THE HIGH COURT

[2026] IEHC 524
[Record No. 2026/ 1116 H.P.]

BETWEEN

KAIFAN LIMITED

PLAINTIFF

AND

THOMAS KEARNEY AND PERSONS UNKNOWN IN OCCUPATION OF THE CAR PARK AT 363 BALLYFERMOT ROAD, BALLYFERMOT, DUBLIN 10

DEFENDANTS

JUDGMENT of Mr Justice Liam Kennedy delivered on 27 July 2026.

1. The plaintiff seeks an interlocutory injunction pending trial, requiring the Defendant to vacate premises ("the Carpark") which are the subject of these proceedings and defined more particularly therein, essentially a large yard attached to a building at 363 Ballyfermot Road ("the Property"). I am not now finally determining the merits of the claim or defences; issues of fact and law may require determination at trial, following exchange of pleadings, discovery, cross examination and full legal argument. This ruling does not affect either party's rights in that regard. It is directed at determining the fairest arrangements pending trial, applying well established authorities. The uncontroversial legal

principles outlined by the Supreme Court in *Merck Sharpe & Dohme v. Clonmel Healthcare Ltd* [2020] IR 1 *("Merck")* are common ground and do not require repetition. The plaintiff submitted, correctly in my view, that although the application was framed in terms of mandatory relief, the standard threshold test should apply. However, it was content to proceed under the higher threshold test. I accordingly do likewise, applying the *Maha Lingham v Health Service Executive* [2006] 17 ELR 137 *("Maha Lingham")* test.

2. The Plaintiff placed particular emphasis on:

a. *Keating & Co. Limited v. Jervis Shopping Centre Ltd*. [1997] 11.R. 512 in which Keane J. observed that a landowner, whose title is not in issue, *"is prima facie entitled to an injunction to restrain a trespass and that this is also the case where the claim is for an interlocutory injunction only".* However, Keane J added that that principle is subject to the qualification noted by Balcombe L.J. in *Patel v. W.H. Smith (Eziot) Limited and Another* [1987] 1 W.L.R. 853 at p.859: that the defendant may put in evidence *"to seek to establish that he has a right to do what would otherwise be a trespass",* in which event the Court must follow normal principles in relation to the grant or refusal of an interlocutory injunction.

b. *Charleton v Scriven* [2019] IESC 28, in which Clarke C.J. observed that on such interlocutory applications the court may have regard to whether there is a *"real case of any substance"* made by the Defendant. In the absence of such a real case, there will be *"a more than adequate basis for suggesting that a strong case has been made out."*

3. The Plaintiff is an Irish limited liability company; the Defendant, a businessman. The Plenary Summons essentially seeks vacant possession of the Carpark. The Plaintiff says that the Defendant stopped paying rent in 2020, failed to vacate following the expiration of the Term in 2023, ignored a notice to quit and broke back in after the Plaintiff

repossessed the Property. Furthermore, the Plaintiff has discovered that, contrary to the express terms of the Indenture of Lease, the Defendant has been deriving a substantial income for many years by allowing other parties to occupy and carry on business from the Carpark, contrary to the Lease terms. Cregan J's 10 March 2026 order recorded the Defendant's undertakings pending trial concerning the Carpark's use and occupancy, including provision for a modest (€480) weekly payment.

4. The Defendant denies the Plaintiff's allegations. He admits entering into the Lease and associated documents on which the Plaintiff relies ("the Agreements") but asserts literacy and related issues (without adducing expert evidence) and says that the Agreements do not reflect arrangements actually agreed in 2018. Notwithstanding the Agreements' express terms, he contends that the parties agreed, inter alia, that he did not have to pay any rent on the Carpark and that he could sublicense it. He also maintains that his rights of renewal were preserved despite stipulations to the contrary in documents which he executed. He denies receiving independent legal advice and there is a dispute as to the role played by two individuals, one being a solicitor. Such issues would need to be determined at a plenary hearing.

5. Although the Defendant denies that these documents reflect the entire agreement, it is appropriate to start with the Agreements (all dated 1 October 2018 and apparently executed around that date) on which the Plaintiff relies. It is common ground that, along with the Lease, the parties simultaneously executed a Deed in which the Defendant renounced any rights under the Landlord and Tenant (Amendment) Act 1980 ("the 1980 Act") and three side letters in which; (i) the Plaintiff agreed to pay €40,000 in cash to the Defendant on the signing of the Lease (which duly occurred); (ii) the Defendant renounced any rights to a yard or laneways at the rear and side of the Property; (iii) The Defendant acknowledged the Plaintiff's right to terminate the Lease at any time after the third year of the term subject to a break fee in certain circumstances (which do not arise here). In the Lease itself the Plaintiff

leased the Carpark to the Defendant for four years and nine months (the Term), subject to covenants and conditions including payment of €25,000 annual rent. The Defendant effectively covenanted, *inter alia*; (i) To pay rent and other sums without deductions in accordance with the Lease (Clause 5.1); (ii) Not to use or permit the Carpark to be used (other than for the Permitted Use (*car valeting and car wash)* without the Landlord's consent in writing (Clauses 5.22.1 and 5.24) (There is no evidence that consent in writing was sought or given to any other use or to any assignment or subletting); (iii) not to assign, underlet or part with possession without the Landlord's consent in writing (Clause 5.29); (iv) t*o* yield up the Carpark at the end of the Term (Clause 5.37.1)*;* (v) a forfeiture clause (Clause 7.1) empowered the Landlord to repossess the Carpark if rents were unpaid for 21 days, whether or not demanded or if any material covenants on the Tenant's part were not performed and the Tenant had been given reasonable written notice to remedy. Other standard provisions in the Lease included clauses 7.5 (the effect of waiver) and *7.14 (Representations).*

