cost is in fact €1,097,000

(excluding Cul an Ti) although that lease was never implemented and no payments were made on foot of the lease.[34]

51. While it accepted that the MOU was overtaken by the later execution of the Shareholder Agreement by Mr Lane and Mr Connolly (likely in or around the 15 July 2013), the plaintiffs have placed some emphasis on the terms of the MOU to support their argument that the parties had from the very outset agreed a partnership arrangement for the purchase and operation of Tinakilly. First they refer to the fact that the MOU on its face expressly states that Mr Lane and Mr Connolly have agreed "*to enter into a partnership*" to acquire and operate Tinakilly. They also say that consistent with a partnership arrangement, the MOU provided that the parties' funding obligations would be proportionate to their shareholdings. The MOU contains provisions to protect the interests of both parties such as, for example, limiting the amount that could be spent by one party without the agreement of the other. Mr. Connolly explained in his evidence that the use of the word "partnership" in the MOU was "*in respect of co-shareholding*".[35] He said "*it was not the intention of the parties to operate the relationship through an actual partnership…*".[36]

A (3) The Shareholder Agreement

52. The Shareholder Agreement is the only subsisting agreement signed by the parties (it having expressly superseded and replaced the MOU) and it is therefore a document of some importance to the issues before the court. For that reason I set it out below in full:

"*The following is to outline the basic agreement reached between Denis Connolly(DC) and Gerry Lane(GL) for the purpose of a partnership to acquire and operate Tinakllly House and Hotel, Rathnew, Co Wicklow.*

[34] Day 3 page 17 line 14
[35] Day 6 page 119 line 23
[36] Day 6 page 119 lines 25-27

1). Acquisition: the agreed purchase price of the property is Euros 1,050,000. In addition, there will be other costs incurred to cover 2% stamp duty, legal and accounting expenses, operating funds, stock, redundancles, ongoing losses, refurbishment, landscaping etc, which are estimated to amount to approximately Euros 250,000.

2) Ownership: the acquisition will be made by 2 companies. Pointsetter Ltd, a special purpose vehicle(SPV) registered in the British Virgin Islands and owned 100% by GL, will own the 2 shares in Hollowstone Ltd, which wlll own the property. Mezen Ltd, which ls owned 99% by GL and 1% by DC, will be the operating company to run the business of the hotel.

3). Shareholding: It is understood that the beneficial ownership of the shares of all of the above 3 companies is 51% DC and 49% GL. Trust agreements will be executed to cover the shares held in trust by GL on behalf of DC.

4). Voting rights: It is hoped that with proper communication and consultation, decisions on all important issues will be unanimous. However, should there remain a difference of opinion, that of DC will prevail.

5). Capital Contributions: DC and GL will provide 51% and GL 49%, respectively. Further contributions for renovation, operating funds, expansion etc will be funded in like manner. Should further funding become necessary in the future, each party has the right to participate or allow the other to increase his equity percentage.

6). Sale of shares: should either party wish to sell or transfer part or all of their shares, It is agreed that the other party will have the right of first refusal. The party purchasing will have a period of 90 days to complete the purchase. Thereafter, either party is free to sell shares to third parties. Any issuance of new shares to third parties must be agreed in writing by both DC and GL.

7). Directors: both DC and GL act as directors of all 3 companies above. Any change and/or addition must be approved in writing by both parties. Board meetings will be held 3 times per year, time and place to be mutually agreed.

8). Dividends: dividends/profit distributions will be mutually agreed and determined by the cash flow needs of the business and available funds. Distribution shall be in accordance with equity percentages.

9). Information: both parties will have complete access to all financial, commercial and other material information generated by and/or affecting the business. Each will respect the confidentiality needs of the business with respect to disclosures to third parties. Any such disclosures must be agreed in writing.

10). Compliance: Mezen Ltd will hold all licenses and certificates required for trading purposes, making sure that they are up to date and in order at all times. DC will ensure that the company complies with all existing Government regulations, including the Labour Code.

11) Conflict of Interest: any action by one party which may affect the interests of the other party must have prior agreement in writing. In particular, any purchase of the adjoining lands would be subject to this provision. Both parties agree that no charge/ debenture shall be put against the business unless by mutual consent.

12) Management: DC wlll mange the company on a day-to-day basis and will work towards break even in trade for the year ending 2014. He will ensure that the business adheres to the highest professional standards, places a strong emphasis on quality and strives for exceptional customer satisfaction at all times.

13) Financial: a Business Plan will be prepared and calenderised in advance for each 12 month period. Timely and accurate financial reports will be prepared each month to include a Balance Sheet, Income Statement, Accounts Receivable and Payable schedules and such other reports as required to illustrate the financial condition of the business. All Capex items *over Euros 5,000 require mutual agreement and DC will provide monthly management reports.*

14) Remuneration: In consideration for managing the business, DC will receive a deferred payment of Euros 40,000 per annum for the first 3 years. Thereafter, an agreement will be reached on how the company should be managed going forward. DC will have the use of the 4-bedroom house behind the hotel.

15) Death or disability;

16) Freebies: a special room rate of 50% off the published rate for the day will be extended to family and friends of DC and GL, subject to availability, F&B will be charged at the full rate by either the guest or their host. At their discretion, DC & GL may entertain guests who are potentially beneficial to the hotel at the hotel's expense. Reconciliation and settlement of accounts shall be completed monthly.

16) Validity: this agreement supersedes and replaces the agreement signed by DC and GL in June 2013, which is no longer valid

Agreed this _____ Day of July 2013

[signed by Denis Connolly and Gerard Lane]"

53. Mr Lane stresses that the Shareholder Agreement, executed some two months following the MOU, continues to expressly refer in the opening recital to the agreement being "*for the purpose of a partnership to acquire and operate Tinaklly".* Mr Lane's evidence was that: "*We never discussed anything other than a partnership".*[37]

54. Mr Connolly's evidence was that the Shareholder Agreement was a jointly prepared document and was prepared without any legal advice. He described the Shareholder Agreement as a document "*obviously setting out the intentions of the parties and it was also, if you like, as an outline, basic agreement so suggesting a further and more substantive*

[37] Day 2 page 22 lines 24-25

agreement was to come".[38] Mr Connolly suggested in evidence that the Shareholder Agreement was a "holding document" or "*an agreement to agree*".[39] However he did accept on cross-examination that it was binding until such time as a new agreement was drafted and that no such new agreement ever materialised. He could not recall the date on which the Shareholder Agreement was signed, but said he was aware that Mr Lane was speaking to a friend of his, Mr Churchill, about it. His evidence was that the use of the word "partnership" in the shareholder agreement related to "*partners as the general word used in respect of co-shareholders*".[40]

55. Mr Connolly said this reference to partnership was in colloquial terms rather than in a legal sense.

56. As the Shareholder Agreement envisaged, there was an immediate need post the closing of the sale of Tinakilly for the injection of capital both as working capital and for capital expenditure.

57. As matters ultimately transpired the corporate arrangements envisaged by the Shareholder Agreement did not come to pass in identical terms to what was expressed. While Pointsetter and Mezen became the Prop Co and the Op Co respectively, Pointsetter took the full title to the property rather than becoming the shareholder in Hollowstone as purchaser. Furthermore, while Mezen was envisaged in the Shareholder Agreement as being 99% owned by Mr Lane, in fact Mr Connolly set up Mezen and none of the shares were ever transferred by him to Mr Lane.

58. Mr Lane confirmed in oral evidence that "*all of the outlays in excess of €5000 we agreed between the two of us, in the early stages*".[41]

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[38] Day 6 page 126 lines 23-26
[39] Day 7 page 147 line 20
[40] Day 6 page 128 lines 4-5
[41] Day 2 page 17 lines 4-6

59. In relation to clause 10 dealing with compliance Mr Lane said: "*I had no experience in business here and I didn't know what is required by the Irish authorities in terms of licences, tax filing and all of the various things that the company has to comply with here. So I was quite happy to let Denis handle all of those items*".[42]

60. Similar to the MOU, it became clear from the evidence tendered that neither Mr Lane nor Mr Connolly had the benefit of legal advice before they executed the Shareholder Agreement. Mr Lane did however send an unsigned copy of the Shareholder Agreement to a Mr John Churchill, an Australian lawyer friend of his, on 10 July 2013 saying:

"I would appreciate if you could have a look at this draft Agreement, which is intended to be an informal, plain English understanding between my partner and I, hopefully to be shoved in a drawer and forgotten about.
Please let me know if you see any major pitfalls, omissions, mistakes, foolishness etc."

61. Mr Churchill did not substantively comment on the Shareholder Agreement before it was signed as he was on holiday, although he cautioned Mr Lane in general terms that the document was "*not clear/enforceable in a number of areas and not a great basis to invest 1 million*" and that "*[t]here is little basis to give away control*". He enquired whether Mr Lane had "*done your homework on your new partner*?" and Mr Lane responded that "*[m]y new partner, Denis Connolly, is a close friend of Brendan's*". While Mr Churchill did ultimately send Mr Lane a far more detailed shareholder agreement template, this arrived after the Shareholder Agreement had been signed by the parties. Mr Churchill was not called to give evidence as to his understanding of matters at that point one way or the other and the draft documentation he produced, which was subject to the law and jurisdiction of New South Wales and never provided to Mr Connolly, is not in my view relevant to any issue this court has to decide in this case.

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[42] Day 2 page 18/19

A (4) Refurbishment of Tinakilly and Room 66

62. In the early years Mr Lane confirmed that he had a very cordial and cooperative relationship with Mr Connolly. He said: "*I gave [Mr Connolly] absolutely total support in everything we were trying to do, and the result is that the hotel itself benefitted enormously*".[43]

63. A lot of refurbishment was carried out at Tinakilly in these early years. The gardens were also extensively developed and Roisin Lane Walker (Mr Lane's sister) gave evidence of the works which had been carried out by her and under her direction and for which Mr Lane paid (approximately €600,000). There is no dispute that the gardens were extensively upgraded for the benefit of Tinakilly. A marquee was added with adjoining kitchens and this became the hub of the wedding business for Tinakilly, greatly increasing the size of the weddings it could host.

64. Mr Lane decided to refurbish room 66 in Tinakilly to use as his "*home in Ireland*" and as "*something permanent where I could stay whenever I come to Ireland*".[44]

65. There is no claim made by Mr Lane for this refurbishment or for the upgrading of the gardens. There is no dispute that room 66 was substantially refurbished and furnished by Mr and Mrs Lane. However a lot of evidence was given about the entitlement of Mr and Mrs Lane to use this room exclusively. It was a row in relation to the use of this room in 2022 which proved to be the trigger for the substantial deterioration in relations between Mr Lane and Mr Connolly.

66. The evidence on the agreement reached in relation to room 66 was varied. Ms Roisin Cassidy said in her witness statement that the room would be carefully staged with the personal belongings of Mr and Mrs Lane before they arrived to Tinakilly. Mrs Lane gave evidence that

[43] Day 2 page 29 lines 6-9
[44] Day 2 page 30 lines 18-19

room 66 was referred to by the staff in Tinakilly as the “Lane Suite”.[45] She referred in evidence to an email she sent to Anna Windsor on 24 May 2018 following an incident when the room was unavailable for the Lanes in which Mrs Lane advised that room 66 was “*our home in Ireland. Our only home in Ireland! It can be used as a last minute bonus to a wedding party, but only when it is clear that we don't need it ourselves.*" That email was followed by another on 26 May 2018 when Mrs Lane wrote*:* “*I'm utterly appalled with this latest excuse. This is just a clear message that there's no respect for the owners of this hotel. How would you feel when you come home one night and you're locked out by strangers. Gerry will now ensure that this will never happen again and this room must only be used by ourselves, our family and friends.*" Ms Windsor replied to that email saying “*I can promise you that this will not happen again*”. Mr Connolly’s evidence was that he did not believe Ms Windsor had checked with him before sending that response.[46] Ms Windsor confirmed in her evidence that she had not discussed matters with Mr Connolly and that in sending the email she was “*trying to deescalate the situation and try and smooth things over*”.[47]

A (5) Engagement on financial information

67. Evidence was given to the court remotely by Mr Alfred Grainger, a friend of Mr Lane, who confirmed that in late 2013 or thereabouts he was asked by Mr Lane to review the Mezen monthly management accounts for him. He said that his role was as an accountant, looking at those management accounts and interpreting them in such a way as he could ask what he thought were appropriate questions that they presented.[48] He said these accounts were generally sent to him by Noone Casey, who were accountants and also auditors to

[45] Day 4 page 57 lines 6-8
[46] Day 9 page 16 line 2
[47] Day 10 page 133 lines 9-10
[48] Day 5 page 7 lines 11-14

Mezen. He described these accounts as arriving on an ad hoc rather than a strict monthly basis.

68. Mr Grainger's evidence was that his understanding was that Mr Connolly and Mr Lane's arrangement was essentially a 50/50 relationship and partnership regarding any financial benefits that might arise from the businesses. He said that "*[t]his understanding underpinned my entire involvement with Tinakilly's financial affairs, whether in face-to-face conversations or email communications. It was also how Noone Casey and others in the business interacted with me as Gerry's representative*".[49] However Mr Grainger also confirmed that he had never seen the MOU or the Shareholder Agreement and was not involved in advising Mr Lane in relation to the acquisition of Tinakilly. He confirmed that it was "*correct*" to say that he did not know the legal basis upon which Mr Lane and Mr Connolly went into business together.[50]

69. Mr Grainger said that he had raised concerns "*from the get-go*" in relation to the accounts. He queried why monies that Mr Lane put into Mezen were described as a director's loan account when Mr Lane was not a director but a shareholder (albeit unregistered). Mr Grainger said he believed that the balance sheet should have shown Mr Lane's capital investments recorded in a shareholder's loan account. He accepted on cross-examination that all of the monies that were put into Mezen by Mr Lane were recorded in a loan account.[51] Mr Grainger said that certain schedules showing Mr Connolly's payments did not tally with the Mezen balance sheet. In his view "*[t]hey were being kept off the balance sheet for Denis's personal reasons and that's very unbusinesslike and very worrying, yes*".[52]

70. He also confirmed that throughout the two years he was involved (2014 to September 2015), the contributions made by Mr Lane and Mr Connolly were "*mismatched*".[53] This issue

[49] Para 13 witness statement of Alfred Grainger
[50] Day 5 page 16 line 29
[51] Day 5 page 55 line 14
[52] Day 5 page 70 lines 12-14
[53] Day 5 page 9 line 10

was raised by him with Mr Connolly. Mr Grainger said Mr Connolly's reaction was that he tended to make excuses indicating that he would make amends and introduce monies to match Mr Lane's at a subsequent date. He said that "*Denis' failure to match Gerry's contributions to Mezen gave rise to a fundamental concern for me*".[54]

71. Mr Grainger travelled to Tinakilly in May/June 2014 and again in August/September 2015. He gave evidence that on the occasion of his visits he "*took over a role as being partially an auditor*".[55] When asked what authority he had to adopt this role Mr Grainger replied that "*indirectly I had the permission of Gerry to take on the role of an auditor*".[56] He accepted he had no permission from Mr Connolly or Mezen to take on this role or to directly engage with the staff in Tinakilly about financial matters. It was in this role of quasi auditor that additional concerns were noted by Mr Grainger. One of these was the concerns he had in relation to payroll. He said that the highest paid person on the Mezen payroll was not in fact an employee of Mezen but was an employee of another company owned by Mr Connolly. He said that on the other hand neither the general manager, Colin Hatt, nor Mr Connolly were on the Mezen payroll. Mr Grainger was informed that Mr Hatt was paid in cash, which Mr Grainger viewed as being an irregularity. He did not know however how long these matters persisted or whether or how they were ultimately resolved.

72. It was clear to the court that Mr Grainger and Mr Connolly did not see eye to eye on many issues. Mr Grainger's evidence was that "*[m]y legitimate professional inquiries into these financial matters were met with hostility and aggression from Denis. As I was departing my first face-to-face meeting with Denis, in or around May 2014, he said words to the effect that he did not ever want to see me again*".[57] Things appear to have become more hostile between the two men following Mr Grainger's visit to Tinakilly in 2015 following which Mr

[54] Para 18 witness statement of Alfred Grainger
[55] Day 5 page 9/10
[56] Day 5 page 40 lines 20-21
[57] Paras 25 and 26 Witness statement of Alfred Grainger

Connolly sent what Mr Grainger described at para 28 of his witness statement as a "*long and aggressive email which had the effect of questioning my authority to pry, as he seemed to regard it, into his relationship with Mezen*." This he said was followed by an email on 6 September 2015 from Mr Connolly stating that he "*did not want to see me ever again-in any shape or form*!". In fact the email stated: "*I do not want you to correspond with the company accountants in any shape or form.*"

73. It was clear from Mr Connolly's evidence that Mr Grainger's visits to Tinakilly caused some issue for him and the team. He stated in evidence that when Mr Grainger came to Tinakilly in his quasi auditor role "*the mood wasn't very good*".[58] He later referred to Mr Grainger as Mr Lane's "*Rottweiler*" and to him " *snooping around*". He denied however, that he had made the statements attributed to him by Mr Grainger in his evidence.

74. My assessment of Mr Grainger's evidence is that his involvement was for a limited period on a limited basis at a relatively early stage of the relationship. I am guided far more strongly by the expert witnesses on the financial aspects given the extent of the exercise they have carried out. Mr Grainger's witness statement was more definite on issues than the supporting materials tended to illustrate. I accept that the management accounts in 2014/2015 were not prepared with the level of detail and explanation that Mr Grainger would have liked to see and that he was often dissatisfied with the level of follow up explanation he received to the queries he raised. I am satisfied that there were some difficult engagements between Mr Connolly and Mr Grainger, but I do not believe that they impact on any of the matters this court is required to determine in these proceedings.

75. What can be said however is that there was a level of financial scrutiny engaged in during this 2014/2015 period and tensions arose. Mr Grainger advised Mr Lane in an email dated 9

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[58] Day 6 page 141 line 14

May 2015 that he (Mr Grainger) had checked again and could "*confirm that there is no indication in the Tinakilly House balance sheet – of Denis's matching (your) investment*".

76. The evidence shows that Mr Lane and Mr Connolly engaged directly with each other during this period regarding the finances of Tinakilly. In an email from Mr Connolly to Mr Lane dated 28 July 2015 Mr Connolly identified the desirability of agreeing the allocation of (1) shareholder funds, (2) gifted funds/items and (3) loans made to the company.

<u>Time Period (B): March 2017 - July 2022</u>

B (1) Monasterio – its acquisition and subsequent refurbishment

77. The evidence confirms that in the years following the purchase of Tinakilly, Mr Connolly brought multiple various investment opportunities to Mr Lane to ascertain his level of interest in expanding their business together. One such opportunity was Monasterio. Monasterio was a relatively newly built 21 bedroomed hotel, but was fashioned in a traditional Spanish style with a pool and extensive gardens. The original developer of Monasterio had gotten into financial difficulty and it was being sold for €2.5m – substantially less than its estimated €8m build cost. Mr Connolly was convinced of its potential as a wedding venue and described it to Mr Lane as "*Tinakilly in the sun*".

78. In March 2017 Mr Lane visited Monasterio with Mr Connolly and Mr Lane was impressed with the property. His evidence was that he and Mr Connolly agreed they would purchase, develop and run Monasterio under a similar arrangement to Tinakilly. Mr Lane's evidence was that "*essentially it was a continuation of the partnership that we already had*".[59]

79. The evidence confirms that no new written agreement was put in place so there is no equivalent documentation to the MOU or the Shareholder Agreement specifically referencing

[59] Day 2 page 147 lines 14-15

Monasterio. Mr Lane says Monasterio was viewed as an extension of the Tinakilly business[60] and was to be governed by similar terms save that the respective percentage split was reversed for Monasterio meaning that Mr Lane was to get 51% and Mr Connolly 49%. Mr Lane said in evidence that the percentages were reversed in Monasterio as "*[t]he principle is the same, that one party needs to be able to break a deadlock in the case of a dispute. So, in this case it was only fair, and Denis agreed, that we reverse the equity which in effect left us, again, with a 50/50 shareholding, which we both thought was very fair*".[61] Mr Connolly denies there was a partnership but agrees that the shareholding for Monasterio was a 51:49 split in favour of Mr Lane. It was unclear from either the pleadings or the evidence whether Mr Connolly accepted that the terms of the Shareholder Agreement also extended to the purchase and operation of Monasterio. Mr Connolly did not however identify any other agreement that he said applied to Monasterio.

