

**THE HIGH COURT**

**Record no. 2020 No. 80 SP**

**IN THE MATTER OF SECTIONS 25 and 26 OF THE TRUSTEE ACT 1893**

**ON THE APPLICATION OF:**

**CLARIANT AG AND**

**CLARIANT PLASTICS & COATINGS (IRELAND) LIMITED**

**EX TEMPORE JUDGMENT OF Mr Justice David Barniville delivered on the 28th April 2020**

1. Having considered the papers, the written legal submissions and the book of authorities furnished to the Court, and having heard counsel for the Applicants, and there being no opposition to the Applicants' claims, I am in a position to deliver an *ex tempore* judgment.
2. This is an application by Clariant AG and Clariant Plastics and Coating (Ireland) Ltd ("Clariant Plastics") for orders under the Trustee Act 1893 in respect of a parcel of land in an industrial estate in Naas, County Kildare. The registered owner of the land was Clariant Specialities (Ireland) Limited ("Clariant Specialities"), another company in the Clariant Group, which has been dissolved. Part of the premises occupied by Clariant Plastics, and from which it carries on business, is on that land.
3. First, the applicants seek an order in accordance with s. 25 of the Act appointing Clariant AG as trustee, in substitution for another company in the Clariant Group, of the land. In the alternative, the applicants seek an order in accordance with s. 26 vesting the land in Clariant Plastics.
4. The proceedings were commenced on 4 March 2020. The proceedings were served on the Minister for Finance and on the Chief State Solicitor. Subsequent to commencement of the proceedings, the OPW wrote to the solicitors for the applicants and confirmed that the State had no objection to the orders being sought. The letter further stated that the Minister would not be participating in the proceedings. I note that the solicitors for the applicants have kept the OPW updated in relation to the proceedings.
5. The proceedings were entered in the Commercial List of the High Court on foot of a written ruling, delivered on 20 April 2020, which sets out the factual background to the proceedings.
6. The facts on which the applicants rely are set out in the grounding affidavit of Andrew Locke sworn on 9 March 2010. The affidavit sets out in some detail the factual background, the history of the ownership of the two plots of land on which the premises of Clariant Plastics is constructed and the history of the Clariant Group. There is no dispute as to the facts. I am prepared to adopt and find as established the facts as set out in the affidavit of Mr Locke. I also accept as an accurate summary of the facts, the factual background set out in the helpful written submissions provided by the applicants' counsel, Declan McGrath SC and Emily Egan McGrath BL.
7. I accept, as a matter of fact, that by reason of the agreement between the liquidator appointed to Clariant Specialities, on the one hand, and Clariant AG, on the other, for the

transfer all of the assets of Clariant Specialities to Clariant AG, its sole shareholder, the land (which formed part of those assets but, through inadvertence, was not expressly transferred by the liquidator to Clariant AG) was held by Clariant Specialities on trust for Clariant AG. I also accept that this agreement was evidenced by the minutes of the Board meeting of Clariant Specialities and the EGM held by the shareholders of Clariant Specialities and the resolutions passed at those meetings in May 2013. I am satisfied that these documents constitute sufficient written evidence of the creation of a trust for the purpose of s.4 of the Statute of Frauds (Ireland) Act 1695. I also accept as good authority in this jurisdiction the judgment of Jenkins J. in the English High Court in *Re. Strathblaine Estates Ltd* [1948] Ch. 228

8. I am satisfied that the land at issue was not transferred by the liquidator of Clariant Specialities to Clariant AG due to inadvertence, as everyone concerned assumed that the land was owned by Clariant Plastics, which had occupied it and extended its premises onto it in 1995. Clariant Plastics carried on its business from the premises constructed in part on its own land, and on the land in question, since 1995.
9. As a consequence, the land was held under a trust and did not vest in the State in accordance with s. 28 of the State Property Act 1954. I accept that it is not now possible to void the dissolution of Clariant Specialities in accordance with s. 708 of the Companies Act 2014, as a period of more than 2 years has elapsed since the company was dissolved.
10. I also accept that the trustee of the land "*cannot be found*" within the meaning of that term in s. 26 of the Trustee Act 1893. In that regard, I follow the judgment of Costello J. in the High Court in *Re. Kavanagh and Cantwell* Unreported, High Court, Costello J, 23 November 1984, the English case cited by Costello J in that case, *Re. No. 9 Bomore Road* [1906] 1 Ch 359, and the subsequent judgment of Laffoy J. in the High Court in *Re Heidelstone Company Limited and Courtview Management Company* [2007] 4 IR 175.
11. The consequence of all of these findings of fact and law is that the court does have the power to make an order appointing a new trustee in accordance with s. 25 of the Trustee Act 1893, or an order vesting the land in accordance with s. 26 of that Act. I am satisfied that this is a case in which the trustee cannot be found. That situation is provided for in s. 26(ii)(c) of the Trustee Act 1893, which provides that the court may make an order vesting the land in any such person, in any such manner and for any such estate as the court may direct.
12. I accept that it would be much more convenient, and would make more sense, and cut out unnecessary conveyancing steps out of the procedure, for the land to be vested directly in Clariant Plastics, rather than first appointing Clariant AG as the new trustee, so that the land could then be vested by Clariant AG in Clariant Plastics. It seems to me that it is not necessary for me to require Clariant AG and Clariant Plastics to go through these additional steps. I accept that the court has jurisdiction to make an order vesting the land directly in Clariant Plastics under s. 26 of the Trustee Act 1893 and that it appropriate for me in the circumstances of this case that I make an order in those terms.

13. Accordingly, I will make an order pursuant to s. 26 of the Trustee Act 1893 vesting the leasehold interest in the property comprised in Folio KE4566L County Kildare, and any other estate, right, title or interest held by Clariant Specialities on the date of its dissolution, in Clariant Plastics.
14. I will make an order in the terms of the draft order helpfully provided by the applicants and also grant liberty to apply.