6. The Plaintiff's case appears from its Statement of Claim and affidavits. In short, the Statement of Claim referenced the Agreements, alleging that; (a) the rent was in arrears. The last rent was paid in November 2020; (b) The Term expired on 30 June 2023 at which time the arrears amounted to approximately €127,963.00; (c) The Defendant wrongfully remained in occupation, making no payment to the Plaintiff (in breach, *inter alia*, of the "yield up" covenant). Accordingly, he was trespassing at all material times after the expiry of the Term; (d) by solicitors letter dated 17 October 2025, the Plaintiff required the Defendant to deliver up vacant possession by 17 January 2026, but he failed to do so, despite further correspondence; (e) the Plaintiff's agents re-took possession of the Carpark during the night of 25 February 2026[1]; (f) Having done so, the Plaintiff established that the Defendant was permitting parties

[1] *As an aside, I note that, despite the plaintiff's deponents' repeated insistence that the repossession was peaceful, they avoid saying what that actually means. Access to the Carpark was secured by locked gates. In the light of the plaintiff's coyness, the absence of any suggestion of a key to the padlock and an admission in the course of argument, I presume that the Plaintiff's agents broke the padlock to gain entry, giving*

(the licensees) to occupy portions of the Carpark and containers therein, some of them operating businesses, without the Plaintiff's permission. It says that such acts were in breach of clauses 5.22, 5.24 and covenant at 5.29 of the Lease, by unlawfully licensing the Carpark or parts thereof without its consent and that the licensees are trespassing; (g) the Defendant and associates of his forcibly re-took possession of the Carpark on 26 February 2026 (the following day), in a wrongful and intimidating manner although they had no right to re-enter the Carpark, and their actions constituted trespass[2]. On foot of those pleas, the plaintiff claims, inter alia, a permanent injunction requiring the first Defendant to vacate, judgment for the arrears, damages for breach of covenant breach of contract, trespass and slander of title.

7. It is common ground that: (a) the Defendant has not paid rent since 2020. Indeed he denies paying any rent since the 2018 Agreements, contending that he didn't have to; (b) the Plaintiff's consent in writing was neither sought nor given to the presence of the Licensees. The Defendant says he didn't need such consent to because, notwithstanding the terms of the Lease, the parties agreed that he could use the Carpark in that way. He avers that (as of 19 March 2026) he was permitting 23 "licensees" to use the Carpark. There is some debate about the figures, but the Defendant has confirmed that between October 2018 and January 2025 he earned €30-40,000 per annum by way of gross rental income from the licensees.

8. Mr Clegg's grounding affidavit covered similar terrain to the (later) Statement of Claim, exhibiting the Agreements, a condition survey undertaken for the purposes of the transaction and other documents including contemporaneous communications. In particular, at paragraph 11 he explained the Plaintiff's payment of €40,000 to the Defendant on the basis that, when the Plaintiff acquired the Carpark in a receivership sale in May 2018, the Defendant,

---

rise to a possible issue as to whether such actions can be described as peaceful in the circumstances. The plaintiff's affidavits should have been more open as to the primary facts, rather than asserting a legal characterisation.

[2] *Despite the Defendant's generalised denials, on the basis of the rather more detailed evidence from the plaintiff's agent, Mr Comsa, and the photographic evidence, I consider that the characterisation of the Defendant's re-entry as forcible and intimidatory was entirely fair.*

the son of the borrower whose loans triggered the receivership, had been trading from a small "shed" adjoining the Gala Bingo Hall and asserting various rights against the Receiver and, subsequently, the Plaintiff. In the October 2018 transaction, the Plaintiff offered the Defendant the lease of the car park and simultaneously agreed to pay €40,000 to *"buy off"* any possible claims to prior rights or entitlements to the premises adjoining the Gala Bingo Hall. (The Defendant challenges this explanation but the reasons for the payment appear immaterial in the context of the current application. What matters is whether the parties did a deal in October 2018 or, more specifically, whether it is reflected in the terms of the Agreements or whether it was in the terms asserted by the Defendant). The grounding affidavit also details the rent arrears, the overholding and the events leading up to the plaintiff's taking possession on 25 February 2026 and the Defendant retaking the Carpark the following day, noting correspondence between the parties. He notes that, as a result of taking possession, the Plaintiff learnt of the Licensees trading from the car park without The Plaintiff's consent. He concluded that The Defendant was profiting significantly from unlawfully licensing or sub-letting the car park while paying nothing to the Plaintiff since 2020. Mr Clegg also noted the defendant's failure to offer particular undertakings and, in terms of adequacy of damages and the balance of convenience, he stated that:

a. the Defendant has no right to occupy the car park. He had paid no rent since September 2020. The Lease expired in July 2023. He already has a very significant monetary liability to the Plaintiff. He had been profiting substantially from unlawfully sub-letting or licensing of the car park, passing nothing onto the Plaintiff.
b. Damages would not be an adequate remedy if the Plaintiff is not allowed back into possession pending trial. The Plaintiff has plans to re-develop the Carpark in the short to medium term as part of a large scale residential and mixed-use

development. It requires vacant possession. Unless the Defendant is ordered to leave pending trial, his occupation could scupper any re-development, causing very significant loss to the Plaintiff.

c. The Plaintiff trades profitably and would be a mark for damages. The entire Property has an approximate value of €4m and has secured approximately €1.2m in finance with an estimated net equity of circa €2,8m. In addition, part of the Property is leased, generating an annual income of €175,000.

d. Any loss which the Defendant might sustain pending trial could be measured and compensated in damages.

e. Insofar as the Defendant has been using or (wrongfully) sub-letting/licensing the car park, he has done so purely for commercial purposes. Accordingly, damages are an adequate remedy for him; the plaintiff offered the usual undertaking.

9. Mr Comsa's affidavit exhibited reports, including photographs and video evidence (although I have not found it necessary to review the video) detailing the events of 26 February 2026. Although the Defendant takes issue with that evidence (in general and high-level terms) it appears from Mr Comsa's detailed evidence and the photographs that the Plaintiff and his associates forcibly re-entered and took possession of the Carpark. I do not consider that he can be faulted for describing the conduct and words of the Defendant's associates as frightening and intimidatory.