80. The same type of Prop Co/Op Co structure was employed for Monasterio using Spanish registered companies, NOL and MESL respectively, both 100% owned by Mr Connolly. There had been some initial consideration as to whether Monasterio should be a wholly owned subsidiary of Mezen, but Mr Lane did not favour that approach. Mr Connolly explained in an email to Mr Lane's son Dwad on 29 June 2018 that Noone Casey had advised that Monasterio should be a wholly owned subsidiary of Mezen, with Mezen holding 98% and Mr Lane holding 2% – thus, he explained, giving Mr Lane the majority share as agreed but still allowing the benefits of tax and non-taxable transfers between the two companies. This was not the structure agreed ultimately. It illustrates however the close interconnection

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[60] Day 2 page 31 lines 17-22 – when asked of the basis upon which he would purchase Monasterio he replied "*It was on the basis, the same basis that we agreed in Tinakilly. We didn't draw up any new MOU or Shareholders' Agreement, we just carried forward everything that we understood, we were in partnership here and we were applying all of the same principles to the new acquisition in Monasterio*."
[61] Day 2 page 31/32

from the outset between Mezen and Monasterio and the deliberate structuring of the transaction to avail of the benefits of corporate entities.

81. Mr Connolly says the agreement reached was nothing more than that he and Mr Lane would participate in and fund Monasterio as shareholders of NOL and MESL. The evidence shows that Mr Lane never became either a director or shareholder of either NOL or MESL. Mr Connolly says that at all times he held 51% of the shares in both companies in trust for Mr Lane.

82. Evidence was given that Mr Lane had the contemporaneous understanding that he and Mr Connolly were purchasing Monasterio as partners. For example in an email to third parties in March 2017 Mr Lane wrote that *"we have just negotiated the purchase of a beautiful four star boutique hotel near Sotogrande in the south of Spain. Denis (my partner in Tinakilly) and I will take possession in October but we're already starting to upgrade.*"

83. Furthermore, there was evidence of an email sent by Mr Connolly on 16 October 2017 to the Spanish lawyers instructed in the purchase of Monasterio, Mr Connolly stated that he wished to "*introduce you to my business partner. We intend to conclude the purchase this month*". Both Mr Lane and Mr Connolly attended the lawyers' offices the following day.

84. Mr Connolly's evidence was that he had negotiated the purchase price of €2.5 million. At the time there was a tenant in place with 18 months left on his lease. Mr Connolly agreed to contract on the basis that the sale of Monasterio would complete at the end of that lease. He explained that he did not wish to buy a property with a tenant in place. Mr Connolly said that he procured that Mezen would pay the deposit of €100,000 and that he informed Mr Lane he was using this as a booking deposit on Monasterio. He said that he told Mr Lane that if he (Mr Lane) was not interested in Monasterio then Mr. Connolly "*will sort out the Mezen transaction*". He said Mr Lane confirmed he was fine with that.[62]

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[62] Day 6 page 152 lines 18-23

85. The evidence confirmed that in 2017 Mr Connolly concluded an option agreement in respect of Monasterio on behalf of himself and Mr Lane. The €100,000 payment came from Mezen with Mr Connolly advising Mr Lane by email dated 8 February 2017 that:

"*Just to update you on progress with Monasterio. We/I have entered into an agreement with the owner as an option agreement to purchase the property for 2.5 million. Completion 15th January 2018. I shall require to draw down 100,000 from Mezen to complete the optio*n.
If you do not proceed with the investment I shall reimburse you the 50% of the outlay? Is that okay with you? Otherwise we shall lose the opportunity which I would not want to do."

86. Mr Connolly says he was proceeding on his own account at that time but that Mr Lane had the option to become involved as an investor if he wished to later. Mr Lane says that Mr Connolly considered that he was entitled and empowered to bind Mr Lane in matters related to their partnership relationship. Mr Connolly's evidence was that Monasterio was "*sitting in isolation from what's happening in Ireland…. there's no indication that this is any connections (sic) with Tinakilly whatsoever"*.[63] At a minimum however Mr Connolly's actions in relation to this option agreement demonstrates that the finances of Mezen and Monasterio became intertwined even before Monasterio was purchased.

87. On 17 November 2017 a deed of sale of Monasterio for a total purchase price of €2.5 million was entered into by Mr Manuel Gonzalez (in his capacity as sole administrator of the vendor, Hotel Camino Real de Montenegral Alto SL) and Mr Rincón (on behalf of NOL) pursuant to the power of attorney granted by Mr Connolly in his capacity as sole administrator of NOL.

88. The purchase price of €2.5 million (plus tax and costs) included the taking over of 2 loans on Monasterio totalling of €730,000. The cash balance to be paid amounted to €1.7 million. In addition, Spanish tax (IVA) of €58,000 was also paid.

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[63] Day 8 pages 54 and 55

89. Mr Lane's 51% contribution to the balance of the purchase price of €1.7 million amounted to €867,000. Mr Connolly claimed that he procured a loan from one of his own businesses (Cassidys) to pay the €1.7 million cash balance due on the closing of Monasterio, of which €833,000 was his share.[64] He then requested Mr Lane to send his contribution of €867,000 directly to Mezen and this was done by Mr Lane on 8 December 2017.

90. The receipt of that money by Mezen and its subsequent use by Mr Connolly to reduce the balance on his own Mezen loan account was the subject of much fairly heated evidence at the trial. It is a matter I will deal with separately in this judgment when I address the expert evidence which was tendered.

91. On 21 November 2018 Mr Connolly emailed Mr Lane explaining that €680,000 (being part of the loan balance taken on as a term of the Monasterio purchase) was due to be repaid on 15 December 2018. He asked Mr Lane to fund Mr Connolly's 49% portion. Mr Lane agreed that he could cover the full €680,000 due. On 10 December 2018 Mr Lane sent €680,000 to Servicios Legales RRW SL to repay the loan as part of the Monasterio purchase. The apportionment of that loan repayment of €680,000 was €346,800 for Mr Lane and €333,200 for Mr Connolly in line with their agreed 51%/49% holdings. Repayment of that loan completed the financing of the purchase of Monasterio.

92. For reasons not explained, NOL received a refund of €516,000 from Servicios Legales on 8th May 2019. This money was not used to repay Mr Lane's loan which he had advanced to MESL to discharge the bank loan assumed as part of the Monasterio purchase. In the weeks following this transfer a number of payments were made from NOL by Mr Connolly for his own benefit including payment of personal debts and credit of part to his NOL shareholder account. So the €680,000 advanced by Mr Lane was not in fact used to complete the purchase

[64] In fact the accounts in Cassidys do not reflect this transaction as a loan to Mr Connolly but rather as a financial asset (Spanish investment by Cassidys).

of Monasterio although that was what Mr Connolly represented to him the funds were needed for. Mr Connolly accepted in evidence that he had misled Mr Lane on that point.[65]

93. Monasterio was refurbished to a considerable extent after it was acquired by Mr Connolly and Mr Lane. The former general manager of Monasterio, Mr Macias Ríos (speaking through a translator) confirmed there were "*many changes, especially the garden. The garden was done from scratch. It was all new and there were many, many refurbished rooms as well in these changes. It was like washing the face of the hotel*".[66] Mr Lane displayed a particular interest in the 5 acres of Monasterio gardens and they were substantially upgraded with funds he provided. Mr Lane also advanced loans in the amount of €760,000. Monasterio became a profitable and popular wedding venue. Mr Macias Ríos stated to the court that after the investments and improvements "*the business started booming*".[67] However Monasterio's business was severely impacted by the covid pandemic which devasted their wedding business for that period.

94. Mr Macias Ríos confirmed that the majority of guests holding their weddings in Monasterio were foreigners i.e. not Spanish. It was put to Mr Lane that the big selling feature of Monasterio was the fact that the guests had the exclusive use of Monasterio. Mr Lane's evidence was "*[t]hat was never agreed. I would never have agreed to that*" and "*I was not even consulted about that*".[68] Mr Macias Ríos however confirmed that Monasterio was always advertised as an exclusive resort for wedding parties and that guests paid an exclusivity fee to have the full use of the hotel.

95. Mr and Mrs Lane refurbished and expanded a suite (Room 17) in Monasterio for their own use and Mr Lane in evidence described the arrangement as "…*the same understanding that we had in Tinakilly where I would use this when I visit Monasterio, which would also be*

[65] Day 8 page 90 line 9
[66] Day 5 page 74 lines 4-7
[67] Day 5 page 75 line 15
[68] Day 3 page 96 lines 22-25

about two or three times a year".[69] Mrs Lane similarly gave evidence at the trial that Room 17 was "*an exclusive use for us*".[70] The fact of the refurbishment was not disputed and Mr Macias Ríos described the works carried out at Mr Lane's expense and the furniture pieces and decoration that Mr Lane procured from Seville for the room.

96. Similar to the position with room 66 in Tinakilly, there was a disagreement on the evidence as to the entitlement of Mr and Mrs Lane to any exclusive use of Room 17 in Monasterio. Mr Lane's evidence was that he and Mr Connolly agreed that on the opposite wing of Monasterio they would build a mirror image suite to Room 17 and that would be the bridal suite. But he said "*Mr. Connolly never built the suite on the other side. Instead he renamed my suite to the bridal suite and then declared exclusivity and the predictable outcome is that sooner or later there would be a clash which is what happened*".[71]

97. Mr Connolly disputed any such agreement. Mr Connolly's evidence was that Monasterio was generally booked exclusively for between 80 to 100 nights a year for the 80 or so weddings it hosted annually. He said Mr and Mrs Lane had been free to stay whenever they wanted outside of those nights. The non-exclusivity of Room 17 for the Lanes was even more strongly disputed by Mr Connolly for Monasterio than Room 66 for Tinakilly in light of his acceptance that Mr Lane viewed Tinakilly as his home from home and the fact that Tinakilly was, unlike Monasterio he says, not an exclusive wedding venue which couples would completely book out for their wedding. Mr Connolly confirmed that after an incident in 2017 when there was no availability for the Lanes in Tinakilly there was some discussion between him and Mr Lane about having the room exclusively for him. He said that what evolved from that was that Mr Lane would give reasonable notice of when he was coming to stay in Tinakilly and Mr Connolly said they accommodated those arrangements as best they could in

[69] Day 2 page 34 lines 2-5
[70] Day 4 page 64 line 15
[71] Day 3 page 102 lines 9-13

the context of a 54 bedroom hotel that was a commercial enterprise. He said however the arrangement in relation to Monasterio was different. While there was "*an understanding regarding room 66 to a loose exten*t",[72] he denied any such arrangement regarding room 17 in Monasterio. He said the basis of their investment in Spain was that the business was an exclusive hire venue.

98. I accept the evidence of Mr Macias Ríos that Room 17 was generally known by staff in Monasterio as Gerry's room and that the Lanes had decorated this room to their own taste and that it was intended to be available for them when they visited Monasterio. I also accept the evidence that there were instances of tension when the Lanes wished to stay in Room 17 when weddings were booked for the same time. These tensions were, it seems to me, inevitable as Room 17 was otherwise used as the bridal suite for Monasterio. Mr and Mrs Lane may not have known or agreed to this use of Room 17 but it was the arrangement in practice. I also accept that the exclusivity of Monasterio was an integral part of the hotel's offering for weddings.

99. I do not need to determine whether and if so what agreement was in fact reached between the parties on the use of the rooms refurbished by the Lanes for their own use. Nor would any such agreement depend on whether the parties were in partnership or otherwise. The evidence is mentioned here simply to reflect the areas of disagreement and how this particular issue was a sensitive one which ultimately became a trigger for the wider dispute – although not the actual or sole cause of it.

B (2) Discussions regarding the potential sale of Tinakilly

100. Evidence was given that in July 2019 Mr Lane and Mr Connolly agreed in principle that they would both like to sell their interests in Tinakilly. Some discussions were had by both

[72] Day 7 page 8/9

men with a third party, Mr Stanley Quek, who met Mr Lane in Sydney in October 2019. Mr Quek visited Tinakilly on 31 October 2019 and met with Mr Connolly. A draft email with headline terms for sale was circulated between Mr Lane and Mr Connolly and sent to Mr Quek on 6 November 2019 (this email from Mr Lane refers to "*my partner Denis*"). Earlier emails from Mr Lane to Mr Quek, copied to Mr Connolly, also refer to "*my partner, Denis Connolly*".[73] Indeed Mr Lane drafted an email to Mr Quek the text of which was sent to Mr Connolly for advance approval on 4 November 2019 which suggested a sale price for Tinakilly which Mr Lane proposed on behalf of both himself and Mr Connolly "*having discussed this with my partner Denis*". In the interests of balance I should also refer to an email from Mr Lane to Mr Connolly dated 19 December 2019 which referred to the need to straighten out Mezen's finances "*as you and I part company as shareholders in Tinakilly*". Discussions continued with Mr Quek up until the onset of the covid pandemic in March 2020. Ultimately however Mr Quek did not proceed with this transaction and Mr Lane and Mr Connolly's business relationship remained as it had been.

Time Period (C): August 2022 to date

C (1) The Room 66 incident

101. Mr and Mrs Lane's son held his wedding at Tinakilly in August 2022. Although the wedding celebrations were agreed by all to have been a great success, a major incident arose just after the wedding when Mr and Mrs Lane were told they could not remain in Room 66 as it had been booked by another wedding party. A heated exchange took place between Mr Lane and Mr Connolly. Mr Lane described it as a "*disastrous conversation*" in which he said he was treated with "*arrogance and contempt*". His evidence was that: "*It was a disastrous wake-up call for me to find out what Denis -- he had gradually grown more arrogant and felt*

[73] For example email dated 30 September 2019 and email dated 11 October 2019.

that he didn't need interference from me, that I just had become a nuisance for him, and I was extremely disappointed in all of this".[74]

102. Mr Hatt gave evidence that Mr Lane *"started in on me about that he's never been treated so badly and that he was going to apologise in advance that I was going to be collateral damage, that he was a partner from heaven for the last ten years, he's going to be the partner from hell for the next ten years. And he was getting more irate as he talked on about the situation*".[75] Mr Lane admitted that he was angry at that time and had said to Mr Hatt that because of how he (Mr Lane) had been treated there was going to be trouble going forward and that he would become the partner from hell, or words to that effect.[76]

103. Mrs Lane gave evidence about the incident involving Room 66. She said: "*We were told by the manager there that we have to move out of our room because it's exclusive for weddings. And I felt so insulted and so hurt about that because that's our room and how can they even offer and have the audacity to offer it to brides? So really I was very, very hurt. And I talked to my husband about it and he talked about it with Denis*".[77]

104. The meeting that day in August 2022 was the last time Mr Lane and Mr Connolly spoke directly to each other.

C (2) Pre-litigation activity

105. Mr Lane instructed solicitors in May 2023. A detailed email was issued by Mr Lane to Mr Connolly on 1 August 2023 in which Mr Lane said that he "*now want[ed] to understand if we can put aside the friction and tension between us and discuss the way forward*". The email referred to the agreement of the two men "*to partner up together*" to buy Tinakilly and to their relationship being "*based on mutual trust with a view to making a successful business*

[74] Day 2 page 36 lines 19-23
[75] Day 10 page 73 lines 9-14
[76] Day 3 page 106 lines 4 and 9
[77] Day 4 page 64 lines 21-27

and sharing the profit". It continued that: "*It was due to my trust and confidence in you as my partner that I provided the majority of the funding to purchase both Tinakilly and Monasterio and continued to support those businesses for our mutual intended benefit*." It said that the parties needed to regularise and rebalance the payments made to that date. It stressed that Mr Connolly had not repaid his Monasterio loan and that Mr Lane had never received any payments from the profits of either Tinakilly or Monasterio "*even though we had always agreed that profits are to be shared*". The email ended with Mr Lane saying that he "*would appreciate your cooperation in putting last year behind us and getting things back on track*."

106. Mr Connolly's evidence in relation to the 1 August 2023 letter was that it had a "*totally different tone from that I would normally be engaging with him on*".[78] Mr Connolly said that on receiving that email he was surprised to see Mr Lane's use of the word "partnership". Mr Connolly's evidence was that the email of 1 August 2023 placed an emphasis on the phrase "partnership" rather than simply "partner" for the first time and that this made him feel "*very concerned*". But in fact this email was not the first time that "partnership" had been used. Indeed the MOU and the Shareholder Agreement both expressly refer to this term as Mr Connolly later acknowledged in his evidence.[79]

107. Mr Lane followed up his 1 August 2023 email with a further email to Mr Connolly on 9 August saying that he would appreciate the courtesy of a reply by return. Mr Connolly replied by email: "*Would you really*". Mr Lane answered on 10 August: "*Yes, I think it's important for our future relationship*" and sent a further email that day saying: "*Yes. We need to regularize our partnership without further delay. It's important.*" Mr Connolly sent his response later on 10 August 2023 which read: "*You are aware or should be aware of the operation that was invested in, in Spain. At no time did I change or amend anything in*

[78] Day 7 page 10 lines 4-5
[79] Day 7 page 60 line 7

relation to the Exclusive use of the property for weddings. You have already confirmed that with Emily. Therefore, you are wrong in your assumptions. You are wrong in your disgusting and bullying treatment of me and my fellow co workers."

108. No further or substantive response was sent by Mr Connolly at that time. Mr Lane sought further financial information from Noone Casey. The first solicitor's correspondence to Mr Connolly issued on 7 December 2023 in which it was confirmed that "*Mr Lane also agrees to the winding up of the partnership. We note that as part of any winding up, adjustments will be required in order to reflect the parties' respective contributions to your partnership, particularly in circumstances where Mr Lane provided the majority of the money required for the purchases of Tinakilly and Monasterio and also for the operation of those businesses*".

109. Mr Connolly confirmed by email on 17 January 2024 that he did not at that point wish to dispose of his shareholding in either business. Correspondence continued over the next number of months with suggestions that perhaps Mr Connolly would buy Mr Lane's share of the partnership or that the businesses be sold to a third party. By letter dated 30 April 2024 Mr Lane's solicitors issued a formal request for accounts and information pursuant to s. 28 of the Partnership Act 1890.

110. By letter dated 31 May 2024 Mr Lane's solicitors wrote to Mr Connolly advising that Mr Connolly was in breach of the 1890 Act by not providing the financial information requested and that this underlined the total breakdown in the trust and confidence of the partnership between him and Mr Lane. The letter continued that *"[a]ccordingly, our client has decided to exercise his rights to dissolve the Partnership in accordance with sections 26(1) and 32(c) of the [1890]Act*". The letter attached a simple notice signed by Mr Lane that the partnership "*shall be dissolved with effect on or after 7 June 2024*". The letter sought agreement to appoint independent parties to value the partnership assets and settle the partnership's accounts, failing which it was indicated that litigation to wind up the partnership would follow.

111. Later that day Mr Connolly emailed Mr Lane's solicitors stating: "*It is unfortunate timing that your client has chosen to take the steps of dissolving " The Partnership". It is denied that a partnership exists between myself and your client as defined by the (Partnership Act 1890)"*. This was the first formal and express denial by Mr Connolly of the existence of a partnership between himself and Mr Lane.

C (3) The issuing of proceedings and the sale and liquidation of Monasterio

112. These proceedings issued on 14 June 2024. The pleadings have been amended on several occasions. The first amendments to the Statement of Claim were made on 3 December 2024 to plead reliance upon the Shareholder Agreement following its production by Mr Connolly in replies to particulars. Further amendments were also made to reflect the joinder of Mrs Lane as an additional plaintiff and the joinder of Mezen and Pointsetter as additional defendants.

113. A second amended Statement of Claim was delivered on 7 May 2025 following the plaintiffs becoming aware of the sale of Monasterio by Mr Connolly. Amendments made also included an alternative claim of joint venture and further particulars of a claim in respect of an increased equity interest in Tinakilly and Monasterio and their associated businesses and undertakings and to include certain conspiracy claims between Mr Connolly and Mezen in relation to certain identified financial transactions.

114. The third amendments to the Statement of Claim were made on 1 December 2025 to amend the reliefs relating to equity contributions made by Mr Connolly following information received on discovery.

115. The defendants' Defence was also amended in response to these changes and to include additional counterclaims by Mr Connolly (not pursued at trial in circumstances where no leave of the court had been obtained to these amendments).

116. Further amendments were sought to be made by the plaintiffs at the trial and I deal with those later in this judgment.

117. On 17 January 2025 Mr Connolly emailed Mr Lane's solicitors stating that he "*shall be selling [Monasterio] with a very heavy heart*". This correspondence caused Mr Lane's solicitors to write to Mr Connolly on 20 January 2025 confirming that Mr Lane did not consent to the sale of Monasterio and they sought immediate confirmation from Mr Connolly that he would not unilaterally take any steps to sell Monasterio. Mr Connolly confirmed by emails on the 20th and 22nd of January 2025 that he "*…shall not take any steps or action or give instruction on behalf of [NOL] to put on the market or sell the property of the company, namely Finca Monasterio*". Mr Lane confirmed in evidence that he relied on those assurances[80] and took no further steps at that time.

