APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2025 320

Neutral Citation Number [2026] IECA 192

The President.

Allen J.

McDonald J.

BETWEEN

MICHAEL FLATLEY

PLAINTIFF

AND

AUSTIN NEWPORT GROUP LIMITED, DAVID CUSHION, MS AMLIN UNDERWRITING LIMITED, AXA XL UNDERWRITING AGENCIES LIMITED, HAMILTON MANAGING AGENCY LIMITED, HISCOX S.A. AND LLOYDS INSURANCE COMPANY SA (LIC)

DEFENDANTS

JUDGMENT of Mr. Justice Allen delivered on the 18th day of September, 2026

Introduction

1. This is an appeal by the plaintiff against two judgments of the High Court (Roberts J.) delivered on 15th August, 2025 ([2025] IEHC 461) and 14th November, 2025 and consequent order made on 14th November, 2025 that the plaintiff provide security for the first, third, fourth, fifth and seventh defendants' costs in the total amount of €1.1 million. The principal judgment dealt with the question of whether, in principle, security for costs should be ordered. The second judgment dealt with the amount and form and manner of the security.

2. It was eventually conceded in the High Court that the moving defendants had shown that they had a *prima facie* defence to the action. Otherwise, the motions were opposed on a number of grounds: including that the plaintiff – who was and for some time had been living in Monaco – was not ordinarily resident outside the jurisdiction or the EU or EEA.

3. The appeal is more focussed. The plaintiff contends that the High Court judge erred in law and in fact:-

1. in finding that the defendants, while guilty of delay in issuing their motions for security for costs, had adequately explained the delay such that the court refused to find that the delay was a special circumstance which warranted the refusal of the motions;
2. in failing to adequately consider the sufficient or ample assets of the plaintiff within the jurisdiction; and
3. in failing to adequately consider whether the order for security for costs would stifle the plaintiff's access to the courts.

4. Alternatively, it is contended that the judge erred in departing from the prevailing practice to fix the amount of the security at one third of the estimated costs for which the plaintiff was ordered to provide security.

Background

5. The plaintiff is a professional dancer, entertainer and choreographer. He is the creator of a show called *Lord of the Dance.* The plaintiff is the owner of a large property at

Castlehyde, Fermoy, County Cork *("Castlehyde")* which he purchased in 1999 and which was badly damaged as a result of a fire on the night of 18th/19th June, 2016.

6. The first defendant *("Austin Newport")* is a building and restoration company which in 2016 and 2017 carried out restoration works on Castlehyde following the fire.

7. The third, fourth, fifth and seventh defendants *("the Lloyd's defendants")* are insurers who underwrote a policy of insurance on Castlehyde which was responsive to the fire claim.

8. The plaintiff's claim in the action is that, following the fire, he instructed the Lloyd's defendants to carry out the entire restoration works at Castlehyde. He claims that the Lloyd's defendants instructed Austin Newport to carry out the restoration works and that the works were carried out negligently. He claims that the Lloyd's defendants – who paid for the works – are responsible for the negligence of Austin Newport and, separately, that the Lloyd's defendants had knowledge of certain issues concerning the alleged contamination of Castlehyde which – he says – they failed to disclose to him when negotiating and entering into a settlement agreement finalising the indemnity payments made under the insurance policy. The plaintiff further seeks a declaration that the settlement agreement breached the Unfair Terms in Consumer Contracts Regulations, 1995.

9. The plaintiff claims that the restoration works were defective and that the house is unhabitable, including on the basis of the alleged presence of unspecified toxins. He has quantified his claim in the estimated sum of €30 million.

10. Not the least peculiarity in the appeal is that one of the grounds of appeal is that the judge erred in estimating that the house which, for the purposes of the substantive action is uninhabitable and needs €30 million spent on it, was, for the purposes of the motions for security for costs, worth less than €20 million.

The motions for security for costs

11. The action was commenced by plenary summons issued on 7th December, 2023 and entered into the High Court commercial list on 15th January, 2024. The action against the second defendant was later discontinued and the claim against the sixth defendant was referred to arbitration.

12. Following the delivery of an amended statement of claim on 11th March, 2024, letters were written on behalf of the Lloyd's defendants on 21st March, 2024 and on behalf of Austin Newport on 8th April, 2024 seeking details and supporting evidence of the plaintiff's assets within the jurisdiction and portending applications for security for costs if those details and that evidence were not provided. The Lloyd's defendants' and Austin Newport's defences were delivered on 31st May, 2024. In circumstances to which I will come, the formal requests for security for costs were made on 14th March, 2025 and the motions for security for costs were issued on 2nd April, 2025. By then, the action had progressed to the point that discovery had been exchanged.

Delay

13. One of the grounds on which the motions were opposed in the High Court, and probably the principal ground of the appeal, was that – as the plaintiff contended – there was undue and prejudicial delay on the part of both Austin Newport and the Lloyd's defendants in bringing their applications. The arguments both in the High Court and on the appeal were influenced by the judgment of this Court in *Sweeney v. The Voluntary Health Insurance Board* [2025] IECA 15, the gravamen of which was that the plaintiff was required to show that he had been prejudiced by the delay on the part of the defendants.

14. On the very day that the appeal was heard, the Supreme Court gave judgment on an appeal in *Sweeney v. The Voluntary Health Insurance Board* [2026] IESC 32 which reversed the judgment of this Court on the point on which it turned. Soon after, the parties' solicitors quite rightly drew the Court's attention to this development – of which, incidentally, the

Court was already aware – and proposed that the Court might give directions for an exchange of further submissions. For the reason to which I will very shortly come, the Court decided that it did not need any further submissions.

15. The fact is that there was in this case a significant lapse of time between the time when the issue of security for costs was raised by the defendants' solicitors and the issue of the motions. The High Court judge addressed the arguments in the language in which they had been presented – more than once describing the lapse of time as *"delay"* – before concluding that the delay had been explained and that the plaintiff's actions and representations were an integral part of the delay. The judge further accepted a submission on behalf of the moving defendants that the plaintiff had failed to show that he would have conducted the litigation differently had he known that the defendants were seeking security for costs, but the *ratio* was that the defendants had explained and justified the timing of their applications.

16. What was before the Supreme Court in *Sweeney*, as identified in para. 1 of the judgment of Donnelly J., was the approach which a court ought to take where there has been a significant period of delay on the part of a defendant in making the application for security and the extent to which a plaintiff in resisting such an application must demonstrate that he has been prejudiced by the delay. For present purposes, the core conclusions of the Supreme Court were (para. 107) that the starting point in measuring any alleged delay is that the application ought to be made as soon as reasonably possible after the grounds for making the application were first known to the applicant, or with due diligence could have been known; and (para. 109(b)) that the rationale of delay as a special circumstance is based on the entitlement of a party to be able to include in his decision whether to progress the proceedings the fact that it will have to put up security from as early a time as is reasonably practicable. *Sweeney* was an application under s. 52 of the Companies Act, 2014 in which the question was the likely ability of the plaintiff company to meet an adverse costs order but it seems to me that the rationale in relation to the timing of an application for security applies equally to an application under O. 29 of the Rules of the Superior Courts.

17. The Supreme Court in *Sweeney* allowed the appeal on the ground (para. 113) that the length of the delay and the absence of any exigency of justice, or, indeed, any explanation, was sufficient to set aside the order requiring that security for costs be provided. Critically, however, as far as the need for any further submissions was concerned, the Supreme Court upheld the finding of this Court that any delay was to be measured from the time at which the grounds for taking the application were first known to the applicant.

18. While the arguments and the judgment of the High Court in this case were expressed in terms of *"delay"* and *"explanation"* the real question was whether the applications had been made as soon as reasonably possible after the grounds for making the application were first known to the defendants, or with due diligence could have been known. The Supreme Court in *Sweeney* had affirmed the finding of this Court on that question, so there was no need for further submissions.

The correspondence

19. The question of security for costs was first raised by the solicitors for the Lloyd's defendants in a letter of 21st March, 2024. This portended the prospect of an application for security for costs but did not directly ask for security. The statement of claim – it was said – gave the plaintiff's *"principal address"* as Monaco, which is neither in the EU nor the EEA. The solicitors suggested that the Registry of Deeds showed that Castlehyde was subject to multiple mortgages and charges, the most recent of which was in favour of Novellus Finance Limited *("Novellus")* in September, 2023. The solicitors expressed concern that the plaintiff did not have sufficient unencumbered assets within the jurisdiction to satisfy an adverse costs order in their clients' favour and asked that the plaintiff's solicitor would identify and provide full details of the plaintiff's unencumbered assets, failing which – or in the event that the information was not satisfactory – an application would be made for security for costs.

20. I pause here to say that while the correspondence repeatedly sought details of unencumbered assets, it is clear that what was sought was details – and vouching – of the plaintiff's net assets in the jurisdiction.