10. The various affidavits dealt with many issues which are not particularly germane to this application such as; (i) the Plaintiff's beneficial ownership; (ii) the arrangements for the €40,000 cash payment; (iii) the detailed history of the involvement in the Property of the Defendant and his father and their family going back to the 1980's; (iv) confrontations between the Defendant and the receiver prior to the Plaintiff's acquisition of the Property in May 2018 (although such matters may cast light on the context to some recent events); (v) the

intimidatory tactics which each party accuses the other of adopting in the aftermath of the receivership sale prior to negotiations that led to the October 2018 Agreements; (vi) allegations of Gardai investigations of alleged criminality at the Carpark; (vii) the facts in relation to the supposed meeting at the West County Hotel (prior to the October 2018 Agreement) at which the Defendant claims to have been offered an improbably large sum to vacate the premises; (ix) the Defendant's disparate criticisms of the Plaintiff and its principals and their affidavits; (x) Mr Sloane's background and history.

11. The Defendant's affidavits acknowledged entering into the Agreements and their terms but argued that they did not reflect the parties' actual deal. In short, while there seem to be common ground between the parties as to aspects of the deal, the Defendant says that the Plaintiff agreed that he could occupy the Carpark rent free and permitted him to sublet or license it. He also denies receiving independent legal advice, notwithstanding the stipulation to that effect in documents he signed) and there is a conflict as to whether (as the Plaintiff asserts) two individuals, one being a solicitor, Mr Reynolds, and the other a gentleman, Mr Sherlock, were advising the Defendant and acting on his behalf or whether, as he says, they represented the Plaintiff. (No evidence has been obtained from either individual). In particular, the Defendant accepts that he signed the Deed of Renunciation (which, on its face, stated that the Defendant received independent legal advice *"in relation to this renunciation"* from Mr Reynolds and understood *"the effect and importance of this renunciation".* However, the Defendant denies being aware that he signed any such document or received any advice from Mr Reynolds.

12. Likewise, the Defendant accepts that he signed the side letter relating to the €40,000 Cash Payment and that his signature was witnessed by Mr Reynolds but says that he was unaware of its content and legal effect, believing that he was executing legal documents necessary for the surrender of existing occupation and tenancy rights in a different part of the

Property, unaware that the document conferred a right of termination on the Landlord in respect of the Carpark.

13. The Defendant also accepts that he signed the side letter stating that the landlord could terminate the lease on three months' notice after its third anniversary but says that he was unaware of its meaning and legal effect and that he was not advised by Mr. Reynolds. He particularly takes issue with the reference to rent, reiterating that he never agreed to pay any rent and that at the time of the signing of the lease, neither party expected rent to be paid.

14. The Defendant also denies that Mr Reynolds was independent or indeed that he acted as his solicitor on any issue. He says that; (i) the Plaintiff's principals knew that Mr Reynolds was not independent; (ii) Mr. Reynolds was unknown to him and never acted as his solicitor; (iii) prior to attending Mr. Reynold's office to execute the October 2018 Agreements, his understanding and belief, induced by the Plaintiff's Agent, Mr Sloane, a gentleman from Northern Ireland, was that Mr. Reynolds represented the Plaintiff and the Defendant believed that the plaintiff nominated, instructed and paid Mr. Reynolds (in any event he denies doing so); (iv) all documentation, the lease and side letters, were drafted by the plaintiff or on its instructions. He argues that he had been in occupation of the Yard, Laneways and Carpark since the late 1990's and he disputed the Receiver's right of occupation to those parts of the Property. After the sale to the Plaintiff, he claimed that that the Plaintiff had purchased from the Receiver subject to the Defendant's rights and says that he was

> *"acutely aware of my entitlement to renewal on the basis of long occupation and had resisted, over approximately 4 years any attempt by the Receiver and the Plaintiff to oust me as a tenant".*

15. The Defendant disputes the Plaintiff's explanation for its agreement to pay €40,000 for his vacating a shed to the front of the Gala Bingo Hall Building, adding that if that was the case then he would have received no consideration for renouncing his rights to renewal

so the conditions of s.47 were therefore not satisfied[3]. He says that at the time of entering into the Agreements he understood that he was required to sign documentation surrendering the yard and laneways to the Plaintiff in return for; (i) the payment of €40,000; (ii) rent free occupation of the Car Park; (iii) provision of free electricity and water in the Car Park; (iv) whether, after entering into the Agreements, the Defendant enjoyed continued access to and occupation of the First Floor Snooker Hall with or without the Plaintiff's permission;(v) the plaintiff providing two storage containers to him; (vi) his being permitted to lease space to other parties ("the Licencees"), with the containers being provided to him for that purpose, effectively allowing him to continue to replace the rental income he says he was deriving from the parts of the Property which he was surrendering as part of the Agreements[4]. The Defendant also says that the Plaintiff was aware of the Licensees' presence, with their signage evident from the photographs exhibited in the Blackwater Reports exhibited by Mr C. He also claims that he never paid – and was never asked to pay – rent for the Carpark and that this confirms his understanding of the Agreement[5].

16. The Defendant claims that he appreciated the site's development potential and value having been involved in father's plans to develop apartments on the site, which failed due to planning issues and costs escalation, leading to the receivership – he was *"intimately aware of the issues surrounding the development of the site but also the characteristics of the site relevant in the context of development",* and knew the surrender value of the parts of the Property which he controlled at the time of the acquisition, the value of his tenancy and of his right to renew on the basis of long occupation. He said that he received *"extensive written advice from solicitor and counsel"* on such issues at the time of the receivership[6] and that in

[3] *This submission was not pursued before me, nor do I consider that it was well founded in any event.*
[4] *The Plaintiff disputes (ii), (iv) and (vi) in particular; the Agreements and contemporaneous documents seem to align with its position rather than the Defendant's assertions.*
[5] *The Plaintiff accepts that it was not diligent about seeking the rent but maintains that initial payments were received, apparently from the Defendant, contradicting his current position that he had no obligation to pay rent and that it eventually did demand payment.*
[6] *Although such documentation was not exhibited despite any privilege presumably having been waived by virtue of its deployment*.

dealing with the Plaintiff, he only intended to surrender the rear yard and laneways and never intended to create a termination right or renounce his right of renewal.