118. However, the evidence at the trial established that Mr Connolly had, by the date of those assurances, and without the knowledge or consent of Mr Lane, in fact caused NOL to enter into a binding agreement to sell Monasterio for €5,075,000 – having done so on 6 December 2024. Mr Connolly's evidence was that he had been approached (unsolicited) by a property agent Ms Elise de Lange in September 2024 with an indication that she might have a buyer for Monasterio. Mr Connolly said that she then became NOL's agent for the sale and NOL was responsible for her fee – confirmed to be a net figure for NOL of €125,000. He confirmed that he did not tell Mr Lane about this approach.[81] He also did not tell the buyer about Mr Lane's 51% interest in the property.[82] That interest would not have been obvious to

[80] Day 2 page 34 lines 26-29
[81] Day 9 page 38 line 13
[82] Day 9 page 40 line 17

any buyer given that Mr Lane's shareholding had never been registered in either NOL or MESL.

119. The sale of Monasterio as a going concern was not an open market sale. Mr Connolly referred to planning issues which he said meant any buyer would be unlikely to get a mortgage and so would have to be a cash buyer. Mr Connolly agreed in evidence that he did not obtain a valuation report on Monasterio at the time of the sale but relied on one obtained the previous April. The sale included the sale of the personal belongings of Mr and Mrs Lane held in Room 17. As Monasterio was sold as a going concern, the sale also included the booking deposits in the region of €400,000 held for weddings booked to that date and the stock of Mr Connolly's Tandem whiskey. €750,000 of the sales proceeds continue to be held in escrow and will only be released if Monasterio achieves a four star rating under the new ownership. Mr Connolly agreed to that condition as part of the sale. There is no time limit on the return of that escrow sum to the buyer or no guarantee that the buyer will satisfy the conditionality of releasing the escrow by obtaining a four star rating on the property.

120. Mr Connolly gave evidence that he attempted to undo the Monasterio sale contract but was advised that legally he was unable to do so. In any event the contract for sale proceeded without further notice to the plaintiffs and despite the assurances which had been given by Mr Connolly that no steps would be taken by him or NOL to sell Monasterio.

121. In around March 2025 Mr Lane became aware of the sale of Monasterio and his solicitors immediately corresponded with Mr Connolly and his then newly instructed solicitors. The focus of attention then turned to the proceeds of sale. Throughout the period March to July 2025 assurances were sought that the sale proceeds would be placed in escrow or otherwise secured to ensure they were not dissipated. Mr Connolly's then solicitors confirmed their instructions (repeated on several occasions) that Mr Connolly would not do anything to dissipate the proceeds of sale of Monasterio and that "*no further transfers will be* *made from the proceeds of sale by NOL without notifying [Mr Lane's solicitors] in advance*".[83]

122. The plaintiffs and their solicitors relied on these various written confirmations and did not seek a freezing order in respect of the proceeds of the sale of Monasterio at that time. I find that it was entirely reasonable for these assurances to be accepted by the plaintiffs and that they were given by Mr Connolly's then solicitors on his behalf and with his instructions, on the express understanding that the assurances would be relied upon by the plaintiffs and their solicitors – as indeed they were.

123. On 29 August 2025 Mr Lane's solicitors received correspondence from Mr Connolly which indicated that "*Mezen has called in the remaining outstanding loan from Spain*". This alerted the plaintiff's solicitors to the fact that NOL had, in apparent breach of its assurances, in fact transferred at least some of the Monasterio sales proceeds to Mezen. The evidence confirmed that NOL and MESL had transferred funds to Mezen totalling €497,500 in four tranches on dates ranging from 14 August 2025 to 21 August 2025. No prior notice of these transfers had been given to Mr Lane.

124. On 2 September 2025 Mr Connolly wrote to Mr Lane's solicitors stating:

"*To crystallize all parties' positions and determine entitlements to loan repayments and final distribution of surplus finds, an independent liquidator was appointed on 21st August to oversee the orderly winding up of the companies…. The assets of the companies are now secure with the liquidator. As part of the winding up of the companies I no longer have control over the company's assets*".

[83] Letter Dentons to Arthur Cox dated 28 March 2025. Note also letter dated 7 July 2025 stating: "We have confirmed on many occasions that our instructions are that neither NOL, nor Mr Connolly, intend to dissipate the proceeds of the sale of NOL's assets. We have also confirmed on numerous occasions that Mr Connolly will not direct any further transfers to be made from the proceeds of sale of NOL's assets without notifying you in advance".

125. The evidence confirms that Mr Lane was not given any advance notice of the liquidation of NOL and MESL. Significant funds as outlined at para 125 above were transferred out of NOL and MESL just prior to the appointment of the Spanish liquidator to those companies.

126. An undertaking was sought from Mr Connolly and his then solicitors that no further transfers would be made out of the proceeds of sale of Monasterio pending the resolution of these proceedings. The plaintiffs indicated that failing receipt of such an undertaking they would seek liberty to apply for a freezing order. Mr Connolly's then solicitors confirmed that they were seeking to come off record for him (which they subsequently did) and for Mezen and had no further instructions. Correspondence continued between the plaintiffs' solicitors and Mr Connolly in which information and undertakings regarding the proceeds of sale of Monasterio were requested. Part of the undertakings requested were that the monies which had been transferred to Mezen out of the proceeds of the sale of Monasterio would be transferred to an escrow account pending the determination of these proceedings. Mr Connolly did not provide the requested undertakings and denied dissipating any of the proceeds of sale.

127. Accordingly, on 9 September 2025 the plaintiffs brought an ex parte motion seeking interim reliefs concerning the proceeds of sale of Monasterio. The court made a number of interim orders on that date, including that Mr Connolly and /or Mezen be restrained from dealing with, dissipating, transferring, charging, encumbering or alienating any sums which had been transferred to Mezen from the proceeds of sale of Monasterio. Following some extensions of that interim order the matter was heard on an interlocutory basis on 27 November 2025 at which point Mr Connolly was self-represented. He appeared in person both at the hearing and for delivery of the court's judgment on 1 December 2025. The order made by the court that day included an order that Mr Connolly and/or Mezen "*are restrained from dealing with dissipating transferring charging encumbering or alienating any sums* *which have been transferred to [Mezen] from the proceeds of sale of the property and/or business known as Finca Monasterio*"(the **"Mareva Order**").

128. The court further directed that Mr Connolly swear an affidavit identifying all payments which had been made from the proceeds of the sale of Monasterio and the dates, basis for and payees of those payments. An affidavit in purported compliance with this requirement was delivered by Mr Connolly on 6 January 2026 in which Mr Connolly identified payments made to Mezen from the proceeds of sale but which did not identify any payments being made out of Mezen or between Mezen accounts in relation to that part of the sales proceeds held by Mezen. It is not in dispute that Mr Connolly is in sole control of Mezen as director and the 99% shareholder (his brother being the registered holder of the remaining 1% on trust).

129. The plaintiffs wished to ensure on an ongoing basis that the monies the subject of the Mareva Order remained in Mezen's bank accounts in compliance with the Mareva Order. Further evidence was requested in the form of bank statements to confirm the up to date position. On 13 February 2026, while this hearing was ongoing, Mezen's bank statements from 16 October 2025 to 13 February 2026 were provided to the plaintiffs. This information was the basis of a motion seeking various reliefs against Mr Connolly and Mezen arising from what the plaintiffs alleged to be evidence of improper payments having been made, in breach of the Mareva Order, from monies which constituted the proceeds of sale of Monasterio.

130. The Mareva Order remains in place and I deal later with the application made in relation to it at the trial.

131. Mr Connolly confirmed in his evidence that he did not tell Mr Lane about the sale of Monasterio until Mr Lane belatedly discovered this fact on 11 March 2025. Nor did Mr Connolly advise Mr Lane about the appointment of liquidators to NOL and MESL on 21

August 2025. His reasoning for that was put in the following terms: "… *I was under immense pressure, there was proceedings against me, the business, the business in Spain, the outcome of which was going to be appointing receivers over a Spanish property, probably through Spanish receivers and a trading company. We were suffering detrimentally from the proceedings themselves through customers and clients looking for refunds. We were under immense pressure in both businesses. Not only a nose dive in bookings, but people who had made bookings becoming very concerned about the prospects of a receiver being appointed*".[84]

132. Mr Connolly's evidence was that he regretted not telling Mr Lane or his solicitors about his intentions. He emphasised the immense pressure he was under and how he wanted to bring matters to a resolution and that he "*didn't believe that I was dealing with somebody who would be commercially minded in assisting in doing this because of the correspondence and the heaviness and the, if you like, the threatening content of that*".[85]

133. His evidence was more assertive later in the trial. He said:

"*… from my point of view, this was an opportunity to sort out an awful lot of things that relate to NOL 2 and Monasterio Exclusive, bearing in mind that if you look at the outcome that Mr. Lane was seeking, to appoint receivers over a Spanish company holding a hotel property and an operating company, that would only be detrimental to the business. We'd be involving Spanish lawyers, we'd be involving Spanish law, tax codes, etc., and it would mean we'd be down there for another three or four years, fighting away in the courts. It would only extend and exasperate the situation. And by crystallising the position at what is absolutely fair value and putting the asset into cash, which is ultimately what Mr. Lane is seeking to achieve through the proceedings, I was hoping that we could just come to an understanding*

[84] Day 7 page 11 lines 6-16
[85] Day 7 page 12 lines 14-18

on it, that we could tidy up the tax situation, wind up the companies and that we wouldn't be sitting here now discussing this and we could've got on with the other position in relation to Pointsetter and Mezen…. And in order to support Mezen, I felt that it would be important to prop up the Irish business as well. And by virtue of the fact of crystallising the distributable amounts through the sale of the property, that that allowed us to do that very thing and monies were paid back to Mezen from Spain… the liquidator was appointed, so that any funds or monies could be held in safe keeping, that, exactly what I wanted to do, the taxes to be paid, creditors to be paid down, whatever claim Mr. Lane has against the companies could be dealt with. I've never disputed the money that Gerry has put into the companies. I would assist in any way whatsoever to ensure that he's paid back and that whatever rests with the liquidator thereafter is divided between us in a fair and equitable manner. And that's all I've ever sought from the beginning and that's all I've sought through this."[86]

134. There is no doubt that all of the evidence establishes that Mr Connolly made a deliberate and calculated decision to sell Monasterio, to pay out such funds as he wished, to then put NOL and MESL into liquidation and to conceal and deceive Mr Lane about all of this until everything was completed. Mr Connolly denied that he had sold Monasterio to raise money to put into Mezen in an attempt to defeat Mr Lane's claim in these proceedings. I believe Mr Connolly had no entitlement and indeed knew he had no entitlement to sell Monasterio without Mr Lane's consent – even indeed if he and Mr Lane were merely co-shareholders. I did not find his denial credible on this aspect.

135. On Mr Walsh's evidence "*from a mathematical point of view*"[87] there would have been sufficient funds to repay Mr Lane prior to placing the companies in liquidation – but Mr Connolly did not do so.

[86] Day 9 pages 45-47
[87] Day 10 page 58 line 4

136. The net effect of the appointment of the liquidator to NOL and MESL is that neither Mr Connolly nor Mr Lane can now get access to the Monasterio proceeds of sale. This is however a far more significant disadvantage for Mr Lane given the fact that Mr Connolly pre-liquidation paid out the sums that were important from his own perspective and because Mr Lane is not a registered shareholder. His difficulties will be compounded by the evidence that NOL's accounts do not appear to record the contribution of €867,000 he made to the purchase of Monasterio by NOL and by the absence of any loan documentation as between NOL and Mezen. No credible rationale was provided by Mr Connolly to explain the appointment to solvent companies of the Spanish liquidator, now in control of approximately €2 million.

137. I accept the evidence that this litigation has been damaging to the business of Tinakilly and has had a significant impact not only on the parties but also on the staff. This is unfortunate where it is clear that a very successful wedding business had been built up in the years since 2013. I do not believe this has been the intention of any party to this dispute. Rather it has been a regrettable consequence of the publicity surrounding the breakdown in the relationship between Mr Lane and Mr Connolly and their inability to resolve matters outside the glare of the inevitable publicity which litigation of this nature tends to attract.

<u>The expert financial evidence and other financial evidence from Noone Casey</u>

The expert evidence

138. The parties each engaged an expert financial witness. The level of cooperation those experts displayed and their production of a detailed joint report on which agreement was reached on a broad range of financial matters was an example of how independent expert witnesses should approach their role and discharge their duty to the court.

139. Mr Lane engaged Mr Kieran Wallace. Mr Connolly engaged Mr Joe Walsh. Both experts produced detailed reports. I propose to focus primarily on the areas of agreement and disagreement identified by the independent experts in their joint report which provided valuable information to the court and substantially reduced the areas that remain in dispute. That joint memorandum provides a snapshot in time – namely the position as at 30 June 2025. It is worth noting in that regard that this date was after significant payments had been made by NOL to Mezen in and around March 2025 following the sale of Monasterio.

140. In his evidence Mr Wallace confirmed his finding at para 2.1 of his report dated 20 November 2025 that "*…the core financial information which, in my experience, should be readily available for businesses of this nature, have not been provided for either Tinakilly or Monasterio. The inability to access basic financial records has severely hampered the ability to assess the true financial position and trading performance of both Tinakilly or Monasterio".*

141. It was Mr Wallace's evidence that the level of transactions on the directors loan accounts in Mezen was particularly unusual with over 1500 transactions identified. It was his opinion, as articulated at para 2.5.1 of his report that "*[t]he evidence points to extensive use of company assets and funds for the personal benefit of Mr. Connolly, his family and related companies including personal expenses and payments to related companies. Many of these transactions lack proper business justification or supporting documentation*".

142. Looking to the helpful joint memorandum prepared by the experts the following evidence was proffered as agreed (as at 30 June 2025) in that memorandum and/or in oral testimony:

(1) Both experts agreed that the financial records of Mezen, NOL and MESL are incomplete and cannot be relied upon in full. There was however a degree of difference between the experts as to the extent of that incompleteness. Mr Wallace believed the

Mezen accounts were misleading. Mr Walsh's view is that: "*These issues relate to misclassifications and do not impact on the overall net position of Mezen, i.e. the total assets and liabilities which remain the same*".

(2) The statutory requirement for an annual return for Pointsetter was only introduced in BVI in 2023. There is a lack of underlying financial records for Pointsetter and the 2023 financial return does not appear accurate.

(3) Mandatory related-party disclosures regarding Mr Connolly's overdrawn director's loan account have not been disclosed in Mezen's audited financial statements.

(4) The related-party transactions have been recorded through the director's loan account. The audited accounts should have, but did not, include specific disclosures regarding all related-party transactions identified.

(5) Mezen is in breach of s. 239 of the Companies Act 2014 arising from Mr Connolly's overdrawn director loan account balance as it exceeds 10% of the net assets of Mezen. The balance owed by Provenance and the loan referred to in the Mezen accounts as the Spanish loan also exceed 10% of the net assets of Mezen. Three separate instances of breaches have been identified.

(6) Mr Connolly's director's loan account included a credit of €323,000 relating to wages for Mr Connolly for Monasterio. It is unclear whether this is a net or gross sum and no vouching documentation was provided to support those payments. If gross, as Mr Wallace believes, this figure should have been much lower to account for the tax liability on it and therefore there would be a further amount owing by Mr Connolly to Mezen as well as tax consequences. There was no evidence in the accounts of NOL or MESL that they recorded such monies as owing to Mr Connolly or paid out. The experts agree that this transaction should not have been in Mr Connolly's loan account for Mezen and that it would be for the Spanish liquidator to determine whether this unpaid wages claim of €323,000 should

be admitted.

(7) The experts came to a figure of €225,538 (minimum)[88] as being owed by Mr Connolly to Mezen as at 30 June 2025 by separating out all of the other transactions with related entities, and including the credit of €323,000 referred to at (6) above.

(8) The experts agreed that Mezen owes Cassidys €512,204. Provenance owes Mezen €728,869.[89] Monasterevin Whiskey owes Mezen €14,508 and Caspian owes Mezen €4,172. These are all related entities to Mr Connolly, but entirely separate legal entities from him and from each other.

(9) The document provided in discovery as a fixed asset register of Mezen lacks the detail that would allow any analysis of the underlying line items.

(10) Neither expert has been provided with documentation for any loans between Mezen and the related entities associated with Mr Connolly. The accounts for Cassidys include the Monasterio investment as a financial asset as opposed to Mr Connolly's position that it was a loan. This financial investment is described in Cassidys' audited accounts as "Spain investment".

(11) The total consideration for Monasterio was €2.5m (excluding taxes and costs), which included €730,000 in loans assigned to NOL of which €117,000 was discharged at the time of the acquisition from the solicitor's client account for NOL. At the time of the purchase €2.112m was paid. This figure included the €117,000 referenced above and the balance of the agreed consideration (less the remaining assumed loan) of €1.77m. That cash balance was funded by way of a loan from Mezen of €1.3m. The breakdown of that €1.3m was €867,000 for Mr Lane's 51% interest and €833,000 for Mr Connolly's 49% interest. Mr Lane repaid his portion on 8 December 2017, not directly to Cassidys but

[88] Mr Wallace's evidence – Day 6 page 42 line 14

[89] There does not appear to be any loan agreements in place in respect of this sum.

instead paid it to Mezen as outlined below. There was no evidence before the court that Mr Connolly ever repaid his portion to Cassidys.

(12) The total funds paid into the NOL solicitor's account was €2.769m which included a loan from Mr Lane of €680,000 which he advanced on 10 December 2018 to repay the assumed loan that by then had fallen due for repayment. Mr Connolly's portion of that payment would have been €333,200 in line with his 49% interest. The stated purpose of this loan was "to meet payments from the borrower company and group companies, among others, the company of Irish nationality, Mezen Consultancy". Not all of the funding paid into the solicitor's account (by Mezen, Mr Lane and Cassidys) was however used for the purchase of Monasterio. Following the purchase NOL received a payment of €517,000 from Servicios Legales (surplus on purchase price for Monasterio) on 8 May 2019, which was used for other purposes unrelated to NOL's business activities.

(13) In the weeks following the transfer of these funds to NOL payments were made from NOL by Mr Connolly for his own benefit, including €364,000 paid to Mr Connolly's Augustus Cullen Law client account and €133,000 credited to Mr Connolly's shareholder account in NOL. The experts agree that while the purchase price for Monasterio was €2.5m (excluding taxes and costs) the sum paid over at or around the time of completion was less than this amount (i.e. €1.885m). So, it has transpired that €2.5 million was not the purchase price ultimately of Monasterio – it was less in light of the refund later received from Servicios Legales. Mr Wallace expressed his view that excess funds borrowed for a purchase should logically be repaid to the parties who contributed to the purchase. It was agreed that the €680,000 loan was repaid to Mr Lane in 2025 (not in 2019 when the refund was received).

(14) Pointsetter financial statements for the period ending 30 June 2014 record a shareholder loan for Mr Lane of €543,130.

(15) Pointsetter financial statements for the period ending 30 June 2014 record a shareholder loan with DB Hollowstone of €546,211. These accounts do not record Mr Connolly as having provided the funds directly.

(16) Cassidys transferred €1.7 million for the acquisition of Monasterio, of which €867,000 is attributed to Mr Lane's 51% interest. Mr Lane paid his contribution of €867,000 directly to Mezen on 8 December 2017 but this transaction was never reflected in NOL's financial records.

(17) The balance of €833,000 represents the 49% shareholding of Mr Connolly in NOL which Mr Connolly asserts was introduced by him through Cassidys. However, the audited accounts of Cassidys do not reflect this position as the full €1.7 million is included as a financial asset, (Spain investment and not as a loan).

(18) Mr Connolly's director loan balance in Mezen as at 30 June 2025 is agreed at €225,538. It is worth noting that this balance excludes related party transactions with Connolly entities[90] and Mr Connolly's Monasterio wages claim and noting that an overdrawn director's loan account would be subject to tax and no provision has been made for the quantum of any tax payable to Revenue. Neither expert has audited the underlying transactions.

(19) Mr Lane provided loans totalling €760,000 in respect of Monasterio. €680,000 was provided by Mr Lane to NOL on or about 10 December 2018 for the Monasterio acquisition and a loan document was prepared for this. The remaining €80,000 was advanced by Mr Lane to MESL in 2 tranches of €40,000 each on 30 April 2021 and 13 May 2021. Mr Connolly and the liquidator confirmed that these loans were not recorded in NOL or MESL. The non-recording of this transaction will require Mr Lane to persuade the

[90] The agreed figures for those related entities as at 30 June 2025 is Cassidys €512,204 (credit owed to Mezen including €867,000 repaid by Mr Lane to Mezen for his share of Monasterio); Provenance €728,869 (owed to Mezen); Monasterevin €14,508 (owed to Mezen) and Caspian €4,172 (owed to Mezen).

liquidator in Spain that they are legitimate amounts that are owed to Mr Lane.