21. The plaintiff's solicitor replied by letter dated 26th March, 2024. He suggested that the Lloyd's defendants were aware that the plaintiff had spent €29 million of his own funds to renovate and restore Castlehyde after he bought it. It was acknowledged that over the years the plaintiff had different mortgages over the property but – it was said – all of those mortgages bar one had been repaid in full. *"It is anticipated"* he said, *" that the current mortgage will be repaid circa October 2024."* The plaintiff's solicitors said that the plaintiff was an Irish citizen who had substantial property and fine arts in the jurisdiction. It was said that he had had to vacate his home in Castlehyde due to *inter alia* the negligent acts and omissions of the Lloyd's defendants and their breach of contract. The plaintiff – it was said – was currently residing in Monaco but from May, 2024 would be residing in Paris as his principal address. It was said that any application for security for costs was misconceived and ill-advised and that any application would be vigorously defended.

22. I pause here to say that the fact that the plaintiff is an Irish citizen – which was a recurring theme of the correspondence, his evidence, and the submissions made on his behalf – is completely irrelevant. Plaintiffs who are Irish citizens and are ordinarily resident outside the jurisdiction are treated in precisely the same way as all other plaintiffs who are ordinarily resident outside the jurisdiction.

23. The Lloyd's defendants' solicitors replied on 3rd April, 2024. They suggested that a property search showed that Castlehyde was subject to seven mortgages since 2004, only one of which had been released. They asked for details of all mortgages remaining on the property, including the sums outstanding on the loans and the extent, if any, to which they were in arrears. They asked for details of the *"substantial property"* which the plaintiff owned in Ireland and the extent to which it was encumbered; and details and supporting valuations for the plaintiff's collection of fine art.

24. By letter dated 8th April, 2024 the plaintiff's solicitor confirmed that the mortgage to Novellus was the only mortgage outstanding on Castlehyde and provided copies of the releases of the previous mortgages. He said that he would deal with the balance of the queries by close of business on 10th April, 2024.

25. By e-mail of 10th April, 2024 the plaintiff's solicitor wrote that the only mortgage over the property was in favour of Novellus in the sum of *"circa 5.5 million euro"*. He said that he was instructed that the property had been valued by Sotheby's International Realty in 2018 at *"circa 12.5 million euro"* and that if it was fit for purpose, it would be worth in the region of €17.5 million. He suggested that the Lloyd's defendants, as the plaintiff's previous insurers, knew about the value of his artwork, which – he said – was unencumbered. In the circumstances – it was said – having regard to the 2018 valuation alone and the balance on the mortgage, there was over €6 million of unencumbered equity in the property. *"We trust this alleviates your clients' concerns."*

26. The Lloyd's defendants' solicitors replied on 19th April, 2024. They observed that no evidence had been provided of the €12.5 million valuation but that, in any event, that had been made six years previously and they suggested that a current valuation was required. The Lloyd's defendants had been able to locate a table of contents of artwork dated 25th July, 2015 attached to an old insurance policy but made the point that the value then ascribed to the artwork was no longer reliable and that no evidence had been provided that the plaintiff still owned it. They asked for a current valuation of Castlehyde and details of the artwork and reserved their right to make an application for security for costs.

27. The response to this was an e-mail of 23rd April, 2024 in which the plaintiff's solicitor said that as of 28th April, 2024 the plaintiff would be taking up residence in Valencia, Spain. The issue as to security for costs – he said – simply did not arise. Any application for security for costs would be vigorously opposed and bound to fail.

28. On 17th May, 2024 the Lloyd's defendants' solicitors wrote again. They pointed out that the recent suggestion that the plaintiff would be residing in Valencia contradicted the earlier assertion that he would be living in Paris. They repeated their request for an up to date valuation of Castlehyde; a list of the plaintiff's artwork, supported by valuations and confirmation that it was in Ireland; and any further evidence of the plaintiff's unencumbered assets in the State. That letter went unanswered and a reminder was sent on 14th June, 2024 in which the further point was made that the plaintiff had not provided any evidence that he was resident in the EU. The plaintiff's solicitor was exhorted to engage with the request for information. It would – it was said – be a poor use of the parties' and the court's time if a motion were to be served and only then the information provided.

29. By e-mail of 18th June, 2024 the plaintiff's solicitor confirmed to the Lloyd's defendants' solicitors that the plaintiff was not currently residing in the EU. He had – it was said – decided to remain in Monaco and to return to Ireland when Castlehyde had been restored. The plaintiff – it was said – had instructed a valuer to value Castlehyde and anticipated a valuation *"in the next few weeks"*. The plaintiff's solicitor said that he would revert when he had the property valuation. By letter dated 24th June, 2024 the Lloyd's defendants' solicitors thanked the plaintiff's solicitor for confirming that a valuer had been instructed. They said that their clients required the valuation timeously and by 8th July, 2024 at the latest. The response to that was an assertion that the Lloyd's defendants were seeking to stall the proceedings; that they had delayed in seeking security for costs; that the plaintiff was in a position to pay any costs order; and that the valuation was expected by about 22nd

July, 2024. By letter dated 2nd July, 2024 the Lloyd's defendants' solicitors took issue with what had been said but nevertheless welcomed the confirmation that the valuation would be available by circa 22nd July, 2024 and looked forward to receiving it then or before then.

30. With the benefit of hindsight, the plaintiff's solicitor's assertion that the Lloyd's defendants had delayed in seeking security for costs might have rung an alarm bell. However, the fact of the matter was that the plaintiff's solicitors were adamant that he had abundant assets within the jurisdiction – specifically sufficient equity in Castlehyde – to meet any adverse costs order; and that he would provide evidence of that in early course. The plaintiff's solicitor did not then, or later, take issue with the Lloyd's solicitors' position that it would have been a waste of the parties' time and money – as well as court time – for them to have issued a motion for security for costs, only to be met with satisfactory evidence that the plaintiff's assets within the jurisdiction were such that an order security for costs was not warranted.

31. On 19th July, 2024 the anticipated date for the valuation was put back by the plaintiff's solicitor to *"circa"* 9th August, 2024. No reason was given and the plaintiff's solicitor's response to a request by letter of 23rd July, 2024 to provide a reason was that the plaintiff's valuer was on vacation. A reminder on 8th August, 2024 appears to have been ignored. By letter of 10th September, 2024 the Lloyd's defendants' solicitors threatened a motion for security for costs unless the valuation was received by close of business on 16th September, 2024.

32. In September, 2024 the long promised and long-awaited valuation of Castlehyde was eventually provided. Under cover of a letter of 17th September, 2024 the plaintiff's solicitor sent to the Lloyd's defendants' solicitors a copy valuation by Humphrey Hogan & Associates, a firm of valuers in Blarney, which valued Castlehyde as of 12th September, 2024 at €20 million. I will refer to this as the first Hogan valuation. The repeatedly requested particulars of the plaintiff's fine art collection were not provided but if the valuation of Castlehyde was accurate – or even more or less accurate – and if the information previously provided that the balance owing to Novellus was €5.5 million was correct, there was plenty of equity in Castlehyde.

33. The Lloyd's defendants appear to have taken the first Hogan valuation at face value. It was obviously the plaintiff's intention in providing the valuation that they would. For the time being, the valuation saw off the threat of an application for security for costs.

34. There was a significant development in December, 2024. It came to the defendants' solicitors' notice by a newspaper report that receivers had been appointed by Novellus over Castlehyde. On 3rd December, 2024 the plaintiff and a company associated with him, Blackbird Film Productions Limited *("Blackbird")* obtained an interim injunction restraining Novellus and/or its agents from taking possession of the property. I will refer to these proceedings as the Novellus proceedings. The newspaper report suggested that it was Blackbird who had secured the loan from Novellus in September, 2023, on the security of a personal guarantee by the plaintiff, and that Castlehyde had been put up as collateral for the plaintiff's guarantee.

35. In a letter of 9th December, 2024 the Lloyd's defendants' solicitors suggested that the plaintiff's solicitor had failed to advise them of the true nature of the charge or of the injunction proceedings. They asked for a copy of the pleadings and motion papers in the Novellus action. I will refer to these papers as the Novellus papers. The plaintiff refused to provide a copy of the Novellus papers but by order of the High Court made on 13th January, 2025 the solicitors for the defendants in the Novellus proceedings were permitted to provide a copy of the papers to the solicitors for Austin Newport and the solicitors for the Lloyd's defendants. Copies of the Novellus papers were made available to the defendants' solicitors on 17th January, 2025.

36. It was evident from Novellus papers that the plaintiff, by his accountants, had provided Novellus with a statement of affairs as of 7th September, 2023 in which it was stated that Castlehyde was then valued at stg£8 million (the equivalent of about €9.3 million) and was subject to a loan of stg£4.95 million, leaving an equity interest of stg£3,050,000. Also among those papers was a valuation prepared by Sherry FitzGerald on the instructions of Novellus which valued the house and surrounding 159 acres as of 29th August, 2023 at €8.5 million. I will refer to this as the first Sherry FitzGerald valuation.

37. The statement of affairs ascribed a value of stg£90 million to *"Lord of the Dance Inc"* which was said to include Lord of the Dance, Lord of the Dance 25, Celtic Tiger, Feet of Flames, Corporate Touring and Dance Lord. The reference to Lord of the Dance Inc appears to have been a global grouping of the plaintiff's interest in these various productions rather than a reference to a corporation. There was nothing to show how this value was arrived at.