17. There seems to have been a confrontational relationship between the parties in the months following the Plaintiff's acquisition of the site in May 2018, but the Defendant says that the Plaintiff proposed negotiations which ultimately resulted in the October 2018 Agreements. The Defendant maintains that he had leverage in those negotiations because his then occupation of part of the Property was an impediment to the Plaintiff's plans to develop the Property or let other areas. He maintains that the Plaintiff made an offer that was agreed in principle to the effect that the Defendant would surrender occupation and rights to the yard and laneways which he then occupied in return for the €40,000 cash payment and a rent free lease of the Carpark for 4 years and 9 months with free water and electricity connections. In particular, he said that while a rent would be stated on the lease, no rent would be payable by him and that, in recognition of the loss of rental income for sheds, the Plaintiff would provide two storage containers in the car park which could be let by the defendant but he has not particularised any such express representations[7].

18. The Defendant accepts that he expressly agreed with the Plaintiff's representative that, while the lease would expressly provide for a rent of €25,000 per annum, no rent would actually be payable - I am not satisfied that he ever satisfactorily explains this dichotomy. He says that he was told that the lease had to provide for a rent as the Plaintiff intended to seek finance, and that the rent for the car park would be relied upon in the application to the bank and that he signed documentation provided to him by the Agent to that end *"in relation to proof of payment of rent to be submitted to the Bank by the Plaintiff"*.

[7] *The Defendant seems to assume that such consent to general subletting was implied by the Plaintiff's provision of two containers in the carpark and by the nature of his previous operations, which seems a quantum leap.*

19. He also claims that he was reassured (presumably by Mr Sloane) that the provision of the storage containers meant that he could continue to use the car park for storage and other uses not limited to car valeting and washing but that the lease would only permit use of the car park for car valeting and washing

> *"as that was the permitted use pursuant to the relevant planning permission, and the Plaintiff could not be seen to breach planning regulations".*

20. The Defendant claims to have understood that the Agreements would not prejudice his right to rely on his statutory relief to renew his lease based on long occupation. He claims to have written to the Plaintiff on 24 May 2022 requesting an extension of his lease, receiving no response from the Plaintiff. The latter's principals have no record of receiving that email but it was copied to, inter alia, Mr Reynolds who replied to the Defendant on 10 June 2022, referring to the enclosure of a copy lease, renunciation, and side letter. However, the defendant has no memory of receiving any such enclosures and could not locate them in his records.

21. He notes that solicitors other than Mr Reynolds were representing him in 2018 at the time of his stand-off with the Receiver and then with the Plaintiff, he did not know and never dealt with Mr Reynolds until he attended at his offices to execute the Agreements negotiated with the Plaintiff. He says that, when attending Mr Reynolds' offices, he understood that Mr Reynolds acted for the Plaintiff. He was present in Mr Reynolds' office for a matter of minutes and was not required to produce identification or other documentation. He denies receiving any advice from Mr Reynolds then or at any other time. In particular, he was not advised that he was renouncing any renewal rights or granting a termination right to the Plaintiff. He notes that, while not illiterate, all his life and at the material time he had limited reading comprehension and writing ability. The Defendant reiterated that Mr Reynolds was a stranger to him and that he had no direct communication with him prior to signing the Lease in

2018, never instructed him to act on his behalf and never received any legal advice or service of him. Nor did he complete client due diligence ("CDD"), know your client ("KYC"), or anti-money laundering checks ("AML"). Nor was he provided with a letter of engagement. Nor did he receive a bill from Mr Reynolds or pay a fee to him. Save for the 10 June 2022 email, he never received any correspondence or documentation from Mr Reynolds. He denies paying rent to the Plaintiff (notwithstanding apparent payments in rent statements exhibited by the Plaintiff). He disputes the Plaintiff's account of the reoccupation of the Carpark. In particular, he denies that threats were made to any person's health, safety or welfare.

22. The Defendant noted the lack of specificity in the Plaintiff's evidence as to its development plans. There was no indication that any development would reach a critical stage prior to determination of the proceedings. To the contrary, the suggestion that the Carpark would be unaffected by the work seemed difficult to reconcile with that observation[8].

23. The Defendant denied that damages would be an adequate remedy for him because he would suffer loss of custom and goodwill and would have to rebuild his business from the beginning. An injunction could engender a lack of confidence among customers, suppliers, and other stakeholders as to the security of his tenure and the stability of his business. He also expressed concern that the dispute may not proceed to trial as he would have no practical means of meeting ongoing legal costs. An injunction would itself reduce the likelihood of a trial and prevent the discovery of documentation and evidence that would undermine the Plaintiff's case and would prevent an examination of the circumstances in which the plaintiff supplied the draft legal documentation in respect of the 2018 Agreements.

[8] *I would agree with that observation. On the one hand, I appreciate the need for the Plaintiff to secure the entire Property once major construction work is underway even if it affects other parts of the site; on the other hand there was no indication that work was likely to commence imminently due to the planning and commercial issues which were still in play.*

24. He asserted that the status quo was that no rent had been paid for approximately eight years, there was a dispute in that regard. His failure to pay and the plaintiff's failure to collect the rent supported his position.

25. The Defendant's first affidavit attached and referred to a *"schedule of exhibits"* *referring* to documents which were not in fact exhibited and which I have therefore not been able to consider, along with other exhibits including a list of the *"licensees"*.