(20) The sum of €134,800 was paid by Mr Lane to the benefit of Monasterio. This amount has not been recorded in relevant books and records as being due to Mr Lane.

(21) €780,000 has been paid by NOL to Mr Lane since the sale of Monasterio in February 2025.

(22) €1,443,450 has been paid by NOL to Mr Connolly and related parties.

(23) Mr Lane provided agreed loans of €277,914 to Mezen which are recorded in Mr Lane's Mezen loan account. There is however disagreement between the experts as to the full extent of Mr Lane's outstanding Mezen loan balance as at 30 June 2025.

(24) Mr Lane provided €560,800 to Mezen which the experts do not classify as either loans or capital contributions and that is a matter for this court to determine in its analysis of the claim for an increased equity contribution under clause 5 of the Shareholder Agreement. These payments were included with the Mezen Loan account balance for Mr Lane.

(25) While there is no claim in these proceedings for the monies paid by Mr Lane for the gardens in Tinakilly, Mr Wallace nevertheless believes those monies ought to have been reflected somewhere in the Pointsetter or Mezen accounts. They are not.[91] Mr Walsh did not look at this point as there is no claim for these monies in these proceedings.

(26) In relation to the payments regarding Cúl an Tí, Mr Connolly claimed that payments totalling €181,430 had been made for this purpose. He provided backup in relation to €130,755.75 of this amount but no invoices were provided. Most of the funds paid out appear to have come from Cassidys rather than Mr Connolly personally. There does not appear to be a credit in Mezen to Mr Connolly and Mr Walsh could not confirm these additions were included in the accounts of Pointsetter Limited.

[91] Day 5 page 149 line 17

(27) The experts express no view on whether the sum of €504,000 paid to former solicitors in respect of legal representation of Mr Connolly and Mezen in these proceedings were legitimately paid by Mezen or whether they should in whole or in part have been discharged by Mr Connolly personally. The letter of engagement was not produced to the court. Mr Connolly confirmed in evidence that he did not personally pay any money to his former solicitors but that the legal costs were paid by Mezen.[92] The evidence of payments made from Mezen's bank account was corroborated by Ms Windsor's evidence on day 10 of the trial as indeed was the continuing payment of legal costs to the current legal team. Ms Windsor confirmed in her evidence that Mr Connolly instructed those payments.[93]

(28) Mr Walsh indicated in this evidence that the overall position on Mr Connolly's loan account balance was positive as at June 2022 without stripping out the related-party transactions. He agreed that this positive figure had moved to a negative balance by June 2025, both for Mr Connolly personally and for the related-party transactions.

143. The experts disagreed on some matters as follows.

(1) They disagree on the extent of Mr Lane's outstanding Mezen loan balance as at 30 June 2025. Mr Wallace put this figure at €633,757 owed to Mr Lane. Mr Walsh says the figure owed to Mr Lane is €183,757. Both experts agree that after Monasterio was sold, monies were remitted from the sale proceeds to Mezen. Of those monies remitted to Mezen, €450,000 was paid to Mr Lane. The difference between the experts is explained because Mr Wallace believes this €450,000 should be regarded as a distribution to Mr Lane of part of the proceeds of sale of Monasterio whereas Mr Walsh believes the €450,000 should be regarded as repayment by Mezen of loans due to Mr Lane. He points out that the money has been received by Mr Lane and so it should in fact reduce the loan

[92] Day 9 page 84 line 29
[93] Day 10 page 160 line 20

balance due to Mr Lane and it must properly be reflected somewhere as the monies were actually repaid to Mr Lane. Mr Lane's position is that monies that he is owed by Mezen should be repaid by Mezen. He argues that taking money out of the sale of Monasterio is worsening the net return to the individuals who own Monasterio. Mr Walsh says that the calculation of a liability of €633,000 to Mr Lane, which ignores the payments made by Mezen, presents a misleading position. However Mr Walsh agreed on cross-examination that he was not in a position to put a label on the payments and could just identify what the figures are.

144. There is also some disagreement over Mr Connolly's remuneration for Mezen as recorded in his director's loan account. It is agreed that the sum of €356,000 (being director's fees for two years of €100,000 each and wages going back to 2019 of €156,000) was credited to Mr Connolly's loan account claimed to be remuneration for Mezen. Mr Wallace believes this figure is gross and as a result Mr Connolly's loan account is overdrawn by an additional €195,800, being the estimated associated payroll taxes. If Mr Wallace is correct then Mr Connolly's loan account in Mezen is overdrawn to at least €420,000. Mr Walsh simply notes Mr Connolly's position that he is liable to pay the taxes due as part of his income tax returns and he does not comment any further noting that the personal tax affairs of Mr Connolly are outside the scope of his report.

145. There was a lot of evidence given in relation to the manner in which Mr Lane repaid his portion of 51% of the Monasterio acquisition monies which amounted to €867,000. As previously outlined, at Mr Connolly's request this amount was sent by Mr Lane directly to Mezen rather than to NOL. I do not accept Mr Connolly's oral evidence, not in his witness statement or any supporting documentation, that he had a discussion with Mr Lane about possibly paying this money to Cassidys. Once received by Mezen (in December 2018) the full sum was then credited to Mr Connolly's director's loan account in Mezen and was drawn down by Mr Connolly over a period of time. Mr Wallace said he had no backup information to support that credit because the Cassidys accounts record the sum of €1.7m as an investment by Cassidys into Monasterio.[94] He was of the opinion that there are tax consequences to monies being credited to a director's loan account that should not have been credited in the first place, particularly if that account becomes overdrawn.

146. Mr Connolly's evidence on the €867,000 paid by Mr Lane in respect of his portion of the purchase price of Monasterio was that "*Gerry owed me or Cassidy's 867,000 as paying back for the money I put down to the solicitors…. Gerry has some issues transferring money or money comes back to him and there's just a couple of things there, I think the BIC numbers and such. I was in Spain at the time when he rang me. I said, "Look, Gerry, the easiest thing for you to do, because I know you have the Mezen bank account number and that you're capable of transferring money", I don't mean capable "your bank know the number, the easiest thing for you to do is, why don't you put in Mezen because my shareholder's account is overdrawn there at the moment and that would just rebalance it and put me in a plus position". So Gerry is paying me the 867 that he owes me".*[95]

147. Mr Connolly was not receptive to criticisms regarding the intermingling of Monasterio money with Mezen money or the idea that the money was owed to Cassidys and not to him personally. His evidence was: "*The reality of the situation is, I put down 1.7 on behalf of myself and Gerry. Gerry owed me the 867 and he gave it back to me. That's the beginning, the middle and the end of it*".[96]

148. An effort was made by Mr Connolly's legal team to suggest that in a general sense of "money in/money out", all of the connected entities (being Cassidys, Provenance,

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[94] Mr Wallace said that "the same accountants for Cassidys were the accountants who were preparing the accounts in Mezen in 2018 when that director's loan account was being prepared. There is a very common element to both." Day 6 page 18 lines 11-14

[95] Day 6 page 156/157

[96] Day 6 page 157/158

Monasterevin Whiskey and Caspian) should feature in the overall calculation of the monies outstanding so that the overall figure owed by "Related Entities" to Mezen was €235,344 when the individual transactions were netted off. They also argued that if Mr Lane actually received money from any of these entities, it should be counted in respect of any indebtedness owed to him by Mr Connolly. They said this represented the reality on the ground.

149. Mr Lane's legal team did not agree. It was Mr Wallace's evidence that he did not understand how it could be contended that an amount owed by one corporate entity can be offset by an amount owed by another corporate entity when there is no agreement in place and the entities are not a group.

Other financial evidence tendered by Noone Casey

150. It is worth referencing briefly the evidence that was tendered by Mr Anthony Casey, one of the founding partners of Noone Casey who have acted as accountants, tax agents and auditors to Mezen since 2014. This evidence was of limited value to the court in circumstances where Mr Anthony Casey was not personally involved in the affairs of Mezen. Mr Andrew Noone, who was directly responsible for the Mezen account, retired on 31 December 2024 and was not available as a witness. Mr Casey confirmed however that he had reviewed the Mezen audit files prior to giving his evidence. Although a qualified accountant, he gave his evidence in a factual rather than an expert capacity.

151. Mr Casey confirmed that Noone Casey was not asked at any time to prepare partnership accounts or partnership tax returns and they never did so. He acknowledged that Mr Connolly was the principal person who gave instructions on behalf of Mezen. Mr Casey could not explain why the description of “shareholder funds” was changed to “director’s loan” in the Mezen accounts or who, if anyone, had instructed this.

152. Mr Casey confirmed that management accounts were made available to Mr Connolly and Mr Lane on an ongoing basis between 2014 and 2020. He did not however have personal knowledge of that given that he was not involved in this aspect. He said that in 2020 Noone Casey ceased preparing management accounts when Tinakilly closed as a result of covid. Mr Casey said that the files showed that Noone Casey engaged with Mr Grainger when he was involved and tried to address Mr Grainger's queries and requests for additional information.

153. Mr Casey confirmed that there were no audited accounts for Mezen for 2023, 2024 or 2025 (and no draft financial statements for 2025). He said that Noone Casey had no opinion on the accuracy or otherwise of the draft 2023 and 2024 accounts or whether they represented a true and fair view.

154. He said that Mezen qualified as a small company for the purposes of accounting standards which characterisation meant that Mezen could disclose less in the notes to its financial statements. Ordinarily Mezen, as a small company, should not be subject to audit. However Mezen lost its audit exemption in various years because of late filing of its annual returns. In effect Mezen did not require an audit for 2014, 2015, 2016 and 2019 but did require an audit for 2017, 2018, 2020, 2021 and 2022. Therefore four of the nine years which Noone Casey reported on were non-audit.

155. It was Mr Casey's evidence that from the outset, and with the agreement of Mr Connolly and Mr Lane, Noone Casey accounted for all receipts and payments in the director's loan accounts – without distinguishing between related party transactions or transactions sourced through third parties for their benefit. He said that the parties and Mr Grainger believed that this was the true reflection of the balances during that period – although Mr Casey was not personally involved in any such discussions. He acknowledged that the experts have expressed a different view on disclosure of related party transactions and said that "*I believe* *they're wrong*".[97] In Mr Casey's view the payments were not related-party transactions but rather payments on behalf of and to the benefit of Mr Connolly and Mr Lane.

156. He accepted that a significant amount of transactions both in number and value had passed through the directors' loan accounts. He said however that all of the transactions had been recorded accurately in the director's loan account balance. He said that Noone Casey had advised Mr Connolly that he should not be processing so many personal transactions through the company accounts and he believed in later years the number of such transactions reduced.

157. Because Mr Lane was neither a director nor a shareholder, the monies owed to him by Mezen appeared under a heading of "other creditors" in Mezen's audited accounts. In fact Mr Connolly was also treated in the same way although Mr Connolly was both a director and a shareholder. Mr Casey agreed that it would have made more sense to identify Mr Connolly specifically. When asked why this happened Mr Casey replied: "*I think other than historic reasons that from the incorporation of the company for many years the two accounts were in effect bundled together in the statutory accounts. There's no reason why Mr. Connolly's should not have been disclosed separately*".[98]

158. On cross-examination Mr Casey agreed that related-party transactions should be separately disclosed.[99] He also agreed that if Mr Connolly's personal director's loan account was overstated (which Mr Casey did not believe it was) it would be reported separately.

159. Noone Casey were also the auditors to Cassidys. Mr Casey was taken through the accounting treatment of the €1.7m advanced by Cassidys towards the purchase of Monasterio in 2017 which is still showing as an asset of Cassidys in its balance sheet. He agreed this treatment was "*inconsistent*" with that is evident from the Mezen accounts.[100] Mr Casey said

[97] Day 9 page 125 line 8
[98] Day 9 page 161 lines 3-8
[99] Day 9 page 156 lines 21-22
[100] Day 9 page 133 line 7

that he had recently spoken to Mr Barry Connolly (a director of Cassidys) and he agreed that the figure paid to Mezen (by Mr Lane) was made on behalf of Mr Denis Connolly. He could not however give contemporaneous evidence of any such enquiry as he was not involved at the time. He said that payment made no difference from Mezen's perspective but he agreed that there are possible tax issues for Cassidys relating to it.

The evidence of Anna Windsor

160. I propose to deal separately with the evidence tendered by Ms Windsor because it took a somewhat unexpected turn at the trial in the course of cross-examination on matters which had not been included in her witness statement.

161. Ms Windsor has worked in Tinakilly for more than 30 years. Since July 2013 she has been employed by Mezen. She gave evidence that her official title is Assistant Manager, but that her main role is the day-to-day financial administration of the business including bookkeeping and monitoring all financial transactions. She confirmed that she had assisted Mr Connolly while he was a lay litigant in these proceedings.

162. Her evidence was that Mezen was at all times operated as a limited liability company and not as a partnership although she was not aware until recently of the MOU or Shareholder Agreement between Mr Lane and Mr Connolly.

163. Ms Windsor was questioned regarding the large increase in the volume and amount of transactions going through Mezen's account since 2020 which reimbursed payments made on company or private credit cards or payments made in cash. Ms Windsor explained that during Covid, work was undertaken to convert eight of the Tinakilly rooms into studio apartments. She said: "*I was purchasing some items at that time through my own account and then getting reimbursed*".[101] When asked if such purchases could explain all the increase in payments of

[101] Day 10 page 143 line 8

approximately €90,000 for 2021, Ms Windsor said: "*No, some of that relates to some work that Mr. Connolly was doing on the stone yard, on the premises*".[102]

164. On further questioning she advised that the stone yard was across the avenue from Tinakilly. It is not owned by Mezen or Pointsetter but by a different company, Green Hill Developments, a company owned by Mr Connolly's son.

165. When asked could she explain how the reimbursed payments continued to increase in the years up to 2024 (when to her knowledge no large renovations were being undertaken at the hotel – although she later changed her evidence on this), Ms Windsor replied that she imagined this was due to payments she would have made to third parties on behalf of Mr Connolly, for which she was reimbursed by Mezen.

166. When given an opportunity to look at the specific transactions for the single year 2024 Ms Windsor said: "… *in June 2024 we were carrying -- we had employed some carpenters and a plasterer to do work around the building and they were being paid cash. So the money went through my account. So, in order for me to have the cash to pay them, I would transfer it to my account. So that's what that actually is for. So it was cash payments to carpenters and plasterers and people doing work around the hotel*".[103]

167. She confirmed that Mr Connolly knew about the payments being made by Mezen for the stone yard works and that in making any payments she was acting on Mr Connolly's instruction.[104]

168. What was unclear to the court at that time was whether the payments in question were accounted for by Mr Connolly in his Mezen loan account or otherwise. This was not an issue that had been considered by the experts. Counsel sought and was given time to take further instructions on this point as Mr Connolly had taken ill.

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[102] Day 10 page 143 lines 23-24
[103] Day 10 page 147 lines 18-25
[104] Day 10 page 152 lines 23-24

169. When Ms Windsor resumed her re-examination she indicated that in the intervening time she had sought to break down the sum of €174,000 odd that featured in Mezen's bank statements for 2024 as having been paid or reimbursed to Ms Windsor. Some of the payments were salary for Ms Windsor which are entirely uncontroversial. Other payments were made on the Mezen credit card (held in the name of Anna Windsor).[105] These payments totalled approximately €48,000 and Ms Windsor stated that these expenses were incurred for day to day business of Mezen and were clearly recorded on the Mezen credit card statements. A small additional amount of approximately €2,300 was categorised as reimbursement to Ms Windsor for items she paid for Mezen from her own personal account. The bulk of payments amounting to €89,000 were in Ms Windsor's evidence "*… payments [were] to workmen doing works in the hotel. The payments were not on behalf of Mr. Connolly, the payments were entirely on behalf of Mezen and are fully recorded in the books and records*".[106]

170. I was not prepared to allow any reliance on documents that should have been but were not discovered. Ms Windsor explained that the vast bulk of the money was for the benefit of Mezen saying it was used to pay tradesmen to improve the premises including staff studios, the tasting room and work during Covid in the reception area of the hotel. She said such payments were recorded as improvements to the premises in the books and records.

171. In essence, Ms Windsor's evidence changed from a position where there were no significant renovations going on in the hotel in 2024 and a sum of approximately €120,000 was paid out from Mezen to third parties on behalf of Mr Connolly, to a position where there were significant renovations going on in the hotel in 2024 and that all the cash payments of €89,000 were paid out from Mezen to third parties on behalf of Mezen. When the court enquired as to the difference in the evidence given by Ms Windsor previously regarding what

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[105] The evidence is that there is also a Mezen credit card in the name of Barry Connolly.

[106] Day 11 page 18 lines 12-15

works were carried out with the cash payments she said: "*I actually felt completely ambushed and I was looking at this document for the first time. I honestly -- I don't really know what I said on Friday, I'll be completely honest. I was completely, I was just -- I just was in complete brain freeze, I'm not going to lie*".[107] She later said on further cross-examination: "*I accept I changed - I told the facts on the 25th. I felt completely ambushed on the 20th*".[108] Insofar as there was a difference in Ms Windsor's evidence I prefer as more accurate and credible the instinctive evidence she gave on the 20th February. Ms Windsor was asked open questions and the court would not and did not permit her to be ambushed.

172. Of course the court does not have audited accounts or even managements accounts for the years in question. I note with some concern the high level of cash payments utilised by Mezen and the conflicting evidence as to what the funds in question were in fact spent on. Ms Windsor confirmed to the court that Mezen did not receive any invoices in respect of the cash payments. There was no evidence of precisely what works were carried out in Tinakilly itself to improve the premises. It appears that monies were spent by Mezen on other properties near Tinakilly used but not owned by Mezen. These properties appear to be owned by another Connolly related-entity. I appreciate that such properties may be a useful add-on to Tinakilly's business but I do not see how capital expenditure on those properties by Mezen could properly be accounted for in Mezen's accounts as improvements to Tinakilly's premises.

173. The large amount of cash payments raises a query regarding the proper expenditure of Mezen funds, even if those monies are recorded in Mezen's accounts as improvements to the premises. If these monies were spent to benefit other Connolly related-entities who own adjoining properties, Mezen should not bear the burden of that expense as an improvement to

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[107] Day 13 page 28 lines 19-24
[108] Day 13 page 31 lines 24-25

its own premises (which in fact, in any event are owned by Pointsetter). It was not suggested that these monies were accounted for in Mr Connolly's loan balance or that any third party owed these monies to Mezen on foot of a loan agreement. The closest Mr Connolly came to an explanation was in correspondence exchanged during the latter stages of the trial where his solicitors advised that: *"[The Tasting Rooms] has proven to be a great success and has assisted in the business greatly in securing bookings. The situation in respect of the staff studios is similar. Mezen has not [been] charged rent in respect of the staff studies in recognition of the monies expended by Mezen. It has been intended to regularise the relationship between Mezen and Greenhill but the within proceedings intervened."*

174. In her evidence tendered after that correspondence Ms Windsor confirmed that Mezen paid for construction in the stone yards saying: "*They paid, but they get the use of the studios; there's no lease. They renovated the apartments and we have staff living there*".[109] She also confirmed that Mezen had paid for the construction of the tasting rooms. She denied any knowledge of Mezen making a payment in respect of an application for planning permission for the development of a house on the stone yard lands. She said she did not know why the process for recording individual transactions in the director's loan account had been changed in 2024 to refer to aggregated entries rather than individualised entries.

175. Overall, the evidence of Anna Windsor confirmed an unsatisfactory degree of informality in the documenting of cash payments made by or on behalf of Mezen to third parties (some alleged to be for the benefit of Mr Connolly or related entities).

Late amendment of pleadings during the trial

176. An application was made by the plaintiffs almost at the conclusion of the oral evidence on day 11 seeking to further amend their statement of claim.

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[109] Day 13 page 48 lines 2-4

177. Notwithstanding the late application, and as set out in my ex tempore judgment dated 3 March 2026 delivered on day 12 of the hearing, I permitted the amendments to be made on conditions, including that the defendants would be permitted to re-call Mr Lane (who had completed his testimony by that point). The defendants took up this opportunity on day 14 of the trial. Of course my allowing the amendments to be made did not mean that I accepted the validity of those amendments. In that regard I set out my findings in the following paragraphs of this section.

178. One group of amendments can be described as technical amendments to which no particular objection was taken and I do not need to address those here.

179. The amendments also sought to include a more fulsome plea for an equitable account. The following amendment was sought as new para 34B:

"In breach of his duty to act in good faith, not to profit from his fiduciary position and/or his duty to account to the first Plaintiff in respect of any profits or benefits received from Tinakilly, Mezen and Pointsetter, the First Defendant has caused the Second Defendant to make payments which were improper, in that the Second Defendant received little or no benefit from the said payments, while the First Defendant received all or almost all of the benefit from the said payments. Given the failure of the First Defendant to provide sufficient financial information, the Plaintiffs are not in a position to identify all such payments, but examples of such payments are set out in the Third Schedule.

