

THE HIGH COURT

[2021] IEHC 511
[2018 No. 5801 P]

BETWEEN

SÉAMUS DUFFY

PLAINTIFF

AND

PERMANENT TSB PLC, HAVBELL DAC AND AIDEN MURPHY

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 22nd day of July, 2021

SUMMARY

1. This case considers whether the proceedings brought by the plaintiff herein are bound to fail. Unfortunately, the claims made by the plaintiff in this case are an example of what has become a regular feature of certain litigation before the courts, namely wide-ranging and far-reaching vexatious claims designed to frustrate a receivership or the realisation of security following default by the plaintiff in respect of loan facilities. In such cases, the court must consider whether justice requires it to exercise its jurisdiction to strike out the plaintiff's claim in order to prevent an abuse of process and to protect the rights of defendants.
2. This consideration arises in this case in circumstances where the second and third named defendants have brought an application seeking to strike out the plaintiff's proceedings on the grounds that they are frivolous and vexatious and bound to fail. The second and third named defendants also seek orders vacating *lis pendens* registered over certain folios of land located in County Louth.
3. The proceedings can be briefly summarised in the following way. On various occasions between 2007 and 2008, the first named defendant extended loan facilities to the plaintiff and his wife in respect of lands in Dundalk, Co. Louth and Castleblayney, Co. Monaghan, leading to an outstanding debt of circa €2.3 million. On each occasion, the plaintiff and his wife signed loan acceptance letters in the presence of their then solicitor. A mortgage was also entered into by the plaintiff and his wife whereby they agreed to mortgage certain properties in favour of the first defendant. The plaintiff and his wife failed to repay the loans and the loan facilities and mortgage were subsequently transferred by the first defendant to the second named defendant. Following this transfer, the second defendant appointed the third named defendant as receiver over the mortgaged properties. Prior to the issue of these proceedings, the receiver had appointed an auctioneer for the purpose of marketing the properties and preparing them for sale.
4. As a result of this turn of events, on 27th June, 2018 the plaintiff issued these proceedings and on that same date registered *lis pendens* over the relevant folios of land. The plaintiff makes numerous allegations in these proceedings against the defendants and while the claims made by the plaintiff are not easy to summarise, due to their sheer multitude, the plaintiff's case can be broadly outlined as one in which he seeks to challenge the validity of the receivership and a declaration is sought to the effect that the appointment of the receiver is invalid. He also seeks reliefs in respect of alleged breaches of, *inter alia*, his data protection rights. However, the plaintiff seeks over 50 separate

reliefs in these proceedings, including declarations, injunctions, orders of rescission and damages. While most of these reliefs are sought against the named defendants, the plaintiff also seeks certain reliefs against the Property Registration Authority, which is not a party to these proceedings.

5. While there was a somewhat lengthy dispute through correspondence between the plaintiff and the second and third defendants regarding service of the proceedings, it was accepted by counsel for those defendants during this application that any defect in service has effectively been 'cured' by the second and third defendants entering an appearance in the proceedings. It appears that the first defendant has not yet entered an appearance in the proceedings.
6. The outcome of this case is dependent on the contractual documentation and this is not a case where the evidence is likely to change prior to the trial. In considering therefore the application to strike-out, this Court has had regard to the pleadings in the case and the documentary evidence and has considered the claims made by the plaintiff in the light of this documentation. For the reasons set out in this judgment, this Court will grant the reliefs sought by the second and third defendants and will strike out the plaintiff's proceedings.

Non-attendance by the plaintiff at the hearing of this motion

7. The within motion first came on for hybrid hearing before this Court on 1st July, 2021. On that occasion, counsel for the second and third defendants submitted that despite the plaintiff being a litigant in person, the application was given an urgent hearing date by the judge fixing the hearing date, on the grounds that there had been interference with the properties and there was therefore considerable urgency to the matter. However, the plaintiff did not appear before the court physically or remotely on that date despite affidavits of service being opened to this Court showing that the plaintiff was properly served with the Notice of Motion and grounding affidavit on 9th March, 2020, and that on subsequent dates thereafter he was advised both by email and certified post that a hearing date of 1st July, 2021 had been assigned to the motion. Evidence was also exhibited showing that the plaintiff had been advised of the remote access details for the hearing.
8. Out of an abundance of caution however, and in order to afford the plaintiff a further opportunity to attend the hearing and to make submissions in response to the motion, this Court did not proceed with the hearing on 1st July, 2021. The motion was subsequently assigned a new hearing date of 9th July, 2021. Once again however, the plaintiff did not attend court on this date, nor did he appear remotely. Evidence was provided to the court that the plaintiff had been advised by email and by certified post of the new hearing date and of the remote access details for same.
9. It is this Court's view that as the plaintiff had registered *lis pendens* which was preventing the sale of the mortgaged property, it is important that justice is not prevented by the simple expedient of a litigant not turning up in Court. On this basis therefore, the hearing of the motion proceeded on 9th July, 2021 in the absence of the plaintiff and the merits of

the plaintiff's case are considered based on the Statement of Claim delivered by him on 2nd September, 2020 and his affidavit of 3rd June, 2020.