38. The Novellus papers included a loan agreement made between Blackbird and Novellus, guaranteed by the plaintiff, for a facility of up to €5,696,841 at a margin of 9.75% over the ECB main refinancing rate, with a minimum interest rate of 14% per annum. On 2nd February, 2024 Novellus had made a demand for €6,641,802.37. It was evident from the papers that the plaintiff was seeking to refinance the Novellus loan by borrowing something like €7.1 million, although the plaintiff's solicitors steadfastly refused to provide details of the loan, repayment terms, or interest rate.

39. If the *"circa"* €5.5 million said in the plaintiff's solicitor's e-mail of 10th April, 2024 to have been the amount of the *"mortgage"* over Castlehyde was not all that far off the amount of the initial loan, it was a far cry from the amount of Novellus's demand of two months earlier, on which presumably a further two months' interest had accrued at a rate of at least 14% per annum. I am not to be understood as expressing any view as to who was responsible for this discrepancy when I say that the information provided to the Lloyd's defendants solicitors was false, and – as to the value of the equity in Castlehyde, which was the subject of the correspondence – materially misleading.

40. By letter dated 14th March, 2025 the Lloyd's defendants' solicitors formally requested security for costs in the sum of *"no less than"* €1.6 million. The plaintiff's solicitor's response, by e-mail of 27th March, 2025, was that the plaintiff was an Irish citizen; that Mr. Hogan had confirmed that Castlehyde was worth €20 million; that there was only one mortgage over the property for €7.1 million; that the action had been necessitated by the negligence of the Lloyd's defendants; and that the Lloyd's defendants had delayed in their application for security for costs. He asserted that the facts were not significantly different that they had been a year previously when – he said – the plaintiff had a €5.5 million mortgage over the property.

41. €7.1 million is €1.6 million, or 29%, more than €5.5 million.

42. The thrust of the correspondence between Austin Newport's solicitors and the plaintiff's solicitors was similar.

43. On 8th April, 2024 Austin Newport's solicitors referred to the Lloyd's defendants' solicitors' letter of 21st March, 2024 and said that their client shared the same concern that the plaintiff did not have sufficient assets within the jurisdiction to meet an adverse costs order. They asked for details of the plaintiff's unencumbered assets within the jurisdiction, and reserved their right to bring a motion for security for costs should the information provided be inadequate.

44. By letter of 12th April, 2024 Austin Newport's solicitors were told – as the Lloyd's defendants' solicitors had been – that the plaintiff intended to move to Paris in May. By the way, Austin Newport's solicitors were not later told of any plan to move to Valencia and they were not told – as the Lloyd's defendants' solicitors were told on 18th June, 2024 – that the plaintiff had decided after all to stay in Monaco. They were told that he owned a substantial property in Cork – which he described as his home – which had been valued by Sotheby's International in 2018 at approximately €12.5 million, and was then worth €17.5 million, and on which there was one current mortgage to Novellus for the sum of circa €5.5 million; and that he had fine arts and antiques in his home with an insured value of €4 million. The attentive reader will have picked up that in the correspondence with the Lloyd's defendants' solicitors, no figure had been put on the fine arts.

45. On 23rd April, 2024 Austin Newport's solicitors wrote that their client could take no comfort from what they had been told. They said that they expected at a minimum to see an up-to-date valuation of the property. They said that they did not accept that a fine art collection could be considered as suitable security, and even if it was, the plaintiff would need to provided details and valuations. Whether or not a fine art collection worth €4 million could in principle be considered suitable security, I see no reason why – if the plaintiff had a valuable collection of art in Ireland – the request for details and valuations might not have been readily met. By letter dated 15th May, 2024 they said that they were still awaiting a response and set a deadline of 22nd May, 2024 for a satisfactory response, failing which they would issue a motion.

46. In a letter of 20th May, 2024 the plaintiff's solicitors said that the plaintiff was an Irish citizen and had a significant property in the State *"for which [Austin Newport] was responsible for a diminution in value."*

47. The booklet of copy correspondence in relation to the value of the plaintiff's assets in Ireland exhibited by Ms. Gilmore – or at least the copy of it in the book of appeal – appears to be incomplete but the body of the affidavit shows that the question was pursued in correspondence; that Austin Newport's solicitors were liaising with the Lloyd's defendants solicitors, and that the plaintiff's solicitor was aware of that; that Austin Newport's solicitors had been promised a valuation by the plaintiff's solicitor and were chasing him for it; and that they were eventually provided with the first Hogan valuation in September, 2024.

48. By letter dated 10th December, 2024 Austin Newport's solicitors suggested that the newspaper report of the Novellus proceedings was inconsistent with the information which had been provided to them and asked for a copy of the pleadings and papers in the Novellus proceedings. Like the Lloyd's defendants' request, that request was refused but Austin Newport's solicitors got a copy of the Novellus papers on 17th January, 2025 on foot of the High Court order.

49. By letter dated 14th March, 2025 Austin Newport's solicitors made a formal demand for security for costs. The plaintiff's solicitor's last word was an e-mail of 26th March, 2025 in which it was asserted by reference to Mr. Hogan's valuations that Castlehyde was worth €20 million and was subject to only one mortgage for €7.1 million, of which €1.4 million was lodged in court. It appears from this e-mail that the first Hogan valuation had previously been provided to Austin Newport's solicitors in September, 2024.

The evidence

50. As I have said, the defendants' motions for security for costs were both issued on 2nd April, 2025.

51. Austin Newport's motion for security for costs was grounded on an affidavit of its solicitor, Ms. Kathy Gilmore, who deposed that the plaintiff did not reside within the jurisdiction or in a member state of the EU or EEA and that her client had a *prima facie bona fide* defence to the claim. She said that there were no special circumstances that might warrant a refusal of the order sought. She summarised and exhibited copies of her firm's correspondence with the plaintiff's solicitor seeking details of his unencumbered assets within the State. She said unencumbered assets but she obviously meant net assets. She explained, at para. 42, that her client was at all times anxious to clarify the position regarding the plaintiff's unencumbered assets in the jurisdiction [which] required requests of the plaintiff and his advisers to provide adequate information.

52. Ms. Gilmore exhibited an e-mail from the plaintiff's solicitors which she said confirmed that the property at Castlehyde was by then subject to a mortgage for €7.9 million. She pointed to the discrepancy between the first Hogan valuation of €20 million and the first Sherry FitzGerald valuation of €8.5 million which had come to light in the Novellus proceedings and said that in circumstances in which a valuation of €8.5 million had been given for a property which was subject to a mortgage facility of €7.9 million, there was a marked concern that the plaintiff would not be in a position to meet an adverse costs order against him. In the correspondence and in the plaintiff' affidavits the balance on the new loan was variously said to be €7.1 million, €7.9 million and €9 million. The judge made her calculation on the basis of an admitted liability of €7.9 million and no one has suggested that that figure was incorrect.

53. Ms. Gilmore gave a very brief summary of the Novellus proceedings and exhibited a booklet of core pleadings in that case, running to 79 pages; a booklet of motion papers in relation to the injunction application, running to more than 1,500 pages; and the transcripts of the hearing of the plaintiff's interlocutory injunction application, running to 383 pages. I am far from convinced that it was necessary for Ms. Gilmore to have exhibited five folders of exhibits but when the time comes to consider the *"delay"* between 17th January, 2025 when the Novellus papers were made available and the formal demand for security for costs of 14th March, 2025, the volume of the Novellus papers gives some insight into the work likely to have been required to analyse them; and the fact that the Austin Newport solicitors had the transcripts of the Novellus interlocutory injunction hearing goes to show that they were monitoring its progress.

54. I pause here to say that the High Court found – and that it was and is common case – that the threshold test on an application by a defendant for an order for security for costs against a plaintiff who is ordinarily resident outside the jurisdiction – and outside the EU and the EEA – is that the plaintiff is in fact ordinarily resident outside the jurisdiction and that the defendant has established *"upon a satisfactory affidavit that such defendant has a defence on the merits."* The trial judge cited the decision of Cahill J. in *Tahboub v. The Joint Arab-Irish Chamber of Commerce CLG* [2024] IEHC 616 as authority for the proposition that:-

> *"There are two criteria that must be satisfied for an order under [O. 29]: first, the party against whom security for costs is sought must be resident outside the jurisdiction of the Court, the EU and the Lugano Convention contracting states; and, second, the defendant must demonstrate a prima facie defence to the merits of the claim. If the defendant discharges this burden, the plaintiff then bears the onus in relation to any circumstances which are asserted to warrant the refusal of the order sought."*

55. I am not to be thought to be critical of Ms. Gilmore when I say that the apprehension which she expressed as to the value of the plaintiff's net assets within the jurisdiction – as well, indeed, as her rather bold positive assertion that there were no special circumstances which would warrant the refusal of the order sought – anticipated what the plaintiff's answer to the application would likely be.

56. The Lloyd's defendants' motion for security for costs was grounded on an affidavit of their solicitor, Mr. Michael Prior. Mr. Prior also deposed that the plaintiff was resident outside the jurisdiction and – by reference to the affidavits sworn by the plaintiff in the Novellus proceedings and the submissions of his counsel in those proceedings – tried (unsuccessfully as it turned out) to forestall any argument that he was resident in Ireland. Mr.