26. Replying affidavits from the Plaintiff's principal, Mr Hugh O'Connor[9], joined issue with the defendant's averments and, inter alia:

a) emphasised that the Defendant's schedule identified 27 parties who he allowed to occupy of the car park without the Plaintiff's consent, most remaining in occupation, and that it appeared that he was still being paid €9,075.00 per month for his unlawful licensing and that had made hundreds of thousands of euro from its unlawful licensing.

b) denied that Mr Reynolds was not independent of the Plaintiff or that it paid for his services, confirming that he was unknown to the Plaintiff's principals, they did not pay for his services, had no relationship with him and did not "nominate" him.

c) Stated that the Defendant was represented in the 2018 negotiations by an agent, Mr Sherlock – the Plaintiff understood them to be business associates and to have combined business interests, noting that in 2019, they offered to take a lease of the snooker hall on the site (which the Plaintiff came close to accepting but ultimately rejected in part due to the arrears on the Carpark, inter alia, as it made clear to the Defendant and Mr Sherlock). At the time of

[9] *Supported by a short concurring affidavit from his brother, Ben O'Connor.*

the 2018 negotiations the Plaintiff understood Mr Sherlock to be negotiating on the Defendant's behalf and to be his agent. The Plaintiff exhibited contemporaneous emails which seem consistent with that understanding, including e-mails between Mr Sherlock and the Plaintiff on 26 - 27 September 2018 (a chain which seems to have formed the nucleus of the 5 October Agreements) discussing issues to be resolved before the Lease could be signed (with no reference to rent free occupation, nor any other suggestion that the arrangements were other than as reflected in the subsequently executed documents). The Plaintiff detailed offers which Mr. Sherlock made on the Defendant's behalf and the Plaintiff's responses as shown in the emails, responses copied to Mr Reynolds' secretary (insisting on a €25,000 per annum rent but conceding a €40,000 payment to the Defendant on signing the lease. Mr O'Connor also stated his belief that Mr Sherlock introduced Mr Reynolds to the Defendant, arranging for him to represent the Defendant in the transaction. He noted that after Mr Sherlock's 27 September 2018 e-mail commenting and agreeing various points, the Plaintiff sent the Lease and other documents to him and to Mr Reynolds, following which a meeting was arranged for 2 October 2018 at Mr. Reynolds' office to exchange the signed Agreements. The Plaintiff also e-mailed Mr Sherlock, copying Mr Reynolds, attaching a rent invoice for October 2018.

d) Noted that, just before executing the Lease and the deed of renunciation, the Defendant sought a right to renew the lease. By email dated 2 October 2018, the Plaintiff furnished an option agreement to Alan Sherlock which provided for a right of renewal on substantially the same terms as the lease, save for

an increased rent of €40,000 and a landlord's break option exercisable on three months' notice. Mr Reynolds responded that morning, seeking an amendment to the side letter to which the Plaintiff agreed in a further email. Mr O'Connor was unsure whether the agreement was ever executed but noted that the Defendant's request for an option to renew contradicted his assertion that he did not understand the effect of executing the deed of renunciation in terms of any rights under the 1980 Act.

e) Noted that the Agreements were signed by the Defendant and witnessed by Mr Reynolds as his solicitor.

f) Stated that the suggestion that - despite the terms of the lease - the parties agreed that the Defendant could occupy the Car Park *"rent free",* was fanciful because the O'Connors were commercial people, in business like the Defendant - they would not have contemplated a four year and nine-month rent free lease. Furthermore, if they had agreed a "rent free" period, it would have been negotiated and documented. In fact, the side letter provided for a €40,000 cash payment to the Defendant - that was the agreed concession for the Defendant's entering into the Lease and renouncing rights to the laneways.

g) Confirmed the Plaintiff's understanding that the two containers available to Defendant in 2018 were for his own business (a car wash and car valet business, as per the "Permitted User" in the lease), not for use by other parties.

h) Noted that the Defendant ignored, inter alia, his obligation to obtain prior written consent to any licensing/sub-letting and stated that the Plaintiff understood that any other persons "on site" in 2018 worked for the

Defendant who never indicated that he was going to license or sub-let to other parties.

i) Exhibited photographs suggesting that only signage in 2018 was for the car wash business.

j) Denied that the Plaintiff discharged the Defendant's utility costs since 2018, stating that, once it granted the Lease, it informed Dublin City Council that the Defendant was the Carpark's tenant and occupier and therefore liable to pay the rates, exhibiting an e-mail to the Council.

k) Acknowledged that the Plaintiff was not diligent in pursuing the rent arrears but insisted that they did seek rent from the Defendant and that the delay had been to his benefit. However, when arrears started to accrue in 2019, they raised the issue with him and rent arrears statements were provided to Mr Sherlock (who they regarded as his representative) in or around April and June 2019. He also acknowledged that after the Lease expired in 2023, the Plaintiff did not act to have the Defendant removed as quickly as it should have, but, again, this had been to the Defendant's benefit. Their attention was focused on trying to buy out the fee simple and to progress the redevelopment.

l) Rejected the Defendant's suggestion that the side letter giving the Plaintiff the right to determine the Lease after its third anniversary supported the Defendant's claim that the Plaintiff agreed that he could occupy rent free, pointing out that the side letter was a typical break option, providing for a *"break fee"* to compensate the tenant if the landlord exercised it during the Term, which did not arise in this case[10].

[10] *I do not think that much turns on this side letter since the option was never exercised.*

m) Stated that neither he nor his brother recalled the May 2022 e-mail which the Defendant claims to have sent requesting an extension, observing that if such an email was sent it would have been reasonable to expect the Defendant to follow up on it.

n) Denied that the Defendant was entitled to access the snooker hall noting that the Plaintiff was occupying it and paid the rates on it since 2018.reiterated that the Plaintiff was progressing development plans on various fronts, including by pursuing the acquisition of the freehold interest and buying adjoining lands, with a view to delivering a mixed residential and commercial development, including the Car Park. He detailed those efforts since 2018 noting that they had progressed the redevelopment plans to an advanced stage, including the preparation of a draft planning application and pre-planning consultations with Dublin City Council, concluding that it was critically important that the Plaintiff could proceed with its plans free from interruption and uncertainty. In view of the Defendant's behaviour, the Plaintiff had concerns that his continued presence at the Carpark pending a trial would damage the redevelopment plans - to say nothing of the financial losses already suffered by the Plaintiff since 2018 which it was unlikely to recover.

o) Confirmed that if an interlocutory injunction was granted and a trial proceeded reasonably quickly, then the Carpark would remain extant at the time of the trial, as it was unlikely that the planning process would have been concluded and works commenced on the Carpark by then. Accordingly, If the Defendant won at trial access to the Carpark could be restored, and the plaintiff could compensate him for any financial loss in the meantime.

p) Noted that the Plaintiff had no idea who the licensees were or nature of their businesses and whether they/their businesses might adversely affect the Carpark or the Plaintiff's interests.