The Plaintiffs shall seek an order for an equitable account to be taken and the taking of an account of all financial transactions which the First Defendant has caused the Second Defendant to enter into, other than those entered into in the ordinary course of business and for all necessary consequential orders on foot of the settled accounts. Insofar as the existence of a partnership or alternatively a joint venture is established, the First Plaintiff will seek the rebalancing of the contributions made, the benefits received and the profits payable by the *partners or joint venturers. In the alternative, the First Plaintiff will seek damages for the financial loss suffered."*

180. I accept that amendment noting that from the very outset of these proceedings the plaintiffs have sought an account, specifically requesting the taking of all necessary accounts and inquiries. The examples relied upon emerged or were expanded upon in large part during the course of the evidence. This amendment is not seeking to introduce a new cause of action. It is certainly aimed at determining the issues in dispute between the parties. I am also mindful of the ongoing complaint about the provision of financial information and the adequacy of the discovery provided in these proceedings.

181. Finally, the most controversial amendment sought was the implication of an implied term to the Shareholder Agreement in the following terms:

"*It was a further implied term of the Shareholders' Agreement that either party would be entitled, upon reasonable notice being given to the other, to terminate the Shareholders' Agreement, following which Tinakilly House Hotel and its business and undertaking would be sold on the open market, with the profits (after payment of all debts) being distributed to the parties in accordance with their equity entitlements, as adjusted as necessary in accordance with clause 5."*

182. There was a considerable dispute between the parties regarding the implication of this term. Mr Connolly contended that it was clearly and on its face a term that would not meet the requirements for implying a term at law and was in any event advanced far too late and represented a fundamental shift in the pleaded claim. Furthermore he argued that such a term would self-evidently be inconsistent with clause 6 of the Shareholder Agreement and in particular the right of first refusal for each party to buy the shares of the other. He also argued that such a term is inconsistent with the partnership argument and with the corporate structure agreed and expressly set out in the Shareholder Agreement.

183. Mr Lane argued that if the Court finds that a partnership exists then there are statutory remedies open in terms of dissolving that partnership. However if the Court doesn't find that it's a partnership then a situation would arise where the parties were locked into a commercial relationship which Mr Lane would wish to terminate. It was argued that in the absence of the above implied term there would be a dispute as to how that relationship could be determined at all including what the period of reasonable notice should be and this could itself give rise to further litigation.

184. On being recalled, Mr Lane described the implied term as a "*fallback position*" in case the court were to hold that the parties were not in a partnership. He accepted that the purpose of clause 6 of the Shareholder Agreement was to give each party a right of first refusal if the other party wished to sell their shares and that this clause was intended to protect both parties.[110] It was suggested to him that the implied term now sought would be entirely inconsistent with clause 6 as its effect would be to allow either party to terminate the Shareholder Agreement (without affording any pre-emption rights to the other) and instead force a sale of the entire property on the open market. Mr Lane did not accept this and argued that the implied term would apply equally to both parties and so was fair to each of them. That of course misses the point as to whether it is inconsistent with an expressly agreed term.

185. In fact in response to counsel's question as to whether Mr Lane accepted that the suggested implied term means that Mr Lane can end the relationship without giving Mr Connolly a right of first refusal, Mr Lane responded "*Yes*".[111]

186. Mr Lane said on cross-examination: "*There has to be a mechanism for this whole thing to end. And that is not satisfied by Clause 6, it needs the implied term*".[112] His evidence was that the implied term first occurred to him during the course of the trial when he discovered

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[110] Mr Lane's evidence on day 2 was that "*It's also only fair, I think, that we agree that, in the event that one partner wants to sell, he has to give the other party the right of first refusal, which I think is only fair*".
[111] Day 14 page 17 line 16
[112] Day 14 p 21 lines 8-10

the amounts of money being taken out of the companies into which he had put millions of euro. He said the need for the implied term "…*became clear as the proceedings proceeded, so to speak".*[113]

187. The Shareholder Agreement does not contain an express right of termination. Mr Lane was asked, but did not answer, why he had never served notice to terminate the Shareholder Agreement if he believed there was in fact an implied right to terminate it. Mr Lane accepted that the implied term now alleged was never discussed, referred to or acted upon by either party since 2013. When asked did he accept this term was never part of the agreement between the parties he said: " … *the implied term is a very recent introduction*".[114]

188. There was no dispute between the parties as to the principles the court should apply in relation to the implication of terms. The implication of the particular term itself however was hotly contested. The plaintiffs argued that the Shareholder Agreement was a document drafted without the benefit of legal advice and that it therefore fell within the category of a less formal document to which a court would be more willing to imply a term.[115] It was argued that the implied right to terminate by reasonable notice has been recognised in many cases in the Irish courts including *Irish Welding v Phillips Electrical Limited* [unreported, High Court, 8 October 1976] and *Q&E Telephones v Alcatel* [unreported, High Court, 17 May 1995]. I accept and adopt the statement of principle noted by Andrews that "…*the courts will recognise that long-term contracts (unless there is an express or sufficiently clear contrary provision or indication) contain an implied term that either party can terminate the contract, without breach of contract, by giving the other reasonable notice*".[116]

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[113] Day 14 p 23 lines 24-25
[114] Day 14 page 33 line 1
[115] Relying on UTB LLC v Sheffield United [2019] EWHC 2322, para 206
[116] Contractual Duties: Performance, Breach, Termination and Remedies (2020, 3rd Ed., Thompson Reuters), para 9-066

189. It is true that courts will not readily accept the proposition that the parties intended to remain in a relationship in perpetuity. However, the term sought to be implied by Mr Lane goes beyond termination on reasonable notice and looks to determine what is to happen as between the parties when termination occurs. It is the second half of the implied term sought that, in my view, brings it outside the scope of a mere "termination on reasonable notice" implied term. Of course, if the relationship is a partnership then there is an entire statutory framework for the termination of same and this implied term would be unnecessary in any form.

190. I have to consider whether the suggested implied term conflicts with an express term agreed between the parties. In that regard the provisions of clause 6 of the Shareholder Agreement come into play. It provides that:

"Sale of shares: Should either party wish to sell or transfer part or all of their shares, it is agreed that the other party will have the right of first refusal. The party purchasing will have a period of 90 days to complete the purchase. Thereafter, either party is free to sell shares to third parties. Any issuance of new shares to third parties must be agreed in writing by both DC and GL."

191. Mr Connolly says this is the contractually prescribed mechanism to bring the relationship to an end. He says that the proposed implied term would enable a party to terminate on reasonable notice *without* first affording any pre-emption right to the other party as required by clause 6 and that this entirely undermines the express agreement and is inconsistent with the pre-emption rights which the parties have granted to each other.

192. Mr Lane argues that the pre-emption rights do not provide an exit mechanism in many scenarios such as where there is no market for the shares because the business has been mismanaged by the other party. He says that even if an investor could be found, the price they would be willing to pay to purchase a minority shareholding in a company such as Mezen, with its significant corporate governance issues and potential liabilities, would be so low that it wouldn't offer any practicable route to exit the relationship for Mr Lane. He argues that Mr Connolly is effectively incentivised to run down the business so he can buy it at a knock down price if Mr Lane wishes to exit. On the other hand it is argued that if the suggested term is implied, there would be the option to sell the hotel and business as a going concern and Mr Connolly could still bid for it. The implied term, it is said, would create another exit mechanism not totally controlled by Mr Connolly and his behaviour. This argument focussed on Mezen only and not on Pointsetter, as owner of the hotel.

193. Irish law permits the implications of terms in limited circumstances only. First in circumstances generally described as the "officious bystander" test where the term can be inferred on the basis of the presumed intention of the parties – being a term so obvious that it goes without saying and where that is no need to express it. Irish law also recognises the "business efficacy" test – again based on the presumed intention of the parties and being a term necessary to give commercial or business efficacy to their agreement. In reality, both tests are generally treated as being, in substance, one test, although the Court of Appeal in *Flynn v Breccia* [2017] IECA 74 left open the possibility that the tests are true alternatives and do not represent cumulative conditions. Second, a term can be implied deriving from the nature of the contract itself.[117]

194. As noted by O'Donnell J (as he then was) in *Law Society of Ireland v Motors Insurers' Bureau of Ireland* [2017] IESC 31: "*Whether a term is implied pursuant to the presumed intention of the parties or as a legal incident of a definable category of contract it must be not merely reasonable but also necessary. Clearly it cannot be implied if it is inconsistent with the express wording of the contract and furthermore it may be difficult to infer a term where it cannot be formulated with reasonable precision*".

[117] See Murphy J in *Sweeney v Duggan* [1997] 2 IR 531

195. In my view the suggested implied term is on its face inconsistent with clause 6. Indeed, although Mr Lane did not accept that inconsistency, he acknowledged in fact the inconsistency in his evidence by agreeing that the term would mean that he could end the relationship without giving Mr Connolly a right of first refusal. I also do not believe that the term arises pursuant to the presumed intention of the parties as necessary to give business efficacy to the Shareholder Agreement nor as a term so obvious that it goes without saying. Mr Lane in his evidence confirmed that the implied term now sought was never discussed, referred to or acted upon by either party since 2013. All of this leads me to the conclusion that it is not a term that should be implied into the Shareholder Agreement. A term cannot be implied merely because it would be fair or improve the bargain made between the parties.

196. It was suggested that the court might amend the implied term to make it "subject to clause 6" so that any possible inconsistency could be avoided. This would require the court to become involved in a level of post-facto drafting that in my view is not appropriate or permissible.

Increased equity share claim

197. It is agreed that the starting point in terms of equity shares was 49% for Mr Lane and 51% for Mr Connolly for Tinakilly and 51% for Mr Lane and 49% for Mr Connolly in respect of Monasterio. Mr Connolly says that is how the respective interests always remained and that the court should not order otherwise.

198. Mr Lane seeks to increase his percentage shareholdings on the basis of his alleged capital contributions which were not matched by Mr Connolly. Reliance is placed by Mr Lane in that regard on clause 5 of the Shareholders Agreement. The precise figures moved around as new financial information was received by Mr Lane but the most recent claim as articulated in the Third Amended Statement of Claim delivered on 2 December 2025 was a contention by Mr Lane that his equity holding should be increased to 67.88% in Tinakilly (Pointsetter and Mezen) and 54.6% in Monasterio – with Mr Connolly's share in both reducing accordingly.

199. Mr Lane spent monies refurbishing Room 66 in Tinakilly (estimated by him at "*over €100,000*"[118]) and Room 17 in Monasterio. However no financial claim is made by him for those refurbishments. The evidence (agreed by the respective financial experts in terms of quantum but not classification) was that 3 other types of (unmatched) payments were made by Lane in respect of both Tinakilly and Monasterio as follows:

<u>The Garden</u>

(1) US$680,086.07 and €13,998.75 was provided by Mr Lane for works to restore and renovate the gardens at Tinakilly.

(2) US$117,328.78 was provided by Mr Lane for works to restore and renovate the gardens at Monasterio.

No claim is made by Mr Lane in respect of these categories of payments.

<u>Loans</u>

(1) €277,941.45 was advanced by Mr Lane as loans to Mezen for Tinakilly

(2) €760,000 was advanced as loans in respect of Monasterio.

No claim is made to an increased equity contribution by reason of those loans. The loans are however claimed as being monies repayable with interest to Mr Lane.

[118] Day 2 page 30 line 11

Alleged Capital Payments

(1) Payments totalling €595,908.08 and US$17,487.01 (alleged by Mr Lane to be capital payments) were claimed to have been made by Mr Lane between August 2013 and January 2019 in connection with the Tinakilly business. Most payments were made to Mezen but some were made directly to other third parties.

(2) Payments totalling €134,800 (alleged by Mr Lane to be capital payments) were made in relation to Monasterio.

200. It is the category of alleged capital payments that gives rise to Mr Lane's claim for an increased equity share under clause 5 of the Shareholder Agreement.

201. Mr Connolly had also claimed in para 29A of the Third Amended Defence and Counterclaim dated 9 December 2025 that he made unmatched payments entitling him to an increased share – although that claim was not advanced at the hearing. The evidence was that Mr Connolly spent €125,782.15 on the refurbishment of Cúl an Tí. Mr Connolly pleaded that if Mr Lane is deemed to have made capital contributions then Mr Connolly's expenditure on Cúl an Tí must also be deemed to be a capital contribution which would require to be reflected in any re-balancing of the equity.

202. I do not agree with Mr Connolly for the following reasons. Cúl an Tí is a residential property owned by Pointsetter. It is not however part of the Tinakilly business and sits outside of the lease between Pointsetter and Mezen. The property is used as a residence for Mr Connolly and his family. Any expenditure on Cúl an Tí was for the benefit of Mr Connolly and not the business of Tinakilly. More relevantly however, the monies expended by Mr Connolly on repairs to Cúl an Tí were not capital contributions. Evidence was given that Mr Lane emailed Mr Connolly on 30 November 2017 when he was told of the expenditure and Mr Lane confirmed that he had "*…no objection to [Mr Connolly] charging the company for necessary repairs to the house, which I think is fair*".

203. In those circumstances I am satisfied that there is in fact no evidence of any unmatched capital contributions made by Mr Connolly to the business of Tinakilly or Monasterio such as might potentially trigger clause 5 of the Shareholder Agreement. This point was sensibly dropped by Mr Connolly at the trial.

204. The only question for the court on the equity contribution aspect therefore is whether some or all of the payments made by Mr Lane as alleged capital contributions give rise to an entitlement to an increased equity contribution for him pursuant to clause 5 of the Shareholder Agreement.

205. The payments claimed as capital contributions to Tinakilly comprise 18 payments made on dates between August 2013 and January 2019. Of those payments, two payments were made in 2013 amounting to €100,000. Thirteen payments were made in 2014 amounting to €386,884.48. Two payments were made in 2015 amounting to €100,000 and the final single payment was made in January 2019 in the amount of €9017.60. The total of such payments amounts to €595,902.08.[119] Further alleged capital contributions in the amount of US$17,487.01 were made – comprising a payment of $1,505 in 2013; $6703.44 in 2016; $3,200 in 2019 and $6078.57 in 2020. While Mr Lane made many of these payments, others were made by companies or individuals on his behalf.

206. Mr Lane was asked on cross-examination why he was now saying these payments were capital contributions when the accounting records created at the time showed them as loans to Mezen. His response was: "*Well, they were never covered by any loan accounts and in the Shareholders', in Clause 5, it was clearly understood that they were capital contributions*".[120]

207. This answer in its vague terms was not particularly helpful to the court. Certainly the evidence confirms that these monies were in fact advanced and were not formally

[119] This figure differs slightly from the total claimed in the plaintiffs' schedule of €595,908.08.
[120] Day 3 page 35 lines 13-15

documented as loans (as certain other payments had been). They were not formally documented as capital contributions either. They were actually accounted for by Mezen's auditors as a liability due to "other creditors" – consistent with their treatment as a loan to Mezen. Mr Lane's response in evidence was that: "*All accounts from Noone Casey are totally unreliable and full of false information. I would rely on Clause 5 of the Shareholders' Agreement to show that clearly these were capital contributions and not loans. That loan of 680,000 for Monasterio was in fact covered by a loan agreements. Where are the loan agreements for all of these here? There is none*".[121]

208. Evidence was given of a specific email request to Mr Lane from Colin Hatt on 1 August 2013 in which he sought payment from Mr Lane of €50,000 as "*[t]he capex 50K is now urgently needed*". That sum was provided by Mr Lane on 6 August 2013. When put to Mr Connolly that this was not a request for a loan but rather for capital expenditure Mr Connolly replied "*[w]ell, the loan would be provided to allow for capital expenditure*".[122] He agreed however that it was not stated to be a loan. It is clear from the evidence that in many cases Mr Lane expressly documented payments he made as loans. It is where other payments were made for capital expenditure that he relies on clause 5.

209. The evidence confirms that the capital contributions made by Mr Lane were recorded in the books of Mezen as shareholder funds right up until June 2021 when the funds were described as "Mezen director's loan, Gerry's input to Mezen". The parties were not agreed as to whether shareholder funds were loans or capital contributions to the company. Mr Connolly says shareholder funds cannot be converted into equity – rather they should be repaid as a loan from the paying party.

[121] Day 3 page 29/30
[122] Day 8 page 22 line 24-25

210. In an email on 10 July 2017 from Mr Lane to Mr Connolly, Mr Lane stated "*[t]his might also be a good time to square up shareholders' funds in Tinakilly*". It was put to Mr Connolly that he must have understood this to mean that Mr Lane was making significant capital contributions to Tinakilly and into Mezen which had not been matched by Mr Connolly. Mr Connolly disagreed.

211. In response to a question as to whether Mr Lane discussed increasing his shareholding as a result of requests for money by Mr Connolly, Mr Lane replied: "*Well, I think it was understood, right, when he's asking me for additional capital contribution, particularly during Covid, for example. I think it's understood in that request, I know the Judge will decide that but it seemed to me that it's clearly understood if he's asking me for more capital contributions it's understood that that's going to increase my equity"*.[123] He later said "*I don't recall any specific conversation to that effect*".[124]

212. Mr Connolly accepted that there had been several requests made to Mr Lane for money to allow creditors to be paid and to complete essential works.[125]

213. Mr Connolly says that the wording of clause 5 of the Shareholder Agreement is based on an agreement – a right to participate rather than a unilateral decision by one party to increase their shareholding. It was Mr Connolly's evidence in relation to clause 5 of the Shareholder Agreement that the parties "*never anticipated or discussed the potential variation of shares between us*".[126] He stressed the importance of his 51% interest which he described as "*obviously crucial*" and said "*I couldn't see a situation occurring whereby simply lending money to a company on a shareholder's loan account could entitle you in retrospect 12 years later to increase your equity in that company*".[127]

[123] Day 2 page 161 lines 3-10
[124] Day 2 page 161 lines 24-25
[125] Day 8 page 19 line 26 and page 20 line 5. For example, email from Anna Windsor to Mr Lane dated 1 February 2001.
[126] Day 6 page 130 lines 18-19
[127] Day 6 page 130 lines 21-25

214. For the reasons I later set out in the Analysis section of this judgment I reject Mr Lane's claim for an increased share of equity based on clause 5 of the Shareholder Agreement.

Analysis

Interpretation and application of the Shareholder Agreement

215. Both parties agree the arrangement they entered into is recorded in the Shareholder Agreement, insofar as Tinakilly is concerned.

216. I am satisfied that the Shareholder Agreement is properly to be interpreted subject to the implied term pleaded in paragraph 10.9 of the second amended statement of claim which pleads that:

"*Further, it was an implied term of the Shareholders' Agreement that neither party would unilaterally sell, transfer or encumber or cause Mezen or Pointsetter to sell, transfer or encumber any partnership assets.*"

217. In fact, it is clear from the provisions of clause 11 of the Shareholder Agreement that there was an express prohibition on either party imposing any charge/debenture against the business (and not just the SPV) unless by mutual consent. It is not therefore necessary for a term to be implied that neither party would unilaterally encumber or cause Mezen or Pointsetter to encumber any assets of the business. The implied term therefore really only concerns a prohibition on either party unilaterally selling or transferring any assets of the business. It seems to follow inexorably from the express prohibition on encumbrances that the parties also intended that they would each be precluded from unilaterally selling or transferring the business. Indeed Mr Lane's evidence reflected his understanding that "*one of the partners cannot sell the business without the full knowledge and consent of the other* *party*".[128] Mr Connolly also accepted in his evidence that he understood that Mr Lane could not sell Pointsetter or Tinakilly without Mr Connolly's consent and that Mr Connolly was not entitled to sell the business of Mezen without Mr Lane's consent. I am satisfied that this term should be implied by reference to the presumed intentions of the parties and because it would also clearly meet either the officious bystander test or the business efficacy test, particularly in light of the express prohibition on encumbrances. I therefore interpret the Shareholder Agreement subject to that implied term in relation to the business generally.

218. I decline however to interpret the Shareholder Agreement as being subject to the implied term pleaded by Mr Lane in his fourth amended statement of claim. My reasons for this decision are set out in some detail in paras 197-214 and do not need to be repeated here.

219. The next issue which arises is whether the Shareholder Agreement (as I have now interpreted it) also extends to the relationship of the parties in respect of Monasterio. Certainly it was Mr Lane's evidence that the Shareholder Agreement continued to govern the Monasterio transaction albeit that the companies involved were different companies and the overall level of shareholding between him and Mr Connolly was reversed from Tinakilly.