Prior set out in some detail the reasons by reference to which his clients would submit that they had a full defence to the plaintiff's claim.

57. As had Ms. Gilmore, Mr. Prior pointed to the discrepancy between the first Hogan valuation of €20 million and the first Sherry FitzGerald valuation of €8.5 million. Mr. Prior also pointed to the 7th September, 2023 statement of affairs, to the rebuild cost for which Castlehyde was then or had most recently been insured, and to a letter from the plaintiff's insurance brokers to the effect that it was *"impossible to secure further cover on the home at this stage"*, all of which, he suggested, went to the question of the actual value of Castlehyde.

58. From para. 65 to para. 84 of his affidavit, Mr. Prior addressed in some detail the *"Timing of the application."* Starting with his firm's letter of 21st March, 2024, he summarised and exhibited the correspondence which had preceded the issuing of the motion. Mr. Prior deposed that the Lloyd's defendants had estimated their total costs of defending the proceedings at about €1.76 million, exclusive of VAT. He pointed to the fact that Austin Newport had estimated its costs of defending the action against it at €1.2 million and that the plaintiff was – as he appears to have been at that time – pursuing his claim against Hiscox S.A. which, Mr. Prior suggested, would likely result in further costs orders against him. Mr. Prior concluded that his clients believed that they had a good defence to the action and that by reason of the plaintiff's residence in Monaco and his financial difficulties it appeared that his clients will – he said will, but he meant would – have difficulty enforcing any costs order that might be made against the plaintiff.

59. I will need to come back to Mr. Prior's affidavit, specifically his evidence as to the timing of the application.

60. On 25th April, 2025 the plaintiff swore two affidavits: a very long affidavit in response to the affidavit of Mr. Prior and a shorter one in response to that of Ms. Gilmore.

61. In his response to Mr. Prior's affidavit, the plaintiff started by saying how successful *Lord of the Dance* was. Without providing any details as to how this sum was calculated, he said that it was worth €200 million: which, the attentive reader will have picked up, was double the combined value ascribed to all of his productions in the statement of affairs of 7th September, 2023. He dealt at length with the circumstances in which he had bought and restored Castlehyde; the fire, and – over 19 pages – the substance of his claim. He was at that time contending that the defendants had not established that they had a *prima facie* defence.

62. Starting at para. 42, the plaintiff suggested that there had been delay on the part of the defendants in seeking security for costs. He pointed to the fact that the action had progressed since the initial requests for information. In the same breath he deposed that the €5.5 million loan had been refinanced by borrowings of €7.9 million *(sic.)* and that nothing had materially changed since the previous year.

63. €7.9 million is €2.4 million or nearly 44% more than €5.5 million.

64. The plaintiff relied on two valuations of Humphrey Hogan & Associates – the first being the valuation of 12th September, 2024 and the second materially identical valuation of 24th March, 2025 (which I will call the second Hogan valuation) by which Mr. Hogan confirmed his earlier valuation – in support of his repeated assertion that Castlehyde was worth €20 million. He said that *"apart from the €9,000,000"* the property was unencumbered. In a later affidavit the plaintiff would come to suggest that the reference to €9 million was a typographical error and should, variously, have read either €7.1 million or €7.9 million. If the reference to €9 million was a typographical error, it was, to put it at its mildest, unfortunate that this was not picked up by the plaintiff's solicitor or the plaintiff himself before the affidavit was sworn. In a row about the equity in Castlehyde the amount of the liability was obviously central. No less, it could surely have been expected that in correcting a significant typographical error, the plaintiff would have been able to say precisely what the error was, rather than putting up two alternative figures: the higher of which was €800,000 or more than 11% more than the lower.

65. At para. 50 of his first affidavit the plaintiff summarised his answer to the defendants' motions as being:-

(i) that the defendants had delayed in bringing the application;

(ii) that he had ample assets in the jurisdiction, namely what he described as his home at Castlehyde which was valued at either €12 million *(sic)* or €20 million;

(iii) that the defendants have not put forward evidence of a good defence;

(iv) that the defendants were attempting to abandon their responsibility as insurers; and

(v) that the plaintiff was an Irish citizen with strong ties to the country and was *"involved in the production of whiskey in Ireland and export from Ireland; valued at €10,000,000."*

66. He did not in his summary put up the value of Lord of the Dance as part of his answer to the applications. He had, however, exhibited a statement of affairs dated 24th April, 2025 – prepared by the same accountant who had prepared the 2023 statement of affairs – which put gross valuations on Castlehyde of €20 million; on *"Flatley Whiskey Limited"* of €10 million; and on *"Lord Of The Dance"* of €200 million. There was no information in the statement of affairs or in the plaintiff's affidavit as to where – other than in the case of Castlehyde – these figures had come from. It will not have escaped notice that there was no reference in the correspondence which preceded the motions to Lord of the Dance or Flatley Whiskey; or that there was no mention whatsoever in the plaintiff's affidavit of valuable fine art, generally, or valuable fine art worth (or insured for) €4 million, in particular.

67. The substance – if that is the *mot juste* – of the affidavit sworn by the plaintiff in response to the affidavit of Ms. Gilmore was the same. He denied that Austin Newport had a good defence and rehearsed the merits of his claim against Austin Newport. He had less to say in the body of his affidavit about his grievances but exhibited more than 300 pages of reports in relation to the fire damage and repairs. Airbrushing out what had emerged from the Novellus papers, he said that Austin Newport was aware since April, 2024 that there was a mortgage in favour of Novellus for €5.5 million and he suggested that Austin Newport had delayed unduly in bringing the application. He said that Castlehyde had been valued by Humphrey Hogan & Associates at €20 million and was subject to a mortgage for €7.9 million, including the €1.4 million which had been lodged in court. He asserted that Lord of the Dance – which, he added, was probably the greatest show on earth – was worth €200 million, and he exhibited the statement of affairs dated 24th April, 2025.

68. A supplemental affidavit of Mr. Prior was filed on 9th May, 2025 the substance of which – as far as the value of the plaintiff's assets within the jurisdiction is concerned – was that there was that there was no indication whatsoever as to the nature of his alleged interest in either Lords of the Dance or Flatley Whiskey, and that the valuation of Castlehyde was *"simply not credible"*. The Lloyd's defendants, he said, had commissioned an independent valuation of Castlehyde dated 7th May, 2025 which had come in at €10.5 million and an affidavit of a Ms. Deirdre Bonus of QRE Real Estate Advisers had been sworn exhibiting that valuation, which it had. I will refer to this as the QRE valuation.

69. A supplemental affidavit of Ms. Gilmore was filed on 12th May, 2025, which was largely argumentative but which, significantly, disclosed that Austin Newport had commissioned Sherry FitzGerald to provide an up-to-date valuation of Castlehyde, which had come in at €8.5 million. That, she explained, was a desktop valuation in circumstances in which the plaintiff had refused to allow Sherry FitzGerald access to the property. Ms. Gilmore exhibited a copy of the Sherry FitzGerald report, which was separately verified by an affidavit of Ms. Harriet Grant, the valuer who had prepared it. I will refer to this as the second Sherry FitzGerald valuation.

70. The plaintiff swore a supplemental affidavit on 6th June, 2025 which – and it is no criticism of the plaintiff personally – was almost entirely, but, as I will quickly come to, not altogether, fluff and bluster. It devoted a full page to the plaintiff's achievements and awards.

71. The plaintiff deposed that the Lord of the Dance had been valued at a conservative minimum of €200 million using industry standard valuation methodology; but he did not say when or by whom, or what the methodology was or what were – as Mr. Prior had surmised were presumably – the intellectual property rights on which the figure was based. Later in that affidavit he suggested that using an unidentified different valuation methodology, the valuation would be as much as double the €200 million.

72. At para. 11 of this affidavit, the plaintiff effectively scuppered any relevance of the value of the Lord of the Dance for the purpose of security for costs. He deposed that:-

> *"11. … Lord of the Dance is a global enterprise, which tours the world under licence from me, often using different corporate entities depending on location or region. The entire intellectual property ultimately vests with me personally. Therefore, wherever I am, so too is located the value of Lord of the Dance. I reside in Monaco or in Ireland. There is no confusion in this regard."*

73. If, at the time of the High Court hearing, there was no confusion as to where the plaintiff resided, it was not for the want of trying on the part of his then lawyers. In the event, the High Court found that he was and is ordinarily resident in Monaco and there is no appeal against that finding. In a nutshell, Lord of the Dance is not an asset within the jurisdiction (or the EU, or the EEA) to which regard might be had to displace the defendants' *prima facie* entitlement to security for costs.

74. In his affidavit of 6th June, 2025 the plaintiff deposed that Flatley Whiskey was an Irish whiskey business which – he said – by its very nature must be located in Ireland: he did not say where in Ireland. He said that he was the 100% owner of that business. There was nothing about corporate structure, premises, brands, production, stock in bond, or – for that matter – a single drop of whiskey.