BACKGROUND

10. These proceedings concern lands contained in various folios and located in Dundalk, County Louth (the "Properties"). At the core of Mr. Duffy's case is his claim that the underlying loan agreements and mortgage are void and unenforceable and his claim that the appointment of the third named defendant (the "Receiver") over the Properties is invalid. On this basis, Mr. Duffy claims that his property rights and various other rights have been breached by the defendants and he seeks, *inter alia*, declarations and injunctions to that effect.

11. On three separate dates between May 2007 and April 2008, Irish Life & Permanent plc (hereafter, "Permanent TSB") offered loan facilities to Mr. Duffy and his wife, Ms. Yvonne Duffy ("Ms. Duffy"). Included in these was a commercial loan in the sum of €1,058,000. On each occasion, loan acceptance letters were signed by Mr. Duffy and Ms. Duffy in the presence of their then solicitor. Their solicitor's signature is also present on each of these loan acceptance letters. Importantly, each of these documents, entitled '*Acceptance of Loan Offer*', contains a clause immediately before the signatures which states that:

"My/our solicitor has fully explained the said terms and conditions to me/us."

12. The loan facilities were secured by way of mortgage and charge dated 8th May, 2008 in respect of the following nine properties:

- 1 Park Mews, Coultar Place, Armagh Road, Dundalk, Co. Louth
- 2 Park Mews, Coultar Place, Armagh Road, Dundalk, Co. Louth
- 3 Park Mews, Coultar Place, Armagh Road, Dundalk, Co. Louth
- 4 Park Mews, Coultar Place, Armagh Road, Dundalk, Co. Louth
- 134 Ath Leathan, Race Course Road, Dundalk, Co. Louth
- 11 Park Square, Coultar Place, Armagh Road, Dundalk, Co. Louth
- 31 Clermont Manor, Blackrock, Dundalk, Co. Louth
- 22 The Crescent, Castleblayney, Co. Monaghan
- Corrygarry, Castleblayney, Co. Monaghan

Under the terms of that mortgage signed by Mr. Duffy and Ms. Duffy, Mr. Duffy agreed to accept Permanent TSB's Mortgage Conditions (2002 edition). It is necessary to briefly set out some of the conditions accepted by Mr. Duffy as a result of him entering the mortgage, including that Permanent TSB would have the right to transfer the mortgage and the right to appoint a receiver.

13. Clause 1.22 of the mortgage defines '*Total Debt*' as:

"the whole of the moneys outstanding for the time being on the security of the Mortgage."

14. Clause 2 of the mortgage sets out the '*provisions for payment*'. These provisions insofar as relevant state as follows:

"2.1 The Mortgagor will and hereby covenants to (consistently with these conditions and without making any deductions) repay to permanent tsb with interest the whole of the Advance and all further Advances on the Security of the Mortgage and all such other sums as by the provisions applicable to the Mortgage shall from time to time become due from the Mortgagor to permanent tsb.

2.2 The Mortgage is intended to provide for repayment of capital and payment of interest primarily by combined payments at monthly intervals save where permanent tsb has stipulated that repayments in respect of all or part of the advance may be made at intervals other than monthly intervals.

2.3 The Mortgagor will discharge his primary obligations under Clauses 2.1 and 2.2 by making to permanent tsb on the specified day in every month the Monthly Repayment, the first repayment to be made on the day notified to him by permanent tsb, or in default of notification the specified day of the month next following the making of the relevant Advance.

[...]

2.5 The Mortgagor will and hereby covenants to pay to permanent tsb and discharge on demand (or on such terms as may otherwise be agreed in writing) the general indebtedness and liability." (Emphasis added)

15. Clause 6 of the mortgage sets out Permanent TSB's rights and remedies, including the right to appoint a receiver, the right to transfer the mortgage and the right to sell the properties:

"6.1 For the purposes of the Conveyancing Acts, 1881 to 1911 the mortgage money shall become due on the first specified date after the date of the Mortgage.

6.2 **The statutory powers of sale and appointment of a receiver conferred by and incidental provisions contained in the Conveyancing Acts 1881 to 1911 shall apply to this security** with the following modifications and additions that is to say:

(a) Notice requiring payment of the mortgage debt shall not be required

[...]

(c) **Any receiver shall have power in the name of the Mortgagor to give notice to quit and bring and take actions or proceedings for**

ejectment or recovery of possession of any tenancy or otherwise and to re-let or let the Property or any part thereof from time to time to such person or persons as he shall think fit for any term of years or on yearly or weekly tenancies at the best rents that may be reasonably obtainable and to accept from time to time the surrender of the leases or tenancies of the Property or any part thereof for the purposes of selling or re-letting the same, without being responsible for loss.

[...]

- (e) If at the time of entering into possession or receipt of the rents and profits of the Property by permanent tsb or by any Receiver appointed by permanent tsb the Property or any part thereof shall be let furnished under a tenancy which is or becomes binding on permanent tsb then in any and every such case permanent tsb or such receiver shall be entitled to receive and apply the whole of the rent received by such tenancy as if it were rent of the Property and neither permanent tsb or any such Receiver shall be required or bound to make any apportionment of any such rent in respect of any furniture or chattels of the Mortgagor comprised in such tenancy [...]