220. It was suggested by counsel for Mr Lane that Mr Connolly had also accepted in evidence that the Shareholder Agreement governed the Monasterio transaction. In that regard reliance was placed on Mr Connolly's evidence that it was clearly the intention of the parties to be shareholders in the Spanish companies although that wasn't formalised through the paperwork or documentation. When asked if the intention of the parties he was referring to is "*what we see in the Shareholders' Agreement, is that right*?", Mr Connolly replied "*[t]he Shareholders' Agreement , yes*".[129]

[128] Day 2 page 26 lines 24-26
[129] Day 7 page 54 line 4

221. The closing submissions on behalf of Mr Connolly did not really engage with this point. The written submissions merely stated that there "…*was no Shareholders Agreement in respect of NOL2 and MESL*" . In his oral closing submissions however counsel for Mr Connolly denied that Mr Connolly in the evidence quoted above accepted that the Shareholder Agreement governed the Monasterio transaction. I agree that this matter is not as clear an admission as was presented by Mr Lane.

222. While it is true that the Shareholder Agreement was never amended or updated to reflect the Monasterio transaction, I am satisfied on the evidence that the Shareholder Agreement was understood by all parties as applying to the Monasterio transaction. There were many instances of Mr Lane and Mr Connolly referring to both Monasterio and Tinakilly in the same breath, most readily depicted by Mr Connolly's reference to Monasterio as "*Tinakilly in the sun*". Mr Connolly confirmed that the footer of Tinakilly emails referred to Monasterio as "*our sister hotel in Spain*". Mr Hatt confirmed that he had been brought over to Monasterio from Tinakilly to set up the operations side of it – showing a clear link between the two hotels and a sharing of staff expertise between them. The evidence showed that Mezen funds were used to purchase items for Monasterio refunded to Mr Hatt's credit card. Mezen funds were also used to cover the initial deposit for Monasterio. Conversely, Mr Lane was asked to refund his portion of Monasterio purchase monies to Mezen and part of the proceeds of sale of Monasterio were used to repay debts relating to Mezen activities.

223. In my view the failure of Mr Connolly to identify or articulate any other agreement between him and Mr Lane regarding Monasterio points strongly to the conclusion that the parties did in fact operate at the time on the basis that the Shareholder Agreement also extended to Monasterio. There were never any steps taken to prepare a new written document by either party, as they had done for Tinakilly. I believe this was because each understood that the existing Shareholder Agreement would govern Monasterio, subject to the oral agreement between them that the respective shareholdings be reversed (with Mr Lane holding 51% against Mr Connolly's 49%) and that the nominated Spanish companies be set up to act as the Prop Co/Op Co structure in the same way Pointsetter and Mezen did for Tinakilly.

224. I therefore find that the Shareholder Agreement governed the relationship between the parties in relation to Monasterio subject to the agreed different Prop Co and Op Co used for the transaction (being NOL and MESL respectively) and the agreed reversal of shareholding to reflect 51% for Mr Lane and 49% for Mr Connolly. This finding of course means that the provisions of the Shareholder Agreement otherwise applied to Monasterio including the pre-emption provisions in clause 6.

The legal status of the relationship between the parties

225. The next and indeed central issue to be determined is whether the relationship between Mr Lane and Mr Connolly is properly characterised as a partnership. If successful in his claim of partnership, Mr Lane seeks all necessary and appropriate orders to give effect to the dissolution of the partnership, including the appointment of receivers over the partnership assets and the taking of a full account of all partnership dealings. In the alternative to his claim of partnership, Mr Lane contends that the parties were engaged in a joint venture as regards the business and property of Tinakilly and Monasterio and that the same fiduciary duties as a partnership arise equally in that joint venture relationship.

226. Parties in a partnership have authority to bind each other in respect of matters entered into in the course of their partnership business. They must account to each other for the assets, business opportunities and income which belong to the partnership.

227. The range of fiduciary duties alleged by Mr Lane to arise in this business relationship, consequent on its being a partnership or joint venture comprising a relationship of trust and confidence, include in general terms:

- a duty to act honestly and in good faith;
- a duty to act in the best interests of the partnership;
- a duty to account for any profits of the partnership;
- a duty to provide full accounts and financial information and to make all partnership books available for inspection;
- a duty to avoid conflicts of interest.

228. A partnership agreement need not be in writing, and indeed may even arise inadvertently. The question as to whether there is a partnership between parties is an objective test. It therefore does not matter whether a party believed they were in a partnership or did not so believe. Ultimately the court decides on the evidence whether or not a partnership existed. As noted by *Lindley and Banks on Partnership*[130] in determining the existence of a partnership "*regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case*". Once a partnership exists, the relationship between the partners is governed by the terms of their agreement or, absent an agreement, on all or particular points, by the terms of the Partnership Act 1890 (the "**1890 Act**"). The onus of proving the existence of a partnership is on Mr Lane in this case as the party alleging it.

229. Section 1(1) of the 1890 Act defines a partnership as:
"*The relation which subsists between persons carrying on a business in common with a view of profit.*"

230. *Twomey on Partnership*, (2nd Edition, 2019, Bloomsbury) at chapter 2 considers the six separate requirements or pre-requisites to partnership based on the above definition (each element of which must be satisfied), while noting that all the relevant factors require to be weighed up in order to determine the true nature of the relationship. Those requirements are as follows:

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[130] 21st Ed, Sweet and Maxwell para 5-03

(1) A relation, (2) which subsists between persons, (3) carrying on (4) a business, (5) in common (6) with a view of profit.

231. Some of the requirements are self-explanatory and are not controversial in the present case. Taking each requirement in turn however, the following is clear:

(1) "A relation"

232. A partnership must be consensual and it is a contractual relationship. However a partnership does not require a written agreement and can be based entirely on an oral contract. The requirement that the relationship be consensual does not mean that the parties must intend to create a partnership *per se*, only that the relationship itself is based on consensus and agreement.

233. There is no suggestion that the parties did not voluntarily enter into their relationship or sign the MOU and Shareholder Agreement. The requirement of a consensual and contractual relationship is clearly satisfied on the facts of this case even if the parties differ on whether it constitutes a partnership and even if Mr Connolly did not intend to be in partnership with Mr Lane.

(2) "which subsists between persons"

234. This criteria is also clearly satisfied. Mr Connolly and Mr Lane are both separate persons who entered into the MOU and the Shareholder Agreement individually and who cooperated with each other in the running of the businesses.

(3) "carrying on"

235. This criteria is also satisfied. The evidence clearly shows that the business of both Tinakilly and Monasterio commenced and became fully operational. This pre-requisite does not require that all partners be active in the day to day operation of the business.

236. I do not accept the argument that neither Pointsetter nor NOL can properly be characterised as vehicles through which Mr Lane and Mr Connolly "carried on business" within the meaning of the 1890 Act because they were not trading companies but rather property holding companies. In fact, both companies were part of the Prop Co/Op Co structure that was agreed and they self-evidently were an integral and crucial component to the carrying on of the business, because they held the assets.

(4) "a business"

237. Section 45 of the 1890 Act defines the term "business" in a non-exclusive manner as "*including every, trade, occupation or professi*on". The commercial activities of both Tinakilly and Monasterio clearly constitute businesses for this purpose. Furthermore, as is stated by *Twomey* at para [2.50], parties still carry on business even where they have come together for a single venture.

(5) "in common"

238. This requirement is the one which goes to the heart of the question as to whether a partnership exists. It is noted by *Twomey* at para [2.68] that "*most cases of doubt about the existence of a partnership revolve around this issue*."

239. This requirement is a question of fact, to be decided by reference to the particular circumstances of each case. In para [2.70], *Twomey* expands upon this requirement: "*In general terms, parties will be acting in common when they have a community of interest in the business in question or in other words are co-owners of the business (as distinct from any property used by the business). A strong indicator of this co-ownership is the fact that they share profits of the business or that they jointly control or manage the business*."

240. An important factor in determining a community of interest in the business will be whether the parties are capable of being each other's agent for the purposes of that business.

The fact that the parties have authority on behalf of each other to undertake business is a strong indication that they are undertaking their business in common. As noted in the evidence and as referred to in para 84 of Mr Lane's witness statement, Mr Connolly concluded an option agreement in 2017 on behalf of himself and Mr Lane to purchase Monasterio in 2018. The consideration for the option was €100,000 which was provided from Mezen funds. A further example of the parties representing each other was the evidence regarding the attempt to buy San Roque Golf Club, where Mr Connolly put forward a proposal to buy based on the "*combined net worth*" of himself and Mr Lane.

241. Another aspect of acting in common is the extent to which the parties each have an input into the business. It is not necessary that both have the same level of operational control or the same level of entitlement to profit share.[131] Pure investment in common, without anything further, is unlikely to be sufficient to satisfy this criteria.

242. The evidence shows that right from the outset, Mr Lane and Mr Connolly undertook necessary tasks together (such as instructing solicitors and surveyors), on a joint basis. Throughout the years since acquisition, both Mr Lane and Mr Connolly acted together in multiple and varied ideas and decisions regarding the business of Tinakilly (and later, Monasterio) – ranging, for example, from investment decisions, staff uniforms, business plans, marketing, fixtures and fittings. They expressly agreed to consult each other on the incurring of future capital expenditure for the business – indicating a common interest between them regarding the development of the business into the future. Mr Connolly agreed in evidence that while he was responsible for the day to day running of the business, on significant strategic decisions in relation to the business, he and Mr Lane "*cooperated on those decisions*".[132] Mr Hatt accepted in his evidence that Mr Lane was always involved with

[131] See *Greenham v Gray* (1855) 4 ICLR 501
[132] Day 7 page 35 line 28

Mr Connolly in the "*important decisions*" but said his involvement in the day to day operations was "*very minuscule*".[133] Mr Hatt accepted that Mr Lane was regarded by him and the staff as a co-owner of Tinakilly. Mr Lane appears to have taken the lead on (and funded) the significant landscaping works in both Tinakilly and Monasterio, an important aspect of the business of both hotels.

243. The parties agreed in clause 11 of the Shareholder Agreement that "*any action by one party which may affect the interests of the other party must have prior agreement in writing*". Mr Connolly accepted in evidence that this restrained his freedom of action and that he couldn't do anything that might affect the interests of Mr Lane.[134]

244. I am satisfied that Mr Connolly and Mr Lane acted in common in relation to the businesses of Tinakilly and Monasterio.

(6) "with a view of profit"

245. The motivation of profit (even if a loss actually results) is central to a partnership relationship. Lord Lindley in *A Treatise on the Law of Partnership* (5th edn, 1888, Jersey City: L F.D. Linn & Co.) spoke of:

"*An agreement that something shall be attempted with a view to gain and that the gain shall be shared by the parties to the agreement is the grand characteristic of every partnership and is the leading feature of nearly every definition of the term*."

246. This "grand characteristic" of the partnership relationship is reflected in clause 8 of the Shareholder Agreement which expressly refers to "profit distributions" and provides that:

"*Dividends: dividends/profit distributions will be mutually agreed and determined by the cash flow needs of the business and available funds. Distribution shall be in accordance with equity percentages.*"

[133] Day 10 page 102 line 26
[134] Day 7 page 166 line 29

247. Section 2(3) of the 1890 Act provides that the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of the business, does not of itself make him a partner in the business.

248. The evidence clearly supports the proposition that Mr Lane and Mr Connolly intended to operate the business of Tinakilly (and later Monasterio) with a view to making a profit. Business plans were prepared with specific financial targets. Investments were made in multiple aspects of the business, such as the Tinakilly wedding marquee and the gardens, with a view to increasing the turnover from weddings, and ultimately the profit to be made from hosting them. Such investments also increased the capital value of the assets of the business of both Tinakilly and Monasterio. A profit includes an increase in the value of capital assets as well as the generation of trading profit. Both are present in this case.

249. Of course, a partnership does not exist in every case in which parties carry on a business with a view to profit. Certain relationships between persons which might otherwise satisfy the above criteria for partnership are excluded from constituting partnerships by s. 1(2)(a) of the 1890 Act which provides that the relationship between members of a company formed under the Companies Act 2014 (or its predecessors) is not a partnership within the meaning of the 1890 Act. Mr Connolly relies heavily on this provision. Mr Lane accepts that the relationship between shareholders does not, without more, constitute a partnership. He argues however that the evidence in this case demonstrates the existence of a partnership separate and distinct from the parties' relationship as (beneficial) shareholders of the various companies and says that s. 1(2)(a) does not preclude the partnership he contends exists in this case. In summary, the fact that there is a relationship as shareholders does not preclude the finding of a partnership if the evidence supports the existence of a partnership – but the relationship of shareholders *simpliciter* is not a partnership.

250. Mr Connolly says that what happened in reality was the incorporation of companies, the filing of corporate tax returns, the payment of corporation tax and the operation of the business through corporate structures. I accept that bona fide companies were formed and were operated and filed accounts. However, the evidence substantiates that simply looking at the activities of the companies themselves would not yield much information about what was happening in reality. No formal board meetings took place. No shareholder meetings were convened. No formal transfers of shares ever took place with the effect that in fact Mr Lane and Mr Connolly are not and never were registered shareholders together in any single company. Neither were they co-directors in any of the companies. No formal deeds of trust were ever put in place in respect of shareholdings. There was no evidence that any company resolutions were passed. Decisions about the business were not actually taken through company structures at all but rather by Mr Lane and Mr Connolly and/or other people instructed by one or other of them – generally on foot of emails or conversations. Monies were regularly requested informally by or on behalf of Mr Connolly and were often paid over to the companies or to Connolly related entities without being documented as to their nature or purpose. No dividends were ever declared or paid. Mr Connolly accepted on cross-examination that Mr Lane could not vote as a shareholder in Mezen, because he wasn't on the register, and the relationship between them could not actually be regulated through corporate governance mechanisms in Mezen or indeed in NOL or MESL.[135]

251. Mr Lane argues that because he and Mr Connolly are not, as a matter of law, co-shareholders in any of the relevant companies this in itself distinguishes this case from the usual case in which the putative partners are registered as the legal owners of shares but their relationship goes no further than that of co-shareholders. He also says that the voluntary interposition of a trust relationship as regards the various shareholdings in this case, as

[135] Day 7 page 52 line 8

reflected in the Shareholder Agreement, already imports fiduciary duties as between him and Mr Connolly.

252. Under the 1890 Act the partnership itself has no separate legal personality and the individual partners have unlimited personal liability. Partners under the 1890 Act can however use limited liability companies to conduct their business and it is not uncommon for a partnership to be structured via shareholdings in companies.

253. Mr. Connolly has been a director of a large number of companies during his career. As well as those companies relevant to these proceedings, Mr Connolly was formerly a director of six now inactive Irish companies and nine inactive UK companies, some which went into liquidation and some were dissolved. Mr Connolly is therefore someone well familiar with company structures and indeed someone who has, of his own admission, availed throughout his career of the benefits of separate corporate legal personalities.[136] Mr Lane of course was also familiar with corporate vehicles and both men had the benefit of the structure that was put in place.

254. In closing submissions the defendants accepted that in certain circumstances a partnership may use corporate vehicles. They argue that in such a case however the shares would have to be held on trust for the partnership and not the individuals personally. I was provided with no legal authority to support this proposition and indeed it does not appear to me to be correct, not least because one cannot hold shares on trust for an entity with no legal personality. Given the evidence and unusual circumstances in this case I find that the use of corporate entities is not *per se* inconsistent with the existence of a partnership between Mr Lane and Mr Connolly. The real question will be whether the relationship of Mr Lane and Mr Connolly was truly that of shareholders and no more, or whether, notwithstanding the use of corporate vehicles, the true nature of their relationship was one of partnership.

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[136] Day 7 page 20 line 1

255. It is necessary therefore to look at the remaining evidence to ascertain the true nature and substance of the relationship. I do so mindful of the provisions of s. 2 of the 1890 Act which sets out rules for determining the existence of a partnership including that:

(1) Property ownership does not of itself create a partnership even where the owners share the profits made by the use of the property;

(2) Sharing gross returns does not of itself create a partnership;

(3) The receipt of a debt by a person out of the accruing profits of a business does not make that person a partner in the business;

(4) The advance of money by way of loan does not make the lender a partner in the borrower's business even where the rate of interest varies with the profits of the business or the lender is otherwise entitled to receive a share of the profits arising from carrying on the business.

Partnership in the context of the Shareholder Agreement

256. Mr Connolly argues that the Shareholder Agreement is not called a "partnership agreement". That is correct but it ignores the opening recital to the agreement which refers expressly to the agreement as being for the purposes of a partnership between Mr Lane and Mr Connolly regarding Tinakilly.

257. Specifically, Mr Connolly argues that the following terms of the Shareholder Agreement are fundamentally inconsistent with the existence of a partnership:

(1) **Use of corporate vehicles**: I accept entirely that a shareholder is legally different to a partner. For the reasons set above however I do not accept that in this case the reference to corporate vehicles in the Shareholder Agreement, when considered in light of all the evidence in this case as to how those corporate vehicles actually operated and the rationale for them, means no partnership could arise between Mr Lane and Mr Connolly.

(2) **Unequal shareholdings**: I do not accept this point. The shares in a partnership are not required to be equal, although this is the default position under the 1890 Act. Partners can agree a different allocation by the express terms of s. 24(1) of the 1890 Act.

(3) **Casting vote**: A casting vote does not negate the existence of a partnership. Partners are free to agree to change the default position under s. 24(8) of the 1890 Act, and did so in this case.

(4) **Sale to third parties**: I accept that the Shareholder Agreement made provision for the sale to a third party by either party of part or all of their shares in the relevant companies subject of course to the pre-emption entitlement. Undoubtedly, if the sale of shares to third parties occurred this would bring any partnership between Mr Lane and Mr Connolly to an end. The parties' interests *qua partners* could only have been assigned in accordance with s. 31 of the 1890 Act. I do not believe however that the possibility of such a sale subject to pre-emption rights of itself negates the existence of a partnership in this case. No sale ever occurred.

(5) **Issuance of new shares**: The Shareholder Agreement made express provision for the issuance of new shares to third parties, but it required the consent of both Mr Connolly and Mr Lane before this could happen. I believe this provision simply reflects the fact that the parties used corporate vehicles to carry on their business and this is not of itself inconsistent with the existence of a partnership in this case. No new shares were ever in fact issued.

(6) **Third Party Directors**: I do not believe that the possibility of the appointment of third parties as directors of the corporate entities (requiring consent of both parties) impacts on whether there is a partnership.

(7) **Dividends**: It is suggested that because the dividends or profits would be distributed in accordance with the equity percentages, that is inconsistent with a partnership. I do

not agree. The purpose of this provision is to give effect to the agreement between the parties on their agreed share of profits or any later changed share if clause 5 was operative. It is argued that the distribution of dividends to a shareholder is not a partnership sharing of profits. However, the express reference in the Shareholder Agreement is to an agreement to share profits and this is on its face consistent with the existence of a partnership. No dividends were ever declared.

(8) **No reference to "partners"**: I think this point overlooks the express reference in the Shareholder Agreement to there being a partnership between the parties.

258. In summary, I do not accept that there is anything specifically in the Shareholder Agreement that is inconsistent with a partnership between Mr Lane and Mr Connolly. This case can clearly be distinguished, for example, from the shareholder agreement that was considered by the Court of Appeal in *Breccia v Sheehan* [2017] IECA 74 which included an express "no partnership" clause.

Applying partnership principles to the working relationship between the parties

259. I turn now to the matters which Mr Connolly says are instances which point in clear terms to the absence of partnership indicia. In that regard Mr Connolly emphasises, and indeed the evidence supports, that no partnership accounts were ever prepared. Furthermore no partnership tax returns were ever made nor was the partnership registered with the Revenue Commissioners (and no name was ever given to the partnership). Mr Connolly also says that neither he nor Mr Lane filed an annual tax return under the Revenue's self-assessment system or paid tax *qua* partner.

260. In response, Mr Lane says little weight should be given to the absence of partnership accounts or registration. Mr Connolly was responsible under the Shareholder Agreement to comply with all regulatory requirements, which he failed to do. He says Mr Connolly should not benefit from his own wrongdoing by relying on his own non-compliance. He says that if

Mr Connolly had prepared proper accounts for Mezen, they would have performed the function of partnership accounts.

261. It is also of course the case that Mr Lane never received any income from the partnership on which any tax would be payable. Had he done so and failed to declare it as partnership income this would be a point of some significance. The undisputed evidence is however that this did not arise.

262. The experts were not agreed on when there was a need to register a partnership for tax. Mr Wallace gave evidence that a partnership formed in Ireland has an obligation to register with the Revenue Commissioners "*at some point*".[137] In his experience the registration of a partnership for tax arises when that partnership believes it is going to receive income. His evidence was that there is "*no point registering the partnership if there's no income and there's no intention any income is going to come, there's no point registering because you're not going to be paying tax*".[138] He said that the person with responsibility to register a partnership for tax is a precedent partner who is someone who is tax resident in Ireland. Mr Lane confirmed in his evidence that he is not tax resident in Ireland. Mr Walsh's evidence was that *"...there's an obligation to notify and register with Revenue once you form a partnership. There is a requirement to have what's called a precedent partner. The Revenue would expect that to be the tax resident individual, but that's not a requirement. You would need to explain to the Revenue why it wasn't the tax resident individual*".[139] His understanding was that thereafter each individual would include the partnership income within their own income tax returns.