75. In support of his assertion that Flatley Whiskey was worth €10 million, the plaintiff exhibited a letter from his accountants to his solicitor which referred to *"Flatley Whiskey Limited & Flatley Whiskey (Holdings) Limited – Valuation ."* The letter referred to *"the valuation of the above group of companies, owned by Mr. Michael Flatley"* but unless that letter was itself supposed to be a valuation, there was no evidence of any valuation.

76. According to the plaintiff's accountants:-

> *"The valuation is the accumulation of all project costs since inception, to include set up costs, legal and copyright costs, brand design and consultancy expenditure, staff procurement, product launch and manufacturing costs. It also includes retained profit from sales to date and current bonded stock held, which has a current open market value in excess of €2 million.*
>
> *Furthermore, the product is on sale for over one year and is performing well, which increases the inherent brand value. In this context, the valuation of €10 million is both proportionate are reasonable."*

77. This is so hopelessly vague as to be meaningless. It does not use any of the conventional methods of valuing a company. To my eye, it also betrays a failure to understand the difference between copyright and trade marks.

78. If – as it is – the object of an order for security is to protect a defendant from being unable to recover its costs if successful, these defendants – if they were to obtain a costs order

– could not have the slightest idea where they might begin to look for whiskey related assets never mind what, if anything, they could hope to find.

The High Court judgment

79. The defendants' motions were heard together by the High Court (Roberts J.) over two days on 8th and 9th July, 2025. On 15th August, 2025 Roberts J. gave a written judgment in which she concluded that she would make an order directing that the plaintiff should provide security for costs. She then listed the motions for submissions as to quantum and form and manner for 14th November, 2025 and gave directions for the filing and exchange of written submissions in the meantime.

80. Following a brief introduction and a description of the parties and a summary of the substantive action, the judge briefly summarised the relevant legal principles on an application for an order security for costs by a plaintiff who is not ordinarily resident in the jurisdiction or the EU or EEA. It is a very clear summary, and I gratefully adopt it.

81. Having cited the relevant parts of O. 29 and the passage from the judgment of Cahill J. in *Tahboub* to which I have already referred, Roberts J. continued:-

> *"13. If the relevant criteria of residence outside the jurisdiction and a prima facie defence are satisfied then an order for security for costs would generally be granted unless special circumstances exist which require a different outcome. The application of special circumstances involves the court exercising its discretion to balance the justice of the matter as between the competing rights and interests of the party seeking security and the party resisting it. As O'Donnell J (as he then was) noted in Quinn Insurance Ltd v Price Waterhouse Coopers (a Firm) [2021] 2 IR 70 at para 12: 'the issue on an application for security for costs is a question to be determined by reference to the balance of justice. That is because there is a possible injustice whatever order the court makes.' An order for security protects a*

defendant from being unable to recover its costs if successful but it can also work to prevent a plaintiff from being able to advance his claim. Each application must therefore be considered by reference to its own unique facts and circumstances and the court has a wide discretion as to whether to grant or refuse an order in every case.

14. It is important to understand the rationale behind the courts' jurisdiction to make an order for security for costs under O. 29. This was explained by Clarke J (as he then was) in Harlequin Property (SVG) Limited v. O'Halloran, [2012] IEHC 13 at para 4.10, where he stated :'the jurisdiction under Order 29 is not based on the fact that a relevant plaintiff may be unable to pay costs in the event of losing but rather the jurisdictional difficulty in recovering these costs if the plaintiff is based in another jurisdiction and has no assets in this jurisdiction….. The jurisdiction under Order 29 is based on the practical difficulty of enforcing an award of costs outside the jurisdiction (or nowadays, outside the European Union) rather than anything else'.

15. A further explanation of that rationale was expressed by the court (Ó'Neill J) in Ditt v. Krohne [2012] IEHC 312 where it was held at paragraphs 15 and 16 that the determinative factor which establishes a threshold or test which will lead the court to exercise its discretion in favour of granting or refusing security for costs is '…the impossibility of enforcement of a costs order against the plaintiff in question or substantially increased difficulty or expense in enforcing such costs order as compared to the enforcement of such an order against the plaintiff resident in Ireland or who had sufficient assets in Ireland'.

16. Under O. 29 the applicant for security does not need to show an inability on the part of the other party to pay costs. Rather, O. 29 is designed to ensure that *defendants do not face jurisdictional obstacles in enforcing costs orders in their favour.*

17. This rationale is to be contrasted with the rationale, for example, of making an order for security for costs against an Irish limited company under Section 52 of the Companies Act 2014. For such corporate entities the rationale has been explained by reference to the nature of limited liability (Thalle v. Soares [1957] I.R. 182 – although under the prior statutory regime being Section 390 of the Companies Act 1963). Orders for security for costs against Irish limited companies under Section 52 of the Companies Act 2014 (or indeed foreign companies under O.29) require evidence that the company will be unable to pay the costs of the defendant if the defendant is successful in the proceedings.

18. In practical terms, there is also a distinction between the level of security generally awarded in cases involving applications against personal plaintiffs and those involving corporate plaintiffs. There is a general (although not absolute) practice of confining security for costs in O. 29 cases against personal plaintiffs to approximately one- third of the costs likely to be incurred whereas a court ordering security against a company is likely to fix the amount by reference to the full costs likely to be incurred. "

82. *Sweeney v. The Voluntary Health Insurance Board*, as I have said, was an application for security for costs pursuant to s. 52 of the Companies Act, 2014. The question of security for costs was raised by the defendant's solicitors immediately the summons was served and a formal request for security for costs was made by letter dated 23rd October, 2015 but the motion for security for costs was not issued until 28th June, 2023. O'Moore J., speaking for this Court ([2025] IECA 15) emphasised that the defendant had provided no explanation for the delay. He found that the only meaning that the defendant's letter of 23rd October, 2015 could bear was that the defendant was then of the view that it would be able to establish that it had a full defence to the claim and otherwise satisfy the High Court that security for costs should be ordered. He found that it was from that time that the delay was to be calculated. As I have said, that conclusion was upheld by the Supreme Court.

83. In her written judgment, Roberts J. first dealt with and disposed of the argument that the plaintiff was not ordinarily resident outside Ireland or the EU or EEA. As I have said, there is no appeal against the judge's finding that he is.

84. The judge then dealt *seriatim* with the plaintiff's arguments in relation to special circumstances. As I have said, the appeal is confined to three grounds. It is convenient to consider the judge's analysis and conclusion on each of these grounds in conjunction with the plaintiff's arguments that she fell into error.

The grounds of appeal

Delay

85. The first ground of appeal is that the judge erred in finding that the defendants, while guilty of delay, had adequately explained the delay such that she failed to find delay as a special circumstance which existed.

86. At para. 47 of the judgment, the judge said that:-

> *"47. There has certainly been a delay in bringing the present applications. The question is whether, on the facts, that delay is culpable and such as would constitute a special circumstance persuading this court to exercise its discretion against making an order for security for costs. This requires a consideration of the facts in this case as well as the explanation for the delay and its impact."*

87. Her ultimate conclusion, at para. 129, was that:-

> *"129. In my view, on the facts of this case, delay is not a special circumstance warranting refusal of the relief sought. The defendants have provided a reasonable*

explanation for their delay in bringing these applications. They were entitled to rely on the information and assurances provided to them by the plaintiff. Once the defendants became aware of contrary information they moved with reasonable haste to issue their motions, having flagged at an early stage to the plaintiff their intention to seek security for costs. The plaintiff pursued this litigation in the knowledge of and at risk of that request being pursued if the information he provided was later contradicted."

88. The plaintiff submits that the judge erred in finding that the delay was adequately explained. Counsel points to the plaintiff's solicitor's e-mail of 14th June, 2024 in which it was stated that the plaintiff would not after all be moving to Paris or Valencia and submits that the defendants chose to await a valuation report rather than obtaining their own valuations. In fact – as will have been seen – while the Lloyd's defendants' solicitors were told of the plaintiff's change of plan, Austin Newport's were not.

89. The plaintiff's submissions identified three dates from which the defendants' alleged delay might be calculated: 21st March, 2024, when the question of the value of the plaintiff's assets in the jurisdiction was first raised; 14th June, 2024, when the possibility that the plaintiff would move to somewhere in the EU was taken off the table; and 17th January, 2025 when the defendants got access to the Novellus papers.

90. The argument that the defendants ought to have moved in the time when the plaintiff had told them that we would be moving to France or Spain was not seriously pursued.

91. The fundamental flaw in the argument that the defendants ought to have moved in June, 2024 is that the plaintiff's solicitor was at that time repeatedly promising that the plaintiff had commissioned an up-to-date valuation and strung the defendants' solicitors along until September, 2024. I accept the plaintiff's submission that it was open to the defendants to obtain their own valuations if they had reason to doubt the plaintiff's valuation.

The gap in the argument is that counsel does not identify any reason for which the September, 2024 valuation might have been doubted. The first Hogan valuation was commissioned specifically to provide comfort to the defendants as to the extent of the equity in Castlehyde and with the intention that the defendants would rely on it. The plaintiff's submission that the delay ought to have been measured from June, 2024 does not engage with the fact that the defendants first had reason to doubt the valuation in early 2025 when – having secured sight of the Novellus papers – they learned that the first Hogan valuation was more than twice the value ascribed to it about a year previously by the plaintiff himself, by his accountants, and by Sherry Fitzgerald.