27. In a further affidavit, the Defendant, inter alia, denied that Mr. Sherlock was his Agent or associate, suggesting that Mr Sherlock held himself out as representing the Plaintiff and that it was Mr. Sherlock who contacted him with a view to his engaging with the Plaintiff's representative, Mr. Sloane. He saw Messrs Sloane and Sherlock as jointly representing the Plaintiff, citing the latter's Linkedln profile[11]. He denied any connection to or association with Mr Sherlock.

Analysis

28. The affidavits debated the parties' respective motivation for aspects of the arrangements reflected in the Agreements, such as the Plaintiff's payment to the Defendant. I am not sure it matters. I can understand why, in the wake of receivership sale, a purchaser in the plaintiff's position might have offered such terms to the defendant to compromise the latter's legal claims (as the Defendant asserts) and/or to resolve a potentially contentious issue, irrespective of the merits. Controversies often surround receivership sales, generating resentment for the purchaser. Accordingly, the transaction may well have been viewed as pragmatic and prudent even if it went beyond the defendant's strict entitlements, buying off possible confrontation, risk or disruption. However, that is a matter of conjecture and, more importantly, the parties' motivations for entering the Agreements matter less than whether they reached an accord which was formally reflected in the Agreements - there is limited scope for a party to seek to resile from formal contractual documentation in such circumstances.

[11] *which did not seem to me to prove anything*.

29. While I can see the commercial logic for the arrangements as documented in the Agreements, the rationale for the undocumented arrangements for which the defendant contends is harder to discern. I do not understand why the plaintiff would have agreed to a five-year rent-free agreement with a right of renewal. The contemporaneous documents do not support such a contention.

30**.** I am satisfied that the Plaintiff has established a strong case likely to succeed at trial on the basis of the terms of the Agreements and the breaches of various covenants, particularly as to: (i) the use of the Carpark and its subletting; (ii) the non-payment of rent and (iii) the failure to vacate either at the end of the Term or on service of the Notice by the Plaintiff. As matters stand, it appears that the Plaintiff was entitled to terminate the Defendant's tenancy on notice and duly did so. It seems to me that the terms of the Lease and the other Agreements are compelling. In particular:

a) the termination side letter gave the Plaintiff the right to terminate on three months' notice at any time after the Lease's third anniversary. The Defendant accepts that he entered into that document. The Plaintiff duly provided three months' notice by letter dated 17 October 2025. Accordingly, any tenancy was validity determined on notice as of 17 January 2026, and the Defendant had no right to remain thereafter.

b) The Lease had expired on 30 June 2023 in any event, although the Defendant continued in possession, paying no rent. I accept the Plaintiff's submission that, once the Term expired (and particularly given his nonpayment of rent), the Defendant was a trespasser, or, at most, a *"tenant at will"* or "*at sufferance"*.

31. In response to the Agreements' unambiguous provisions, the Defendant ventilates points which could only be resolved at trial, such as the role played by Messrs Reynolds and Sherlock and the exact nature of the Agreements. While buyer's remorse will

not permit him to escape the consequences of Agreements which he entered into, he could have defences if, at trial, he can substantiate his claim to have been misled as to the documents and their import. The Court would need to determine whether there is any substance to his contention that the Agreements did not reflect the actual deal and to resolve the controversy as to the capacity in which Messrs Reynolds and Sherlock acted. The Defendant may invoke doctrines such as *non est factum*, rectification or estoppel. Such pleas would undoubtedly face formidable factual and legal challenges. While such hurdles should not be underestimated, it is not for me to determine those issues now but to perform a preliminary assessment for the purpose of determining how matters should be arranged pending trial. As matters stand, the Defendant's various defences rest on bare assertions. They do not align with the objective contemporaneous evidence.

32. I agree that the Plaintiff's delay in enforcing its entitlements was curious, even allowing for its understandable preoccupation with more pressing matters, but oversight seems a more likely explanation than the Defendant's implausible contention that the Plaintiff conceded a long-term rent-free agreement, apparently with renewal rights, while executing documents to the opposite effect. In any event, parties generally face a steep uphill struggle seeking to go behind unequivocal written agreements. While I note the Defendant's reference to literacy difficulties, even leaving aside the absence of independent expert evidence confirming the extent of any such disability, such circumstances would render even more inexplicable his decision to execute important legal Agreements in, according to him, the office of the lawyer representing a party with whom he had been engaged in a contentious dispute only few months before, but without bringing his own lawyer or getting his own advice. Such an approach seems particularly surprising since, on the Defendant's account he had recently been using two firms of solicitors in his confrontations with the Plaintiff and, previously, the Receiver and had received strong advice from his solicitors and counsel in respect of his rights

to certain part of the Property. It is not clear why, having such resources available, the Defendant executed what he knew to be legal documents without consulting to his advisors. In any event, having done so, the circumstances in which the Defendant can persuade a Court that he should not be bound by them are extremely confined. The decision of MacDonald J in *Dublin Port Co v Automation Transport Ltd* [2019] IEHC 499 is particularly relevant. The Defendant submitted that it was distinguishable; while this was not immediately apparent to me, I need not determine that issue.