263. Overall these particular arguments weigh in favour of Mr Connolly's position but, in my view are outweighed by the overall assessment of the relationship as shown by the evidence.

[137] Day 6 page 37 line 13
[138] Day 6 page 38 lines 17-20
[139] Day 9 p 194 lines 6-12

264. While accepting that the test is an objective one, it is nevertheless the case that Mr Lane's evidence was that he always understood he was in partnership with Mr Connolly. This was his evidence right from the inception of the relationship until it's breakdown where he indicated he intended to become, in his words, and as noted by Mr Hatt, *"the partner from hell."* His evidence was supported by Mr Murphy who is the closest to an independent factual witness that was available to the court. Mr Connolly denied he ever viewed the relationship as a partnership, although I am of the view that his evidence on this point is simply not credible. I do not believe that the parties would have used the term "partnership" in both the MOU and the Shareholder Agreement unless there had in fact been some agreement on partnership in the discussions between them leading up to their signing these documents.

265. I therefore do not accept Mr Connolly's contention that the concept of partnership was something introduced retrospectively by Mr Lane when their relationship broke down.

266. The examples of the communications consistently used over an extended period provide contemporaneous evidence that right from the outset both in their communications with each other and with third parties, Mr Lane and Mr Connolly treated each other privately as being in partnership and held each other out publicly as partners.[140] Evidence was also given that Mr Connolly too described himself as being in partnership with Mr Lane. In various emails to Mr Lane directly Mr Connolly signed off as "partner".[141] He also, in an email dated 9 April 2021, expressed to Mr Lane the words "*Proud to have you as my partner*".[142] In an email dated 8 June 2020 to Jersey lawyers Collas Crill LLP Mr Connolly, in looking to regularise the shareholding in Pointsetter, stated that*: "Currently, as you know the entire [shareholding]*

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[140] For example, in addition to the numerous examples from Mr Lane, the court notes the email dated 16 October 2017 sent by Mr Connolly to Mr Rincon a Spanish lawyer advising on the purchase of Monasterio, in which Mr Connolly introduced Mr Lane as his business partner.

[141] For example, at page 543 of Booklet 35, Book of Documents in Plaintiffs Witness Statements, where Mr Connolly, then thinking of selling his interest in Tinakilly, states that "I have always worked with our (Denis and Gerry) best interest at heart and enjoyed the amazing journey over the past six years….Your partner, Denis".

[142] Booklet 36, Book of Documents in Plaintiffs Witness Statements, page 653

is held by my partner, Gerry Lane….". I believe they in fact considered themselves to be partners. For example, in an email sent by Mr Connolly to Mr Lane dated 14 July 2019 Mr Connolly wrote that: "*I have always worked with our (Denis and Gerry) best interest at heart….*" Furthermore, the evidence is that primarily through Mr Connolly's ongoing efforts they sought out several other business opportunities together, eventually leading to the purchase of Monasterio. They also agreed not to make further hotel investments without inviting the other to participate. These examples are not consistent with an ordinary shareholder relationship. They reflect a unique personal relationship between Mr Lane and Mr Connolly in relation to Tinakilly and Monasterio extending far beyond the beneficial shareholding arrangement in the companies.

267. The MOU and Shareholder Agreement explicitly refer to the creation of a partnership between the two men. While that nomenclature is certainly not conclusive, I do place some reliance on it in the circumstances of two seasoned business people. Mr Connolly on entering these agreements was an experienced businessman with a personal knowledge of corporate structures and the benefits of limited liability. I find it implausible that he would have drafted and entered into the MOU and subsequently the Shareholder Agreement, which each contained an express acknowledgement of partnership, unless that accorded with his understanding at the time. Even if it did not so accord, the test to be applied is an objective one. I was not persuaded by Mr Connolly's evidence that he used this phrase on the basis that it was not intended by him to mean a legal partnership.

268. While the MOU was superseded from a legal perspective I am satisfied that I can consider it as important evidence of what was discussed and agreed between the parties at the point in time during which it was operative. The Shareholder Agreement reflects the same declaration of partnership as do numerous contemporaneous documents.

269. My impression of Mr Connolly was that he was very guarded in his evidence and at pains throughout to avoid making any concession about being in partnership with Mr Lane or accepting any of the indicia of a legal partnership. So for example, when asked if there was a relationship of trust and confidence between him and Mr Lane he replied: "*I know where this is going and I just want to be careful*".[143] He accepted that he did have a relationship of trust and confidence with Mr Lane.[144] However he entirely changed his position on that point in his evidence the following day.[145] I believe this change of position was tactical and untrue. There clearly was trust placed by the two men in each other, at certain points in time at least.

270. I find that the evidence supports the true nature of the relationship as one of trust and confidence – forged initially on the close friendship each had with Mr Murphy. Mr Lane says that the relationship he had with Mr Connolly was one of trust and confidence where Mr Connolly, correctly, understood that he could not do anything with the partnership assets unilaterally. The evidence of Mr Connolly's actions and communications in 2019 regarding the potential sale of Tinakilly clearly demonstrate that this was also understood by Mr Connolly.

271. The evidence also establishes that Mr Connolly was the person with hospitality experience and the person operating Tinakilly on a day to day basis. Mr Lane had extensive business experience, but no specific hospitality experience. He was living on the opposite side of the world. Indeed these facts were the very reason he had decided not to buy and operate Tinakilly himself. He relied on and reposed trust in Mr Connolly to run the business day to day and Mr Lane agreed to and indeed suggested that Mr Connolly have a 51% share of the business to ensure that Mr Connolly could have the casting vote to make those day to day decisions if he needed to. Mr Lane provided considerable funds for the business when requested to do so on foot of advice and recommendations by Mr Connolly about the business.

[143] Day 7 page 173 lines 17 -18
[144] Day 7 page 174 line 2
[145] Day 9 page 10 line 20

I accept Mr Lane's evidence that he reposed trust and confidence in Mr Connolly by virtue of their relative and respective positions. I also believe that Mr Connolly reposed trust and confidence in Mr Lane, at least in the early years of their relationship, despite Mr Connolly's assertions otherwise in his evidence. By way of example, Mr Connolly procured the advance of funds to cover Mr Lane's share of certain expenditure on the basis that he trusted Mr Lane to repay his share – which he did. Mr Connolly engaged with Mr Lane on strategic decisions for Tinakilly including capital improvements, operational matters, design decisions, financial budgets and business plans. The two men also agreed not to enter into any future opportunities in the hotel sector without inviting the other to participate.[146] They held each other's shareholdings "on trust" with no back-up documentation. In an email sent by Mr Connolly to Mr Lane on 27 October 2015 (related to queries raised by Mr Grainger) Mr Connolly stated that: "*Trust is well and truly gone between us. I have never in my entire life been treated in such a low suspicious way by anyone, let alone a business partner".* This is, on its face, an acceptance that up until that time, at least, Mr Connolly believed there was trust between the parties who were operating as business partners. These examples support a relationship of trust and confidence by both men in each other – and not just a shareholder relationship *simpliciter*.

272. I was not persuaded by the credibility of Mr Connolly's evidence to the effect that the email from Mr Lane dated 1 August 2023 made him feel "*very concerned*" for the first time because it placed an emphasis on the phrase "partnership" rather than simply "partner". The phrase "partnership" had been used in the MOU and the Shareholder Agreement from the very outset of the relationship. I believe his concern at that time arose not because of the mention of partnership but rather because of his appreciation of the fiduciary duties and other

[146] See para 79 Witness Statement of Gerard Lane

legal obligations and the remedies available to a partner under the 1890 Act, which Mr Connolly admitted in evidence he had researched around that time.[147]

273. For the first ten years of their relationship Mr Connolly did not take any steps (with third parties or otherwise) to correct Mr Lane's description of him (Mr Connolly) as Mr Lane's partner, either in relation to Tinakilly or Monasterio. Indeed Mr Connolly also himself used that term. It was not until the service of the notice of dissolution of partnership that Mr Connolly expressly denied there had ever been a partnership between him and Mr Lane and indeed that denial thereafter became Mr Connolly's main concern. This was also very evident in the manner in which he gave his evidence – constantly prefacing his answers with a narrative about there being no partnership and in effect advocating for his position rather than answering questions in a straightforward manner. It is my assessment that many of his answers to questions were affected by what he considered to be the legal consequences of his answers. This impacted his credibility and truthfulness as a witness.

274. The court is also entitled to take into account in assessing Mr Connolly's credibility his conduct in relation to the covert sale of Monasterio and the deliberately misleading representations he made to Mr Lane and his solicitors in relation to that.

275. Mr Connolly agreed that there was no documentation whatsoever where either he or Mr Lane had referred to the other as a shareholder. In contrast, there were many examples where Mr Lane described Mr Connolly as his partner both to Mr Connolly and to third parties and indeed, also instances where Mr Connolly so referred to Mr Lane. Mr Connolly's evidence however was that reference to partner related to being a co-shareholder. He said: "*I wouldn't be calling him my partner if he wasn't a shareholder in the company because we wouldn't have a relationship outside of that*".[148]

[147] Day 7 p 28 lines 6-7
[148] Day 7 page 45 lines 1-4

276. Of course the analysis of co-shareholders suffers from one fundamental difficulty which is that Mr Lane and Mr Connolly were not in fact co-shareholders in any single company. The evidence confirms that the various shareholdings were not transferred into the names of the respective parties so as to reflect their legal ownership of those shares. Thus Mr Lane is not the legal owner of any shares in Mezen, NOL or MESL and Mr Connolly is not the legal owner of any shares in Pointsetter (although a trust arrangement for Pointsetter was what Mr Connolly had specifically required in both the MOU and the Shareholder Agreement). The reality of this was that there was never a formal process of company resolutions or shareholder meetings for the purposes of making decisions. The formal corporate structures were simply not used (nor could they be on the facts here) to operate the business of either Tinakilly or Monasterio as between the parties.

277. I accept that the companies were bona fide and operational. They operated however in the context of an overarching personal relationship of trust and confidence and partnership between Mr Lane and Mr Connolly. I believe the real purpose and rationale for the companies was to secure the protection of limited liability for possible losses, to provide a favourable means of earning and distributing profits and, in Mr Connolly's case, to do so with minimum disclosure.

278. Another practical illustration of the reality of the relationship and how it was presented to third parties was the extent to which Mr Lane was personally approached to discharge certain bills by third parties who had dealings with Tinakilly. In para 66 of his witness statement he gave evidence that "*…between 2013 and 2015, often when I was staying at Tinakilly, I was approached by several local suppliers requesting payment for long overdue invoices. I would pay these directly when required*." This direct evidence was not challenged. Ms Roisin Lane Walker also gave evidence that she was approached by certain individuals from time to time looking to see if Mr Lane was around so that they could engage directly with him regarding invoices although I have otherwise discounted any hearsay element of that evidence beyond what Ms Lane Walker could testify was her own experience and knowledge.

279. I do not accept Mr Connolly's argument that the parties were commercial counterparties at arm's length and not parties in a relationship of special trust and confidence. In my view, the Shareholder Agreement was not simply an agreement that the parties would become shareholders in certain companies, but was rather an agreement designed to regulate their overall business relationship, introducing protections and obligations well beyond a normal shareholder relationship. It was an agreement which recognised that the parties were combining their capital, experience and skills towards the business. It was open to the parties, while agreeing to use corporate vehicles, to have an overarching agreement between them governing their relationship and I find that they had such an agreement on the totality of the evidence presented.

280. I am satisfied in all the circumstances that the true nature of the relationship between Mr Lane and Mr Connolly was undoubtedly one of trust and confidence and, in substance, one of partnership. That being so, the relationship attracts the rights and obligations afforded by the 1890 Act and is a relationship imbued with fiduciary duties owed by each to the other.

<u>Share Rights</u>

281. I find that the 1% holding of Mr Barry Connolly in Mezen, while not envisaged by the Shareholder Agreement, does not materially impact on Mr Lane's entitlement to his shareholding in Mezen. Mr Connolly retains sufficient shares to comply with his obligation to transfer the full legal ownership to Mr Lane of the shares Mr Lane is entitled to.

282. The holding of the Pointsetter shares by Mr Lane and Mrs Lane in joint tenancy with rights of survivorship is, in my view not in compliance with the Shareholder Agreement. In particular, if Mr Lane were to predecease Mrs Lane then Mr Connolly would find himself depending on Mrs Lane to continue to hold his shares in trust but he has no agreement with Mrs Lane to do so. This arrangement could therefore see Mr Connolly's shareholding adversely impacted although there might be arguments that the shares have already been impressed with a trust. Mr Connolly never agreed to go into any form of business relationship or partnership with Mrs Lane.

283. It is also argued that this joint tenancy arrangement is in direct conflict with the provisions of clause 6 of the Shareholders Agreement which gives Mr Connolly the right of first refusal in the event that Mr Lane was to transfer part or all of his shares.

284. I am satisfied on the evidence that Mr Lane did not seek to conceal this joint tenancy arrangement from Mr Connolly. However there is no credible evidence that Mr Lane ever discussed this proposed structure with Mr Connolly at the time of setting up the structure[149] or that Mr Connolly ever agreed to it at that time.

285. It was Mr and Mrs Lane who were responsible for the corporate compliance of Pointsetter and they cannot complain about Mr Connolly in relation to those issues. In order to comply with the Shareholder Agreement, the only shareholder in Pointsetter should be Mr Lane who should continue to hold shares on trust for Mr Connolly, as agreed, unless and until Mr Connolly wishes to become the registered owner of his shares.

286. The shareholding in Mezen should be amended to reflect Mr Lane's legal shareholding. Mr Barry Connolly should not be permitted to hold any shares in Mezen and should transfer those shares back to Mr Connolly for whom he holds them on trust.

287. Assuming those amended structures can be put in place, it does not seem to me that any damages should be payable by either party to the other for the manner in which the shareholdings have been held to date. No party has yet suffered a loss for that reason alone

[149] Day 3 page 13 line 19

and the shareholdings can be regularised to conform with the Shareholder Agreement as part of the overall resolution of matters.

<u>Increased equity share claim</u>

288. There are no formalities prescribed in clause 5. The clause simply states that capital contributions shall be funded by Mr Lane to the extent of 49% and by Mr Connolly to the extent of 51% and that "*[s]hould further funding become necessary in the future, each party has the right to participate or allow the other to increase his equity percentage.*"

289. Clause 5 refers to an increase in equity percentage in general terms. I do not accept that it is referable only to Mezen either on its terms as drafted or because it was only Mezen who received the monies that are the subject of the increased equity claim. Given that the business of Tinakilly was conducted through a combination of both Mezen and Pointsetter, any increase in equity percentage should apply equally to the shares in both. The same situation pertains for NOL and MESL regarding Monasterio's business.

290. Mr Lane says that he made capital contributions that were not matched by Mr Connolly – Mr Connolly thus did not participate in that funding and so Mr Lane's equity percentage should be increased. Mr Connolly says that this issue was never discussed between the parties when the various contributions were made by Mr Lane. Mr Lane relies on the lack of formality in clause 5 and says such discussion was not necessary and that there were no representations made that clause 5 would not apply. It appears from the evidence that the issue of clause 5 equity increase was never expressly addressed. Mr Lane simply made contributions he now says were capital contributions rather than loans and he has, after the fact, sought an increase in his equity holding based on those unmatched contributions.

291. Mr Connolly argues that the clause requires some discussion as it uses the word "*allow*". I do not accept that a party must consent to the other's increased share but it seems to me that the other party must be given notification and called upon to make their matching percentage contribution under clause 5. Only if they fail to do so should there then be a formal adjustment of the respective equity holdings. Otherwise there is the potential for constant movement in percentage holdings perhaps without the parties being fully aware of what capital contributions are being made by the other. I appreciate that in this case the monies were all contributed by Mr Lane – but clause 5 has to be interpreted not just for that scenario but also if, for example, there were different (unmatched) contributions being regularly made by each party.

292. Mr Lane never raised the issue of an increased equity contribution and indeed he did not include such a claim in these proceedings until the second amendment to his statement of claim in May 2025 (re-calculated in the third amended statement of claim in December 2025). This amendment was not advanced for almost a full year after proceedings issued. The evidence was that Mr Lane did not even have a copy of the Shareholder Agreement to hand until after these proceedings issued. I do not believe in those circumstances that Mr Lane actually operated at the time of making these payments on the assumption that his equity percentage in the partnership would be or had been increased under clause 5 due to the capital payments he had made – and I do not accept his evidence to the contrary. He continued to claim a 49% interest in Tinakilly (and a 51% interest in Monasterio) right up to the time of amending the pleadings, which was long after the payments had been made and after Mr Lane had sought to terminate his partnership with Mr Connolly. Furthermore he did not question the treatment of those monies in Mezen's accounts nor was the percentage allocation ever questioned by Mr Lane or Mr Grainger in those earlier years after the payments had been made, even when Mr Grainger expressly advised Mr Lane that Mr Connolly was not matching his contributions.

293. I am of the view for those reasons that Mr Lane is not now entitled to unilaterally invoke an additional equity share entitlement after he has terminated the relationship. I note the alternative plea by Mr Lane that if any of the monies paid were not capital contributions, they were loans in respect of which Mr Lane is entitled to be repaid with a commercial rate of interest.

294. There is no dispute that these monies were advanced by Mr Lane for the purpose of the business. I am conscious that the Shareholder Agreement does not refer at all to loans. Loans have however clearly been provided by Mr Lane and there is no dispute in relation to those which have been documented as such – with an acceptance that such loans, which are subject to agreed rates of interest, must be repaid to Mr Lane. I am satisfied that in the context of the dissolution of the partnership, Mr Lane is also entitled to be repaid the monies he provided which he has identified as capital contributions. The MOU, which did envisage the provision of loans for both trading and refurbishment purposes, stated that such loans should carry an interest rate of 6% and it is clear at that point that this was what the parties agreed. The MOU is no longer binding of course but it is evidence of an agreement reached at that time that there would be a commercial rate of interest accruing on monies advanced by way of loan. The Shareholder Agreement did not provide otherwise such as would evidence a change in that position – it is simply silent on the point. I find that the monies advanced by Mr Lane which he identifies as unmatched capital contributions are repayable to him subject to a reasonable market rate of interest accruing from the date the monies were provided. The court will fix that rate of interest if the parties cannot agree same.

<u>Provision of financial information</u>

295. The evidence confirms that there were never any accounts provided to Mr Lane in relation to Monasterio and indeed a very significant concealment of the financial transactions involving Monasterio. In relation to Tinakilly the evidence confirms that the last audited accounts for Mezen were for the year ended 30th June 2022. Mr Lane stopped receiving management reports for Tinakilly in March 2020. Companies Act breaches were noted by the experts in relation to the accounts.

296. Furthermore the experts agree that the accounts that were produced cannot be relied upon and that there has been a failure to make the required disclosures of related-party transactions in the accounts.

297. I am satisfied in the circumstances that there has been a breach by Mr Connolly of Clauses 9 and 13 of the Shareholder Agreement with regard to both Monasterio and Tinakilly.

Monasterio

298. While there are many issues in dispute in this case, Mr Connolly does not dispute that Mr Lane is the majority beneficial shareholder in the companies associated with Monasterio. Despite acknowledging this to be the case, the evidence confirms that Mr Connolly covertly caused Monasterio and its business to be sold to a third party purchaser without the knowledge or consent of Mr Lane. It was possible for Mr Connolly to do so in his capacity as the sole administrator and registered shareholder of both NOL and MESL. This action was taken at a time when Mr Lane had brought the present proceedings regarding his interest in Monasterio.

299. I am satisfied that the Shareholder Agreement should, for the reasons I have articulated, be read as subject to the implied term that Mr Connolly could not unilaterally sell the business or property of either Tinakilly or Monasterio. Mr Connolly's unilateral sale of Monasterio clearly and, on the evidence, deliberately, breached clause 11 of the Shareholder

Agreement. The sale of Monasterio by Mr Connolly would have been impermissible even if there had simply been a shareholder relationship in place.

300. The evidence shows that Mr Connolly made a number of payments to various related parties before he put NOL and MESL into liquidation. Mr Connolly alone chose who to pay – and it is true that some payments were made to Mr Lane. Having made all of the payments he wished to make, and without any notice to Mr Lane, Mr Connolly then put both NOL and MESL (as solvent companies) into liquidation. No clear rationale has been provided by Mr Connolly for doing so. Mr Walsh indicated in his evidence that there may be some tax reason but this was not an aspect on which he was giving expert evidence and so I do not rely on that. It was up to Mr Connolly to explain his actions regarding the liquidation process. The height of his explanation was "*…so that any funds or monies could be held in safe keeping, that, exactly what I wanted to do, the taxes to be paid, creditors to be paid down, whatever claim Mr. Lane has against the companies could be dealt with".*[150] The effect of the liquidation was to cause difficulties for Mr Lane by locking up the monies that are due to him from Monasterio, and leaving him to deal with the Spanish liquidator in circumstances where Mr Lane is not even on the share register.