92. I think that it is fair to say that the main focus of the argument at the hearing was on the time after 17th January, 2025. The plaintiff submits that the judge erred in rejecting his argument that the plaintiff had suffered prejudice by reason of the defendants' delay in the time between the receipt of the Novellus papers in January, 2025 and the issue of the motions on 2nd April, 2025, which the plaintiff calculates as two and a half months. The first thing to be said about this is that, even if the defendants' solicitors had dropped everything else, the calculation makes no allowance for the time it would necessarily have taken to consider the new information, take instructions, and draft the motions. Secondly, it makes no allowance for the fact that the defendants' solicitors had not previously made a formal request for security for costs. The requests made on 14th March, 2024 were refused on 26th March, 2024 and the motions issued on 2nd April, 2024. If the two and a half months was topped and tailed by a fortnight at either end, the period of the *"delay"* would reduce to six weeks.

93. It seems to me that the gap in so much of the argument as was based on alleged prejudice is that there is no evidence that during this period the plaintiff did or did not do anything that he otherwise would not have done or done if the motions had been issued sooner. It is clear that the plaintiff was and is determined to pursue his action – as well, I think, as his claim against Hiscox S.A. – and, on his own case, has the resources to do so. There is no concrete evidence as to what costs were incurred by the plaintiff between say, early February, 2025 and 14th March, 2025 but more to the point, there is no evidence that whatever costs were incurred would not have been incurred if the defendants had moved sooner. Thus, there is no evidence of prejudice.

94. It is submitted that following the release of the Novellus papers the defendants ought to have raised the fact of their intention to issue the motions for security for costs and thereby avoid or defer the plaintiff incurring the costs of making discovery. But there is no evidential basis for that submission. The plaintiff never said that if the defendants had moved sooner, he would have abandoned his case or paused it pending the determination of any issue that the defendants might have raised or any motion that might have been brought.

95. There was something of a gap in the correspondence between December, 2024 when the defendants' solicitors first became aware of the Novellus proceedings and 14th March, 2025 when the requests for security for costs were made but it was obvious that the defendants' solicitors had doubts as to what they had been told as to the value of the equity in Castlehyde and were vigorously pursuing the issue. If it was not spelled out, the plaintiff's solicitors must have known that if either the €20 million valuation or the €5.5 million liability was seriously undermined, the question of security for costs would be revisited.

96. By the letter of the law, the defendants, at the time the issue of security for costs was first raised, were probably in a position to meet the two threshold requirements of showing firstly, that the plaintiff was resident outside the jurisdiction and secondly, that they had a *prima facie* defence. A reasonable reader might think that it is more than a bit peculiar that the plaintiff, who until shortly before the hearing in the High Court was contending that the defendants had not shown a *prima facie* defence, and who at that hearing persisted in his contention that he was not ordinarily resident outside the jurisdiction, should now be contending that the defendants were in a position to meet one of the O. 29 criteria fifteen months before it was conceded and the other seventeen months before it was established, but strictly speaking, I think that the plaintiff has the better end of the argument: as far as it goes. So, where does it go?

97. At the time the question of security for costs was first raised, the defendants' solicitors obviously considered that they could establish a *prima facie* defence. That never changed. At the time the question of security for costs was first raised, the plaintiff – as the papers filed on his behalf clearly showed – was ordinarily resident in Monaco but he then said that he intended to move to Paris. He never later said that this was not true when he said it and, in any event, could not now be heard to say that the defendants were not entitled to take him at his word. If, by the letter of the law, the defendants were entitled to insist on security for costs unless and until he had in fact moved, it makes no sense to contemplate that they would have issued their motions and run the risk of an adverse costs order if he in fact did move.

98. In principle, the question of whether the plaintiff had sufficient assets within the jurisdiction to meet an adverse costs order in the action was no different. By the letter of the law, the defendants needed to show no more than that he was ordinarily resident outside the jurisdiction and that they had a *prima facie* defence. It would then be a matter for the plaintiff to demonstrate special circumstances. His most obvious prospect of doing that would be to show that he had sufficient assets within the jurisdiction.

99. The defendants knew that the plaintiff owned a substantial property in Cork. Austin Newport had renovated it following the fire on 2016 and the Lloyd's defendants had insured it and paid for the repairs. They might have been able to have a stab at what it was worth, and they were in fact able to establish by a Registry of Deeds search that it was encumbered. They could not, however, have known the extent to which it was encumbered. Nor could they have known what other assets the plaintiff had within the jurisdiction. It makes no sense to contemplate that the defendants might have issued motions for security for costs, only to be met with evidence that the plaintiff had sufficient – he would say abundant – assets within the jurisdiction such as warranted a refusal of the motions. As will have been seen, that is what the Lloyd's defendants said at the time. What, then, short of issuing motions for security for costs, were they to do? They asked.

100. With the benefit of hindsight, the plaintiff's solicitor's answers were even less satisfactory than they appeared on their face. Despite repeated requests, the plaintiff's then solicitors failed to give any particulars of the fine arts but persisted in their assertion that the plaintiff had such assets in the jurisdiction. If there ever were such assets, it is surprising that when the time eventually came, there was no mention of them in the plaintiff's replying affidavits.

101. The correspondence in relation to the equity in Castlehyde was similarly vague. The suggestion in the correspondence that the property had been valued by Sotheby's International at €12.5 million was never vouched and, indeed, did not find its way into the plaintiff's affidavits. The suggestion in the plaintiff's then solicitor's e-mail of 10th April, 2024 that the mortgage on Castlehyde was for €5.5 million was much later shown to have been misleading but the plaintiff cannot be heard to say now that the defendants were not entitled to rely on it in assessing the prospect that they might obtain orders for security. Frankly, I find it astonishing that the plaintiff was allowed to swear affidavits in which he deposed that nothing had changed between September, 2023 when he drew down the Novellus loan of €5.7 million and 10th April, 2024, when the defendants were told that *"the mortgage"* was for *"circa 5.5 million"* but the outstanding balance was well north of €6.6 million.

102. At the hearing of the appeal, counsel for the Lloyd's defendants submitted that the reason why they had not moved sooner was that they were waiting to see what happened in the Novellus proceedings. This, it was said, was what Mr. Prior had said in his supplemental affidavit. What Mr. Prior said at para. 35 of his supplemental affidavit was that once the Lloyd's defendants had reviewed the new evidence and had been informed that the plaintiff had arranged to refinance the Novellus loan in March 2025, they acted promptly to issue their motion. Counsel explained that his clients had a watching brief on the Novellus proceedings in which the plaintiff's counsel was repeatedly telling the court that Castlehyde would be refinanced but that in the event the loan was not refinanced until March, 2025, at which stage they made their request and issued their motion.

103. If Mr. Prior did not spell out the position in detail, the fact of the matter was that Novellus was attempting to force a sale of Castlehyde and the plaintiff was trying to refinance it. The defendants were by then aware of the discrepancy in the valuations of Castlehyde and of the discrepancy between what they had been told had been borrowed and what Novellus claimed to be owing, but the fate of the property would be material to any application for security for costs. At that time, there had been no mention of Lord of the Dance or Flatley Whiskey and the fine art collection had failed to materialise. Thus – as far as the defendants were aware – if Castlehyde was sold, any question of assets within the jurisdiction would evaporate. On the other hand, if – as it transpired – the Novellus loan was refinanced, there would likely be a row about the value of the equity of redemption. The defendants wanted to see what happened before they decided what to do. This, it seems to me, was a perfectly good explanation for why the defendants did not issue their motions before the outcome of the plaintiff's efforts to refinance was known.

104. The High Court judge's ultimate conclusion was that that the delay had been explained. Rather than saying that the defendants sufficiently explained a delay, I would say

– on the analysis explained in *Sweeney* – that there was no delay. Rather, I would say, the defendants had adequately explained and justified why they did not move sooner than they did.

105. The plaintiff was on notice from the very beginning that if he did not provide satisfactory evidence that he had sufficient assets within the jurisdiction to meet an adverse costs order, an application would be made for an order for security for costs. The motions were in fact issued as soon as reasonably possible after the grounds for making the application were first known to the defendants.

106. I would dismiss the appeal on this ground.

Assets within the jurisdiction

107. The second ground of appeal is that the High Court judge erred in law and in fact in failing to consider what the plaintiff contends were his sufficient or ample assets within the jurisdiction.

Lord of the Dance

108. Counsel first points to the statement of affairs of April, 2025 which, she submits, *"identifies"* that the rights to *Lord of the Dance* were valued at €200 million, less liabilities of €1.4 million, which left a net asset value of €198.6 million. However, as I have said, the evidence was – and the judge found – that the value of Lord of the Dance was wherever the plaintiff was, and that the plaintiff was in Monaco: which put this asset out of the jurisdiction – and outside the EU and EEA. The appeal did not address this finding.