33. Also, the contemporaneous communications appear inconsistent with the Defendant's assertions. His own account implies that he executed documents which he knew to be a sham, designed to cloak breaches of planning legislation and to mislead the Plaintiff's bank. Such contentions do not augment the Defendant's own credibility.

34. While the Defendant is entitled to defend the claim at trial, it is important to note that its case is advanced on the basis of broad assertions, which do not align with contemporaneous documents. By contrast, the Plaintiff's position is supported both by its affidavit evidence and the unequivocal terms of the Agreements and also by contemporaneous correspondence.

35. The credibility of the Defendant's position is also diminished by his failure, for whatever reason, to deliver his Defence. The Court has regard to the pleadings as well as the affidavits when considering whether the Plaintiff meets the threshold test and assessing defences advanced by the Defendant (and the substance of claims and defences advanced in properly particularised pleadings can also impact on the balance of justice assessment). The Plaintiff delivered a Statement of Claim on 29 April 2026 but no Defence has yet been forthcoming in accordance with the Rules of the Superior Courts ("the Rules").

36. In *Olive Green IMS Holdings Ltd v Carter* [2026] IEHC 217 *("Olive Green")*, I noted that litigants' obligations continued even while interlocutory applications were pending, observing that:

> *"61. No Statement of Claim had been delivered at the time of the hearing of the application, despite the plaintiff asserting the urgency of the matter. The plaintiff's pleading deficits (the generality of the Plenary Summons and the lack of a Statement of Claim) scarcely enhance the credibility of its application. They do not assist the assessment of the threshold test or the balance of justice. While the plaintiff accepted its default as to the statement of claim and offered to remedy it within seven days, it is a significant omission:*
>
> > *a. As counsel accepted, pending interlocutory applications do not suspend obligations under the Rules, including the duty to deliver a Statement of Claim. If a plaintiff is committed to going to trial expeditiously, there will rarely be good reason for tarrying until the end of the period permitted by the Rules. It should serve a fully particularised Statement of claim without delay and press for a defence to close the pleadings….*
>
> *The failure to deliver a Statement of Claim …raises doubts as to the plaintiff's commitment to seek an early trial and raises the possibility of the application being tactically motivated…*
> *the failure to deliver a statement of claim even within the period required by the Rules weighs against it on both the threshold and balance of justice assessments".*

37. Unlike *Olive Green*, the pleading deficit here is the Defendant's responsibility. However, the principles outlined in *Olive Green* also apply to Defendants. He should have delivered a defence and his failure to do so inhibits my ability to determine the precise legal basis for the defences asserted in generalised terms. This diminishes his claims' credibility.

38. If he was the applicant the Defendant would struggle[12] to meet the lower threshold even without considering technical points raised by the Plaintiff (with which I agree) as to why the Defendant's attempt to invoke the 1980 Act was misconceived, whereas the Plaintiff comfortably meets the higher bar, the *Maha Lingham* test. The Defendant may take the issues raised to trial (if he serves a properly particularised defence setting out a statable case on such issues) but, in the absence of cogent evidence to back up assertions which, while

[12] *For example, the Defendant's attempt to claim an entitlement to a new tenancy pursuant to the 1980 Act faces significant obstacles including, firstly, the fact that, assuming the termination notice to be valid (and I have seen no reason to doubt that it is), he is out of time to invoke the statutory procedure.*

very serious, contradict the terms of the Agreements and the contemporaneous evidence, he has not yet demonstrated *"a real case of any substance"*.

Balance of Justice

39. The following factors influence my balance of justice assessment:

c. Adequacy of Damages

i. The profit extracted (and still being extracted) by the Defendant through his apparent disregard of his covenants under the Lease, while paying no rent to the Plaintiff (save the recent token contribution pursuant to the undertakings) is enormous. If rent was paid for the full period since 2018, the arrears would stand at €212,533.00.41 as of 29 June 2026. As well as not paying rent and deriving (undisclosed) income achieved from his own carwash business for eight years (as permitted by the Lease), the Defendant has, by his own account earned €30-40,000 per annum (gross) from the licensees and continues to achieve a substantial revenue from that source, unlawfully according to the Defendant. Technically, as the Plaintiff does not appear to intend to rent or sublicense the Carpark in the short term, it is not suffering an ongoing out of pocket loss at the moment. However, if its claim succeeds it would presumably be entitled to demand payment of the arrears and compensation for the overholding and to require the Defendant to account for sublicensing profits. Any such claim would be substantial. His own evidence (and events to date) confirm that the Defendant is not a mark for such damages. Accordingly, damages would not be an adequate remedy for the Plaintiff. Failing to require the surrender of the Carpark at this stage could allow the Defendant to

continue to derive substantial profits for an indeterminate period in apparent breach of the Plaintiff's rights and in circumstances in which there is no likelihood that the Defendant will account for such profits or unpaid rents if the Plaintiff wins at trial. Accordingly, damages would not be an adequate remedy for the Plaintiff.

ii. By contrast, any loss to the Defendant would be purely financial, and could readily be measured and compensated by a damages award which the Plaintiff would be in a position to discharge. The defendant's position is fully protected.

d. Impact of Defendant's occupation on Plaintiff

i. I am sceptical as to the extent to which, in the short term at least, the Plaintiff's development plans would be imperilled by the Defendant's remaining in occupation pending a (reasonably early) trial. The evidence does not suggest that the commencement of work is imminent. However, even if work is not obstructed in the short term, I accept that the presence of the defendant and his sublicensees will be a concern and obstacle, a disruptive element, and a security risk. The fact that the plaintiff has no knowledge or control of the occupants and has made out a strong case that it never permitted them to use the car park is a significant factor.

ii. The plaintiff has established a strong, arguable case that the Defendant continues to breach his contractual obligations and the Plaintiff's property rights in terms of non-payment of rent, subletting the Carpark and failing to vacate, deriving substantial unlawful profits at the Plaintiff's expense. It appears that the Plaintiff's property rights have been and are being seriously impacted (and the Plaintiff relies on the oft quoted remarks of