301. The only party who decided to appoint the liquidator was Mr Connolly. In those circumstances I direct that the full costs of the liquidation must accordingly be borne by him from his share of the partnership proceeds.

Extant motions

302. There are two extant motions that need to be addressed here, both brought by Mr Lane. The first is a motion seeking to have Mr Connolly's Defence and Counterclaim struck out for

[150] Day 9 page 47 lines 12-16

failure to make discovery (the "**discovery strike out motion**") and the second relates to an alleged breach of the Mareva Order.

The Discovery Strike Out Motion

303. While maintaining the position that there was a failure by Mr Connolly to make proper discovery, ultimately Mr Lane did not proceed with the discovery strike out motion. It was argued however that the deficiency in discovery was evident even at the trial with the late introduction of the petty cash account introduced into evidence by Ms Windsor. There was an argument as to whether this document was within the scope of the discovery order made by Sanfey J on 1 December 2025. Mr Lane says it clearly fell within the scope of "… *any relevant documents by which management information is collated and utilised*". Mr Connolly disagreed saying this sentence in a ruling of Sanfey J was quoted out of context and that the petty cash document was not covered by the discovery ordered.

304. I do not need to determine this issue although I believe that in the absence of management accounts the petty cash document was a document likely to be relevant to the method by which management information was collated and utilised in the relevant period. Mr Connolly did not explain whether his assessment of the relevance of the document was made at the time he was due to make discovery or only when Ms Windsor came to deal with it in her evidence. Overall the approach to the discovery of this document was unsatisfactory. Ultimately Mr Lane did not proceed with the discovery strike out motion although he maintained his complaint regarding the adequacy of the discovery made. I do not believe any purpose would be served at this point in making a determination one way or the other on the discovery issue in the circumstances arising.

305. The second extant motion was Mr Lane's motion alleging a breach of the Mareva Order by Mr Connolly.

The Alleged Breach of the Mareva Order

306. On 13 February 2026, while this hearing was ongoing, Mezen's bank statements from 16 October 2025 to that date were provided to the plaintiffs. This information was the basis of the motion seeking various reliefs against Mr Connolly and Mezen arising from what Mr Lane alleged to be evidence of improper payments having been made, in breach of the Mareva Order, from monies which constituted the proceeds of sale of Monasterio.

307. Following further engagement between the experts it was agreed that of the €497,500 sent to Mezen from Monasterio (NOL and MESL) on 25 August 2025, €216,837 of that amount remained in the Mezen account as of 9th September 2025 when the Mareva Order was obtained. There was however no agreement as to whether the €497,000 represented the proceeds of sale of Monasterio or funds relating to the trading activities of MESL. Consequently there was also no agreement as to whether the balance in Mezen's account as at 9 September represents the proceeds of sale (in respect of which the Mareva Order applied). If they are sales proceeds there has been a breach of the Mareva Order as the amount of funds in the Mezen account clearly decreased after the Mareva Order was obtained. If they are not sales proceeds then the Mareva Order does not attach to them.

308. In his oral submissions to the court at the hearing of the Mareva application Mr Connolly indicated that all monies sent to Mezen by NOL and MESL between March and August 2025 (in the amount of €897,000) came from the sale of Monasterio. On 6 January 2026 Mr Connolly swore an affidavit identifying all payments "*which had been made from the proceeds of the sale of Monasterio and/or the business known as Finca Monasterio*". That affidavit referred to the August 2025 payments to Mezen – but the heading to the schedule refers both to sale proceeds and to trading payments so it is not as definitive as Mr Lane argues. It was only in his cross-examination at the trial that Mr Connolly suggested that the Mezen funds were not part of the Monasterio proceeds of sale.

309. It is clear that Mr Lane applied for the interim Mareva on the understanding that the monies transferred to Mezen came from the proceeds of sale of Monasterio. If Mr Connolly had suggested otherwise there is no doubt in my view that Mr Lane would have sought a different form of order to freeze the monies absolutely and not just as proceeds of sale.

310. Mr Lane did not bring a motion for attachment and committal against Mr Connolly – rather the relief sought was ultimately confined to an invitation to the court to make an order that Mr. Connolly repay €216,837, either into court or into a ring-fenced account.

311. The difficulty the court faced was that the experts were not in agreement as to whether any part of the funds in Mezen's account as at 9 September 2025 represents or could represent Monasterio proceeds of sale. Neither expert had given oral testimony to the Court on this point – the court was working from an informal document prepared during the course of the hearing which the experts sought to agree at very short notice. It was not possible in the circumstances for the court to determine which expert was correct in his analysis. On that basis and by agreement of the parties the motion was adjourned for a short period to enable the experts to further engage.

312. Ultimately following further engagement between the experts the parties agreed to adjourn the motion to the closing submissions.

313. At that point Mr Lane argued that based on the evidence there was a clear breach of the Mareva Order. Mr Lane acknowledged however that Mr Connolly had managed to bring about a situation where, although he swore to the fact that proceeds of sale were being transferred into the Mezen account, most of the monies did not constitute proceeds of sale. This, Mr Lane argued, did not however take away from the fact that Mr Connolly intended to breach the Mareva Order but simply didn't manage to breach it to the extent intended.

314. Generally the evidence on this matter was not clear. The experts managed to agree that there was probably a sum of €76,295 in the Mezen 018 account which could be said to represent proceeds of sale on the date the Mareva Order was obtained. While the balance on this single Mezen account was below that level during the trial I was advised in closing submissions that the balance taking both Mezen accounts together was in excess of that figure – although the actual balance was not available for the court. Of course it was only the Mezen 018 account that was covered by the Mareva Order so it is only that account that is relevant in my view. Mr Connolly said there was no risk of dissipation of funds. I do not agree however as the account in question is a trading account and so specific protection would be warranted.

315. I do not believe there is sufficiently clear evidence of a deliberate breach of the Mareva Order in this case by Mr Connolly although I am concerned that, for a period of time at least, the balance fell below what the experts now agree was the figure to which the Mareva Order attached. I am unimpressed by the manner in which Mr Connolly engaged with Sanfey J. regarding the characterisation of the account balance and the confusion that he caused regarding the true nature of those funds. I direct that the balance on the Mezen 018 bank account should not be reduced below €76,295 pending the conclusion of these proceedings. If additional monies are required to be lodged to that account to bring up the balance to that level then Mr Connolly should repay any additional amount necessary within 14 days of this judgment.

Validity of the notice of termination.

316. I need to consider if the partnership was validly terminated by the notice of termination served with effect from 7 June 2024. This was not a point that was disputed to any particular degree – rather it was disputed that the relationship was a partnership.

317. On 31 May 2024 Mr Lane's solicitors served a letter purporting to terminate the partnership with effect from 7 June 2024. The notice was served expressly in accordance with sections 26(1) and 32(c) of the 1890 Act. The notice contained no reference to the Shareholder Agreement. The evidence appears to confirm that Mr Lane did not have a copy of the Shareholder Agreement to hand at that time and so this likely explains the omission of any reference to it.

318. Mr Connolly's position is that the purported dissolution is of no legal effect as the parties never in fact became partners. He says that all the steps taken by Mr Lane after the notice have been unlawful including the institution of these proceedings.

319. Section 26 (1) of the 1890 Act provides that: "*Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners*."

320. Section 32(c) of the 1890 Act provides that: "*Subject to any agreement between the partners, a partnership is dissolved .... (c) If entered into for an undefined time, by the partner giving notice to the other or others of his intention to dissolve the partnership*"

321. No grounds are required for termination under these provisions. The default position under the 1890 Act was not amended or otherwise agreed in this case.

322. Upon the dissolution of the partnership, a statutory lien in respect of the partnership property arises under s. 39 of the 1890 Act and the right to demand a sale of the partnership assets to the best bidder arises. As noted by the court in *Meagher v Meagher* [1961] IR 96 at page 109, only if the assets cannot be sold on the open market will a valuation be made.

323. I find that the partnership between Mr Lane and Mr Connolly was a partnership at will and was validly terminated by Mr Lane by the notice served with effect from 7 June 2024.

324. As *Twomey* notes at para [26.65]: "*…the value of a partner's share of the partnership assets is the value of those assets on dissolution, but as a general rule, this is to be taken as the price realised on the sale of the assets, whenever that may be, unless there is a plausible case that the value at dissolution varied appreciably from that realised by sale*."

Payment of legal fees by Mezen

325. Mr Connolly says that the payment of legal fees by Mezen was appropriate. Mezen was joined as a party to the proceedings and needed to defend its position. It was appropriate that it use its own funds to do so. Mr Connolly could not as a matter of law represent Mezen. For a period of time Mr Connolly was self-represented. Mr Connolly referred to what he described as the inequality of arms between him and Mr Lane. The evidence seems to confirm that the vast bulk of legal fees in this case were paid by Mezen and I did not receive a clear account of how much of those fees were properly for the account of Mr Connolly.

326. As *Twomey* notes at para [20.09] the more usual action in a dispute between partners is for a partner to sue his co-partners rather than the firm. However I accept in the present case that Mezen and indeed Pointsetter were joined as parties to the proceedings by the amended statement of claim in December 2024. Neither could, as a corporate entity, legally represent itself.

327. The stated reason for the joinder of Mezen and Pointsetter was "*…to ensure that all questions regarding ownership of the shareholdings in those companies can be resolved in these proceedings, and to ensure that any Orders made in that respect will effectually bind those companie*s". It was expressly stated in the amended statement of claim that "*[i]t is not anticipated that Mezen or Pointsetter will play an active role in the proceedings*".

328. Pointsetter took no active part in the proceedings. However, Mr Connolly and Mezen appear to have jointly instructed the same solicitors. The court was not furnished with letters of engagement or details of the apportionment of legal costs between Mr Connolly and Mezen.

329. If this was a minority oppression claim or a shareholders' dispute, the company funds could not be used to fund the defence of the person in control of the company in question.

Mr Lane argues that essentially this is what has happened in this case with Mezen's funds being used to pay Mr Connolly's own legal costs.

330. It is argued that Mezen could have adopted a role similar to Pointsetter – effectively requiring little or no legal fees to be incurred by it. However I accept that there was some difference between the position of the two companies including that Mezen was the operating company and had much more documentation of relevance to the proceedings. Furthermore Mezen was at a later stage alleged to be involved in a conspiracy with Mr Connolly. A company joined to proceedings would usually secure legal representation separate from the controlling party who is the main defendant in the proceedings. Regrettably this did not happen in the present case. Separate representation would have avoided any confusion as to what legal costs Mezen was paying on its own behalf.

331. Mr Connolly is responsible for his own legal costs and will have to account for any costs paid on his behalf by Mezen. It will therefore be necessary for the legal costs which have been paid to be apportioned as between those which correctly relate to Mr Connolly and those which correctly relate to Mezen.

The taking of an account

332. By the end of the trial the primary relief sought by Mr Lane was for an order that an equitable account be taken. It was argued that this would enable the court to assess the measure of damages or equitable compensation payable to the plaintiffs. Mr Connolly objected to that remedy arguing that it was unnecessary and that it would unduly prolong matters and would be used as an instrument of oppression by Mr Lane. He also said this remedy was not available in the circumstances of this case. He confirmed that he had made an open offer during the trial to end the relationship by the exercise of the pre-emption rights in clause 6 of the Shareholder Agreement following the appointment of a valuer to assess the value of the shareholdings in Mezen and Pointsetter. He said that the offer envisaged the open market sale of relevant assets if agreement could not be reached on a purchase by him of the shares and it also envisaged the appointment of an independent accountant as expert to settle the sums due to each party with each party to bear their own costs. Mr Lane was not agreeable to this proposal. In his view the ending of the partnership goes well beyond simply valuing the shareholdings in Mezen and Pointsetter on the basis of the assets and liabilities currently held.

333. It is well established that a court can order an equitable account to be taken in aid of common law rights, for example in instances of fiduciary or quasi-fiduciary relationships or on the dissolution of partnership. There is also authority for the taking of an account where accounts are otherwise too complicated to settle at common law.[151] For each of these reasons or indeed a combination of them, I am satisfied that the court should now make such an order in this case.

334. Furthermore, the right to have an account of a partnership's dealings and transactions is enshrined in s. 28 of the 1890 Act which provides that "[*p]artners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives*". As *Twomey* notes at para [20.24], where the partnership is in dissolution, an action for account will be granted almost as a matter of course.

335. Overall, the evidence confirms that there was a high degree of informality in the manner in which the parties engaged with each other. From time to time payments were made by one on behalf of the other and later reimbursed, or not. Monies were often requested informally by Mr Connolly and were paid over to various parties often without being documented as to their nature or purpose.

[151] See Meagher, Gummow and Lehane's *Equity Doctrines and Remedies* (5th edn, Butterworths 2015) para 26-070

336. There was also a high degree of informality as to the manner in which personal payments of Mr Connolly were funded through the Mezen director's loan account and the manner in which funds were intermingled and/or transferred between Mezen and NOL and MESL and indeed between Mezen and other companies related to Mr Connolly.[152]

337. There is no loan documentation supporting any of the loans that Mr Connolly suggested were in place between Mezen and other companies related to Mr Connolly and the accounts of those companies do not describe those monies as loans by them. Mr Connolly's director loan account in Mezen had an unusually high level of transactions relating to personal, family and related-party expenditure with personal and business costs mixed and in some cases incorrectly classified or recorded. The experts found repeated instances of transactions involving separate corporate entities such as Caspian, Provenance and Cassidys appearing in Mr Connolly's director loan account. Mr Wallace was clear in his evidence that this was not a proper operation of a director's loan account.[153] I also believe the matters identified by Ms Windsor warrant further investigation and it is a further factor that persuades me to direct an account be taken regarding the affairs of Mezen.

338. I agree with the observations of Mr Wallace in his evidence that there is a "*co-mingling of everything… the swapping of individuals for corporate entities. It is just everywhere….*"[154] It would be neither mathematically nor legally correct in my view for the court to make any determination at this point on the actual sums due as between the parties on the dissolution of the partnership. Incomplete or no meaningful evidence is available at this point to the court, for example, on the amount of interest payable on loans, on the various tax liabilities likely to be due, on the net funds which will be available for distribution in the

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[152] Mr Wallace said in his evidence on Day 6 page 64 lines 13-18: "…it goes to the heart of issues in this case is the washing around of money at just a whim. It's like confetti at a wedding. Just moving money around from one company to the next without any real rationale as to why that money is moving. We have a bill here, let's throw money at it."
[153] Day 5 page 131 line 11
[154] Day 6 page 84 lines14-16

liquidation of Monasterio or on the series of disbursements made by Mr Lane in connection with that sale or in relation to his own legal costs. Neither are there any Mezen audited accounts available from 2023 to date or any management accounts since 2020. There are recurring themes (backed up in the evidence) of both conflation and concealment of interests by Mr Connolly. The experts were clear that their evidence represented a snap-shot in time only. The timing and outcome of this snap-shot was heavily influenced by the use of Monasterio sales proceeds to shore up the financial transactions in Mezen. There will be no prospect of any resolution of these complex financial issues or restoration of confidence in the finances until these queries are satisfactorily addressed.

339. At this point it is my view that the manner in which the businesses of Tinakilly and Monasterio have been run from a financial perspective has been so casual and haphazard that it requires a proper account to be taken by a suitably qualified and independent party who must have full access to the books and records of Mezen and the power to engage directly with the Spanish liquidator as necessary. In my view that account should particularly focus on the period from 1 January 2020 to date. Prior to that date managements accounts were being prepared and the parties were cooperating together in the business. Since 1 January 2020 however, there has been a marked change in the business, including the changes arising from Covid 19 restrictions; the cessation of management accounts and audited accounts; the breakdown in the relationship; the unilateral sale of Monasterio and the evidence of significant cash payments being made in that period. The account will obviously build on the work carried out by the experts and the discovery already made in these proceedings and it will provide a more detailed analysis over a longer period of time.

340. At the conclusion of that exercise and with the benefit of its findings the court will be in a position to make further orders as necessary. The process of account should reflect the determinations reached on the various aspects of this dispute as set out in this judgment and as summarised in the conclusions sections below. I am not at this point proposing to make any further orders regarding the appointment of a receiver and/or manager or in relation to the sale of partnership assets or the winding up of the partnership or for damages (including in respect of any conspiracy claim).

341. If anything can be learned from this case it is the importance of taking legal advice at the outset of a business venture and properly documenting the arrangements to apply. Disputes of this nature are always regrettable and particularly so in the present case where there is a thriving underlying business employing staff and contributing to the local economy. I do not however accept Mr Connolly's submission that this case is being pursued out of a desire to punish and to overwhelm Mr Connolly rather than for a legitimate commercial purpose. Mr Connolly's actions and inactions have primarily brought about this litigation and the trust issues which have to date prevented it being resolved amicably.

342. Counsel for Mr Connolly urged the court to treat this case in straightforward terms as being one about money in/money out. He says that Mr Lane's case substantially changed over the course of the proceedings and trial and that after all the evidence there is in fact no missing money as Mr Lane originally argued at the start of the case. It is said that Mr Connolly has in fact accounted for all monies in the relevant accounts – the only real issue relates to misclassification, rather than the overall net asset position.

343. I do not agree that this case can be viewed in this simplistic way – although it may of course emerge that the financial differences between the parties are not as significant in quantum as Mr Lane believes. That will be what the taking of the account in this partnership action will determine.

Conclusions and Orders to be made

344. I find that the true nature of the relationship between Mr Lane and Mr Connolly regarding the businesses of Tinakilly and Monasterio was as partners. Their relationship is accordingly governed by the provisions of the 1890 Act. The Shareholder Agreement was intended to and did in fact cover both businesses.

345. I reject Mr Lane's claim for an increased equity share in the partnership. Accordingly, Mr Lane is entitled to his originally agreed share of 49% in Tinakilly and 51% in Monasterio and Mr Connolly is entitled to the corresponding percentage of 51% in Tinakilly and 49% in Monasterio.

346. Mr Connolly is responsible for the liquidation costs arising in relation to Monasterio and same should be borne from his share of the distribution of proceeds. Any shortfall should be borne from his share in relation to Tinakilly.

347. Mr Connolly must repay to Mezen the amount of legal costs incurred by Mezen on his behalf in these proceedings. Mezen's own legal costs are properly a matter for Mezen to discharge on its own behalf. The solicitors who acted on behalf of both Mezen and Mr Connolly should provide a breakdown of the total costs paid indicating those for the account of Mezen and those for the account of Mr Connolly. The costs should be adjudicated in the event that no agreement can be reached as to the relevant apportionment.

348. I find that the notice served by Mr Lane on 31 May 2024 was an operative notice of termination of the partnership at will between him and Mr Connolly. Accordingly, the partnership was terminated with effect from 7 June 2024.

349. I direct the taking of an account in relation to the business of both Tinakilly and Monasterio to address the financial standing of Mr Connolly and Mr Lane as partners *inter se*; the financial standing between them and third parties (including all Connolly related-entities) and that account be taken of advances made by each of them to the businesses. The purpose of the account is to seek any necessary rebalancing of the financial position as between the partners. The account should extend to the date on which matters are finally resolved as between Mr Lane and Mr Connolly. While ordinarily I accept a partnership account would be taken from the commencement of the partnership, in the present case and based on the evidence and the work carried out by the experts to date, I believe that an account from 1 January 2020 would likely be sufficient to properly compute the respective financial obligations of Mr Lane and Mr Connolly to each other. If enquiry is required for an earlier period however that is permissible and I will hear the parties on that matter as well as how, practically, the taking of an account can be advanced in this case.

350. I reserve the question of the costs of taking the account until the conclusion of that exercise, and having regard to how it is conducted and the levels of co-operation achieved.

351. I will make no further order or direction pending the outcome of the account. The parties will have an opportunity to address the Court on the outcome of the account and what further reliefs should be granted at that stage, including in relation to costs.

352. To comply with the existing Mareva Order, I direct that Mr Connolly must ensure that the balance on the Mezen 018 bank account is not reduced below €76,295 pending the conclusion of these proceedings. If additional monies are required to be lodged to that account to bring up the balance to that level, Mr Connolly should repay any additional amount necessary to achieve that balance within 14 days.

353. I will list this matter for mention before me on **Tuesday 14 July at 10am** and at that time will expect the parties to address me on the practical issues arising from this judgment and on any further directions they require to comply with the court's judgment or to otherwise advance resolution between the parties.

Eileen Roberts