109. Counsel correctly says that the judge was critical of the lack of evidence, including the lack of methodology or formal valuation of the shares. Without a hint of irony in a case which occupied the High Court for two days, this Court for one day, and was the full of five oversized boxes, counsel submits – citing the judgment of O'Moore J. in *Fanplex v. Bandan Properties Ltd.* [2022] IEHC 739 – that interlocutory motions for security for costs should not become an end in themselves, or a mini-trial, and should not impose too onerous an evidential burden on parties. I accept the submission on behalf of the plaintiff that the court should not impose too weighty an evidential burden at the interlocutory stage. However, the plaintiff's assertion that Lord of the Dance was worth €200 million was just that: a mere assertion unsupported by any explanation or by a shred of evidence. Nor does the submission on the appeal address the discrepancy between the €200 million figure in the March, 2025 valuation and the stg£90 million (about €104 million) in the September, 2023 statement of affairs. And there was no explanation for the fact that there was no reference in the correspondence to Lord of the Dance.

110. This argument fails to get off the ground.

Flatley Whiskey

111. The plaintiff submits that the judge had evidence in respect of *Flatley Whiskey* which ascribed a value of €10 million, with a secured debt of €1 million, leaving a net asset value of €9 million. The submission recalls that the judge was critical of the lack of a formal valuation, details of trading, profitability or dividends: without going so far as to say that she was wrong to have had regard to those matters, still less to suggest why.

112. The plaintiff's accountants' letter was completely vague. The reference in the first sentence to *"copyright"* is puzzling; unless it is that the author was confusing copyright with a trade mark, which would not exactly inspire confidence. The reference to *"manufacturing costs"* is also puzzling. If there is a distiller, it would have been a simple matter to say so. If there is not, it is difficult to contemplate what might have been manufactured. The letter suggests that the product has been on sale for over a year, but does not say where. I accept the submission on behalf of the plaintiff that a motion for security for costs should not be allowed to develop into a mini-trial, but the parties are both required to adduce credible evidence to lay the ground for what they are required to establish.

113. The only concrete evidence in relation to Flatley Whiskey were Companies Office searches exhibited by Mr. Prior. A search against Flatley Whiskey Limited showed that it was incorporated on 11th November, 2022; had a registered office in Mount Street, Dublin; and on 18th February, 2025 had executed a charge in favour of Galveston Investments S.A. The registered director was a Ms. Donna Thompson, with an address in County Louth. The search against Flatley Whiskey (Holdings) Limited showed that it was incorporated on 24th August, 2022 as Dayler Limited and changed its name on 1st June, 2023. The registered office of Flatley Whiskey (Holdings) Limited was at the same address in Mount Street and its only director was Ms. Thompson. It had one shareholder, Mr. Eamonn Garvey. These searches were exhibited by Mr. Prior to his supplemental affidavit of 9th May, 2025. The plaintiff had the opportunity to explain them in his affidavit of 6th June, 2025 but ignored them.

114. The plaintiff's submission on the appeal recalls that the plaintiff swore that he is the owner of 100% of the whiskey business but does not engage with the judge's finding that the 100% shareholder of Flatley Whiskey Limited was Flatley Whiskey (Holdings) Limited and that the registered 100% shareholder in Flatley Whiskey (Holdings) Limited is Mr. Garvey. In truth, it seems to me, the evidence established little or nothing about Flatley Whiskey but the accountant's letter tended to suggest that Flatley Whiskey was owned by Flatley Whiskey Limited, and not by Mr. Flatley personally. If, at a stretch, the plaintiff's assertion that he was the owner of Flatley Whiskey could be taken as an assertion that he was the owner of the shares in Flatley Whiskey Limited, that was inconsistent with the Companies Office filings which showed Mr. Garvey as the owner of the shares.

115. It is uncontested that once the defendants established that the plaintiff was ordinarily resident outside the jurisdiction and that they had a *prima facie* defence, the onus shifted to the plaintiff to establish that there were special circumstances to warrant a refusal of security.

In my view the judge was perfectly correct in concluding that Flatley Whiskey was not an asset that could be taken into account in assessing the sufficiency of the plaintiff's assets within the jurisdiction.

Castlehyde

116. As the judge put it, the true area of focus in the High Court was the valuation of Castlehyde. The judge identified the inconsistencies in the evidence which had been given by the plaintiff and the barely legible purported statement of affairs prepared by his accountants in April, 2025 which was limited to assertions as to the value and liabilities attaching to Castlehyde, Flatley Whiskey Limited and Lord of the Dance and in which – in the case of Castlehyde – the figures did not add up.

117. The judge had five valuations: the first Sherry FitzGerald valuation of 29th August, 2023 commissioned by Novellus for €8.5 million; the first Hogan valuation of 10th September, 2024 commissioned by the plaintiff for €20 million; the second Sherry FitzGerald valuation of 7th May, 2025 commissioned by the solicitors for Austin Newport for €8.5 million; the QRE valuation of 9th May, 2025 commissioned by the solicitors for the Lloyd's defendants for €10.5 million; and the second Hogan valuation which confirmed the first Hogan valuation figure of €20 million. She noted that the second Sherry FitzGerald valuation and the QRE valuations had been put on affidavit, while the Hogan valuations had not. Neither of the defendants' valuers had been cross examined. Mr. Hogan could not have been. Castlehyde had been remortgaged for €7.9 million but there was no evidence of the interest rate, or whether the interest was being serviced or was accumulating. The defendants' costs estimates – or the different trial estimates on which they were based – had not been challenged.

118. The judge calculated that if the Hogan valuation were accepted there would be sufficient equity in Castlehyde to meet an award of costs but – as she put it – the judge did not accept the Hogan valuations as the best evidence. She gave a number of reasons.

119. In the first place, the judge said that the Hogan valuation was an outlier – which it was. Secondly, she noted that the stated purpose of the Hogan valuation was *"for mortgage lending purposes"*. It referred to reliance on information provided by the operations director of Flatley Group, but that information was not specified. It contained information in relation to an attempted sale in 2015 and an offer said to have been rejected by the plaintiff. which had not been referred to in the plaintiff's affidavits and which did not accord with what had been stated in the plaintiff's affidavits. The Hogan valuations contained what the judge described as hearsay material, which was not to be expected in an independent market valuation. By contrast with the Sherry FitzGerald and QRE valuations, the Hogan valuations did not identify any comparable properties. It did, however, reference media reports that the property had been put on the market in 2015 for €20 million (including contents) but did not sell, and was remarketed in 2018 for €12.5 million but did not sell.

120. The judge examined the Sherry FitzGerald valuations. The first Sherry FitzGerald valuation of 6th September, 2023 also relied on unspecified information by the business manager for the property owner. It gave a full description of the accommodation, including floorplans and photographs of the rooms, outbuildings, lands and historical features. It set out details of rights-of-way, protected status, zoning and environmental aspects. It outlined a detailed economic review as of May, 2023 and referenced nine comparators, with a detailed description in each case.

121. The second Sherry FitzGerald report of 7th May, 2025 was prepared by the same valuer. It was in a very similar format to the earlier report but had been updated to 2025 and identified a number of additional estate and country house sales, and three properties then on the market for sale.

122. The judge noted that the QRE valuation of 7th May, 2025 – which is also a very substantial document – had been prepared on a desktop Red Book basis and discussed seven properties by way of comparative recent sales or properties on the market for sale.

123. The judge found that the best evidence she had were the valuations deposed to on affidavit – that is the second Sherry FitzGerald valuation and the QRE valuation. Although expressing a slight preference for the second Sherry FitzGerald valuation by reason of the reference to comparators and Ms. Grant's prior physical inspection of the property, she decided to split the difference and to ascribe to Castlehyde a value of €9.5 million. Ignoring any costs of realisation, and taking the secured debt at €7.9 million, the judge calculated that the net equity was insufficient to meet an adverse costs order.

124. The notice of appeal suggests that the judge erred in describing the Hogan valuation as a complete outlier. Well, it was. It was for nearly twice the QRE figure and more than twice the Sherry FitzGerald figure.

125. The notice of appeal contends that the judge erred in failing to attach any significance to the fact that, in contrast with the desktop valuations completed on behalf of the defendants, the Hogan valuation was carried out on foot of a site visit in September, 2024. There are a number of things that can be said about this. In the first place, the reason why the defendants' valuations were desktop was that the plaintiff refused to facilitate access. The plaintiff's former solicitor's insistence that the valuers needed to provide evidence of insurance before being allowed to walk around the house was transparently baseless. The plaintiff cannot now be heard to rely on an alleged shortcoming in those valuations based on his obstruction. Secondly, as the judge noted, the valuer who prepared the Sherry FitzGerald valuation had previously – and not too long previously – had had access to the house and lands. Thirdly, the blinkered focus on the issue of whether the valuers had access to the property fails to engage with the judge's criticisms of the Hogan valuation. The valuations relied on by the defendants were not, as they were repeatedly characterised in argument, drive-by valuations.

126. The notice of appeal finally suggests that the judge, when valuing the property at the midpoint between the QRE and the Sherry FitzGerald figures, failed to attach any significance to the Hogan valuations. The premise of the proposition that the judge ought to have attached significance to the Hogan valuations can only be that she should have accepted them, but it is not clearly said that she erred in not accepting them. Where this seems to be going is that the judge should have added the three figures together and divided by three. This is something I have often enough seen judges do, without always being convinced that it was the best way of addressing the gap between the figures. In this case, the outcome of an aggregation of two valuations which the judge had found to be reliable and a valuation which she had found to be unreliable would necessarily have been unreliable.