Clarke J. (as he then was) in *AIB Plc v Diamond* [2012] 3 I.R. 549 at pp 589-590.

iii. The Defendant's occupation of the Carpark seems particularly egregious in circumstances in which, apparently unlawfully, he permitted numerous parties to occupy it, without the Plaintiff's knowledge or consent, deriving enormous personal profits thereby. I accept that the presence in the Carpark of the Defendant and his licensees (trespassers from the Plaintiff's perspective) is disruptive and inconvenient for the Plaintiff and will become more so as the Plaintiff's implements plans for the Development.

e. Effect of Retaking of Possession

i. The recent confrontations will doubtless have exacerbated tension on the ground. Even taking account of the Defendant's objection to the Plaintiff's entitlement to repossess the Carpark without a Court order, the behaviour of the Defendant and his associates when they retook possession does him no credit. To the extent that such conduct is relevant to the exercise of the judicial discretion and the balance of justice assessment, it would weigh against the Defendant. Such past actions have not been determinative on this occasion but the recent history is relevant to the assessment as to whether the Plaintiff can reasonably be expected to allow the Defendant and the licensees to remain in situ. The aggressive retaking of possession will inevitably have engendered a fraught relationship, which goes to the assessment of appropriate arrangements pending trial.

f. Clean Hands

The extent to which either side comes to the Court with clean hands is a factor which favours the Plaintiff. It should have been more diligent in collecting the rent and by acting swiftly once the Term expired. However, primary responsibility lies with the Defendant for apparently failing to pay the rent for 6 years, failing to quit and disregarding his covenants.

g. The Parties respective cases

i. The plaintiff has advanced a strong case to suggest that (i) the plaintiff (and his sublicensees) are trespassers; (ii) no rent has been paid for six years save pursuant to the undertakings; (iii) the defendant has wilfully disregarded his obligations and covenants, generating substantial profits thereby; (iv) part of the property purchased by the Plaintiff in 2018 remains outside its control notwithstanding the expiration of the Term and the service of the notice of termination.

ii. On the other hand, the Defendant has asserted various defences. He is entitled to file a defence and to pursue it to trial, thereby litigating issues which he has on affidavit. However, on the basis of the broad assertions in his affidavits and in the absence of a properly particularised Defence, it does not appear to me that the issues raised are sufficiently real and substantial either to impact on the Plaintiff's ability to meet the threshold test or the balance of justice assessment. Such assertions do not justify allowing the defendant to remain in occupation at this stage. While the Court will not determine the merits of respective cases on these applications, save to the limited extent necessary for the threshold test, the

implausibility of the issues raised by the Defendant goes to the exercise of the discretion, particularly when set against the strength of the Plaintiff's claims and the terms of the Agreements. The contrast between the implausibility of aspects of the defences and the strength of the plaintiff's case (which aligns with the Agreements and the contemporaneous documents) is relevant to the balance of justice assessment.

h. Timing of Trial

i. Both parties indicated their willingness to facilitate an early trial; each demanded to control the Carpark in the meantime for fear the other would delay the proceedings. Notwithstanding his protestations, the Defendant has been the less diligent litigant since the proceedings were finally issued. The Plaintiff delivered a fully particularised statement of claim in April, but no defence has yet been delivered in accordance with the Rules. Unlike *Olive Green*, responsibility for the delay primarily rests with the Defendant. If he had promptly filed a properly particularised defence in accordance with the Rules, the pleadings could have been exchanged, the pleadings closed and requests for discovery exchanged by now, facilitating discovery over the Summer and Autumn and a trial possible as early as the new year. Instead, for whatever reasons, he failed to file his defence, stalling the substantive proceedings. Accordingly, the Defendant's concern about the time the proceedings will take to get to trial resonate less than would be the case if he had delivered its Defence in accordance with the Rules. In any event, as in *Olive Green*, the parties have now agreed directions with my encouragement to progress the proceedings.

ii. The Defendant's concern about delay can be addressed by stipulating that any interlocutory injunction is conditional on the provision of an undertaking by the plaintiff and its solicitor to diligently and expeditiously progress the proceedings to trial. If the plaintiff breaches any such undertaking, the defendant may apply to reverse the order, allowing the defendant to re-occupy the Carpark until trial, and awarding the Defendant the costs of any such application and any costs previously incurred on this application.

40. The balance of justice favours the plaintiff in the circumstances. Even leaving aside the strong case it has advanced, damages would not be an adequate remedy for the continued infringement of its rights whereas they would adequately compensate the Defendant. On the other hand, I am not satisfied that the issues raised by the Defendant are sufficiently real and substantial either to impact on the Plaintiff's ability to meet the threshold test or the balance of justice assessment. The implausibility of some issues raised by the Defendant is also relevant to the exercise of the discretion, particularly when set against the strength of the Plaintiff's claims and the terms of the Agreements and the contemporaneous correspondence. His assertions do not justify the defendant remaining in occupation for now.

41. Applying the principles summarised by O'Donnell CJ in para.64 of his judgment in *Merck,* my conclusions are as follows:

a) a permanent injunction could be granted at trial;
b) the case will likely go to trial and the Plaintiff has established a strong case likely to succeed at trial;
c) the balance of justice favours an interlocutory order pending trial.

d) An award of damages would not adequately compensate the Plaintiff if it wins but the occupation of the Carpark continues in the meantime whereas damages would adequately compensate the Defendant if he should successfully defend the claim and establish that the injunction should not have been granted.

42. Accordingly, on receipt of an undertaking to the Court by the plaintiff and its solicitor to diligently and expeditiously progress the proceedings to trial, I am disposed to grant the relief sought in paragraphs 1 to 3 of the notice of motion. The Plaintiff is presumptively entitled to its costs, but I will hear the parties as to the precise terms of the order and as to costs.

Representation

John O'Regan, instructed by HOS Partners LLP, for the Plaintiff

Paul Comiskey O'Keefe, instructed by Danny Nolan solicitors, for the Defendant.