127. The judge's approach to the second Sherry FitzGerald valuation and the QRE valuation was completely different. It is true that she took the midpoint between the figures but she did so on the basis that they were both reliable valuations and that Castlehyde was a unique property in respect of which there was room for a difference of opinion.

128. The High Court judge carefully considered the evidence in relation to the probable value of Castlehyde and gave detailed reasons for the conclusion to which she came. In my view, the plaintiff has failed to establish any error in the judge's analysis, reasoning, or conclusion.

Access to the courts

129. The plaintiff's third ground of appeal is that the judge erred in failing to adequately consider whether the order for security for costs would stifle the plaintiff's access to the courts.

130. The judge dealt succinctly with the plaintiff's argument under this heading. She pointed to his averments that it was *"unnecessary to seek security for costs as [he] could pay costs"* and that he is *"... a man of means and a man of [his]word and able to pay costs."* In weighing the balance of justice between both sides, the judge said that she was alive to the risk – in principle – that an order for security for costs may stifle a claim but found that this was not a factor in this case.

131. The submission on the appeal is that the judge *"clearly dismissed the plaintiff's right of access to the courts."* This is not only demonstrably incorrect but unfair to the judge. No one has ever questioned the plaintiffs right of access to the courts. That right is subject to the same limitations as apply to every other litigant. The judge, it is said, did not sufficiently consider the repercussions of the making of an order for security. Well, she did. She found that on the plaintiff's own evidence, the question of stifling simply did not arise.

Amount of security

132. The plaintiff's alternative ground of appeal is that the judge erred in law in determining the amount of the security at €1.1 million. The essence of the argument is that the judge should have fixed the amount of the security at precisely one third of the estimated costs.

133. Having decided that the moving defendants were entitled in principle to security for costs, the judge directed an exchange of written submissions in relation to form and manner and quantum; and listed the matter for oral argument on 14th November, 2025. Having heard counsel – and having read the parties' written submissions in advance – the judge rose briefly before delivering an *ex tempore* ruling.

134. The defendants' costs estimates appear to have been uncontested but in the principal judgment – for the purpose of comparing the costs estimates with the value of the equity in Castlehyde – the Lloyd's defendants' costs accountants' figure was reduced by €99,470 in respect of work done before 21st March, 2024 when – as the judge put it – the plaintiff's solicitor was first put on notice of a request for security for costs. The combined estimate was €2,857,708.50, which the judge rounded to €2.86 million.

135. I pause here to note for completeness that there was no issue in the High Court as to the date from which the costs estimates were to be calculated.

136. Not for the first time, the figures are all over the place. According to the notice of appeal, the judge erred in failing to fix the security at *"approximately €930,000 (one third of the total estimated costs of €2.8 million.)"* As a matter of arithmetic, one third of €2.8 million is €933,333, not €930,000. And the total estimated costs were €2.86 million, not €2.8 million. The difference between the amount of the security ordered and one third of the total estimate was not, as the plaintiff contended, €200,000 but €146,666.70.

137. More significantly, the arguments in relation to the amount of the security – in the High Court as well as on the appeal – did not take into account the equity in Castlehyde. In the High Court, the defendants contended that security should be ordered for the full amount of the estimates. The plaintiff contended in the High Court that the security should be fixed at one third of the estimates and the argument on the appeal was that the €1.1 million should be reduced by €200,000.

138. In the High Court, the defendants' core argument was that the so-called one third rule or practice established or recognised by the judgment of the Supreme Court in *Thalle v. Soares* [1957] I.R. 182 did not apply in a case, such as this, in which the plaintiff was able to pay the costs. Attention was drawn to the judgment of the Supreme Court in *Farrell v. Bank of Ireland* [2013] 2 I.L.R.M. 183 in which the Court suggested that the analysis underlying

Thalle v. Soares and *Fallon v. An Bord Pleanála* [1992] 2 I.R. 380 might need to be revisited but the argument was that the rule or practice only applied in cases which would be at risk of being stifled by an order for security for the full amount of the estimated costs.

139. It is clear from the principal judgment that the judge's rough and ready calculation – which was the best that could have been done on the evidence – was that there was a net equity of €1.6 million in Castlehyde. This calculation expressly ignored realisation costs and the figure of €7.9 million for the secured liability on which it was based, assumed that the loan would be serviced: but in fixing the amount of the security the judge expressly took into account that there was significant equity in Castlehyde.

140. In her ruling on the amount of the security, the judge addressed the arguments as they had been presented. However, she made it clear that she was taking account in general terms of the existence of that asset within the jurisdiction as well as the percentage of the costs estimates that should be secured.

141. In her ruling on the amount of the security, the judge said that:-

> *"In determining the quantum of the [security for] costs to be ordered, this Court has engaged in a balancing exercise, trying on the one hand to protect the defendants from suffering the financial loss of being unable to recover their costs if successful and on the other hand protecting Mr. Flatley's right of access to the courts."*

142. Later she said that:-

> *"While I do not need to revisit the one-third rule on the facts of the case, it so happens that the proposed security is generally consistent with, though slightly in excess of a figure equating to one third of the defendants' estimated legal costs. Equally, when it is combined with the evidence of available assets in the jurisdiction, it is marginally less than the full amount of the estimated costs. This achieves a balance reflecting both Mr. Flatley's ability to pay full costs or security and the*

overall level of assets expected to be ultimately available to the defendants if they are successful in these proceedings."

143. This, it seems to me, reflects the arguments which had been made. The €1.1 million was not much more than the one third of the total estimate of €2.86 million for which the plaintiff contended.

144. At the hearing of the appeal, the submission on behalf of the plaintiff boiled down to the proposition that the one third rule should be the starting point and that the judge had not identified any specific circumstances that would have warranted a departure from that. Specifically, the argument was that the security ordered was – by €200,000 – for more than one third of the costs estimate.

145. Counsel for the defendants emphasised that the order under appeal – both as to whether, in principle, there should be security for costs and the amount of the security – was a discretionary order which had been made on the basis of detailed and carefully reasoned judgments which – it was submitted – this Court should be slow to interfere with. It was further argued that the judgment of the High Court should be affirmed on the additional ground that the manner in which the High Court proceedings had been conducted, including by repeated breaches of directions and wholly unmeritorious applications, which had caused the defendants to incur significant costs.

146. It seems to me that, on the arguments as made to the High Court, the judge's departure from the one third starting point was not significant. There might have been an argument to be made that the value of the equity in Castlehyde was by itself sufficient security. If – in the round – the balance of justice would be achieved by ensuring that the defendants would have recourse within the jurisdiction to sufficient assets to secure the recovery of one third of the estimated costs, the issue in principle might have been whether the plaintiff had sufficient assets within the jurisdiction to meet one third of his projected liability. Or, it might have been contended that the one third requirement was sufficiently met by the established equity in Castlehyde. But the case was not argued on that basis.

147. It is quite clear from *Farrell v. Bank of Ireland* – if not from *Thalle v. Soares* itself – that the so-called one third rule was never a rule but at most a practice that security was fixed at an amount not more than about one third of the costs which would probably be incurred by the defendant. The €1.1 million is more than precisely, but nevertheless about, one third of €2.86 million. The case was not made that any departure from the so-called rule was such as to give rise to a risk of injustice sufficient to warrant the intervention of this Court. Nor was the case made in relation to quantum that the difference between the security ordered and the lesser sum contended for was such as would shut the plaintiff out from his rights.

148. To the extent that the judge departed from the one third starting point, she did so with a view to achieving a balance which reflected both the plaintiff's ability to provide full security and the overall level of assets expected to be ultimately available to the defendants if they were successful. That, in my view, was abundant justification for the departure, such as it was.

149. It was suggested in the written submissions filed on behalf of the plaintiff that the judge was not minded to stipulate any conditions such as provision for phased payments but there was no application for phased payments. Rather – on the defendants' application – there was no time limited by the order for the provision of the security but the proceedings were stayed pending the provision of security.

150. I record, for completeness, that – surprisingly, in my view – the judge made a single order on both motions for the payment into court of the combined sum of €1.1 million. The transcript shows that when the question of the apportionment of the €1.1 million was raised in the High Court, counsel for the defendants foresaw the possibility of a *"conversation"* later about apportionment but acquiesced in the making of a single order. For my own part, I cannot see any basis for apportionment other than rateably by reference to the costs estimates but I should have thought that the time for any *"conversation"* was before the making of the order.

Conclusion

151. For the reasons given, I would dismiss the appeal on all grounds and affirm the order of the High Court.

152. The defendants, having been entirely successful on the appeal, are presumptively entitled to their costs. If – at the risk of increasing the costs – the plaintiff wishes to contend for any other order, I would allow a period of ten days for the plaintiff's solicitors to give notice in writing to Court of Appeal office and the defendants' solicitors, in which event the panel can reconvene.

153. As this judgment is being delivered electronically the President and McDonald J. have authorised me to say that they agree with it and the order proposed.