6.4 At any time after the Total Debt has become immediately payable permanent tsb may without any previous notice to or concurrence on the part of the Mortgagor:

- (a) enter into possession of the property or any part thereof or into receipt of the rent or profits of the property or any part thereof;
- (b) whether permanent tsb shall or shall not have entered into possession or receipt of such rents and profits appoint at the cost and sole risk of the Mortgagor a person to collect and receive such rents and profits for the use and benefit of permanent tsb at such commission as permanent tsb shall think fit so that the statutory provisions respecting the appointment of receivers over property in mortgage and the powers and duties of such Receivers or otherwise in relation thereto shall apply to this security except so far as the same are hereby varied and subject to the provisions hereafter contained;
- (c) absolutely sell or dispose of all or any of the Property at such time or times and in such manner and subject to such conditions as permanent tsb in its absolute discretion may deem expedient [...]

6.7 **permanent tsb may at any time (without the consent of the Mortgagor) transfer the benefit of the Mortgage to any person** and from and after such transfer:

[...]

- (d) Subject to the foregoing all powers and rights of permanent tsb so far as applicable after the transfer shall be exercisable by the transferee.

[...]

- (f) The transferee and the persons deriving title under him shall have all the powers conferred on Mortgagees by the Conveyancing Acts 1881 to 1911 as modified or extended by the Mortgage Deed in the like manner as if the transfer had been an original mortgage by deed to the transferee for the Total Debt and for the interest to become due thereon."

(Emphasis added)

16. Clause 7 states that the Total Debt shall 'become immediately payable' to Permanent TSB if, *inter alia*:

"the Mortgagor defaults in the making of two Monthly Repayments or for two months in the payment of any other moneys payable under the Mortgage."

17. Under the terms of the mortgage therefore, repayments were to be made monthly and the debt was to fall due upon two monthly payments being missed by the borrowers. It is common case that Mr. Duffy and Ms. Duffy have not repaid the loans and that the amount due and owing by them is in excess of €2.3 million.
18. By Deed of Transfer dated 19th June, 2015, between Permanent TSB (having changed its name from Irish Life & Permanent plc on 29th June, 2012) and the second named defendant ("Havbell"), the Duffy's loan facilities were transferred to Havbell.
19. By instrument of appointment dated 13th April, 2018, the third named defendant (the "Receiver") was appointed by Havbell over the lands. Subsequent to this, an auctioneer was appointed for the purpose of marketing the lands for sale.
20. The within proceedings were issued by way of plenary summons on 27th June, 2018. In the Endorsement of Claim therein, Mr. Duffy sets out a total of 51 reliefs sought by him in these proceedings. After issuing the proceedings, Mr. Duffy registered *lis pendens* over five folios of land in Dundalk, Co. Louth. Mr. Duffy subsequently wrote to the auctioneers on 9th July, 2018 informing them of the proceedings and requesting that they cease all advertising of the lands.
21. On 13th July, 2018, the solicitors for Havbell and the Receiver wrote to Mr. Duffy noting, *inter alia*, that the proceedings had not been served on those defendants and reserving their right to issue a strike-out motion.
22. No further correspondence was exchanged between the parties until 5th December, 2019. On that date, the solicitors for Havbell and the Receiver once again wrote to Mr. Duffy informing him that they would be issuing a motion seeking an order vacating the *lis pendens* registered by Mr. Duffy over the lands and an order striking out the proceedings. Mr. Duffy responded by letter wherein he made claims that he would be challenging the constitutionality of various legislation, he also attached to this letter postage certificates which he claimed showed that the defendants had been served with the plenary summons. Havbell and the Receiver do not accept however that they were ever served with the plenary summons.

23. On 8th January, 2020 Mr. Duffy attempted service of the plenary summons (which had expired for some six months at that point) on Havbell and the Receiver. Further correspondence was exchanged between the parties thereafter. While Havbell and the Receiver do not accept that they were ever properly served with the proceedings, their solicitors entered an appearance on their behalf on 18th February, 2020. The within motion was issued on 5th March, 2020. Mr. Duffy swore a replying affidavit on 3rd June, 2020.
24. On 2nd September, 2020, Mr. Duffy delivered a lengthy Statement of Claim in which he makes numerous and wide-ranging claims in respect of the defendants' actions and his various rights which he says have been breached as a result.

LAW REGARDING STRIKE OUT MOTIONS

25. In seeking to strike out the proceedings, the second and third defendants rely on the provisions contained in O. 19, r. 28 of the RSC and/or the inherent jurisdiction of the court.
26. O. 19, r. 28 provides that:

"The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."
27. The court also has an inherent jurisdiction to strike out proceedings that are frivolous and vexatious and/or bound to fail. The principles regarding this inherent jurisdiction are well-established and the reason for the existence of the jurisdiction is perhaps best summarised by Costello J. in *Barry v. Buckley* [1981] I.R. 306 at 308 where he states that the jurisdiction '*exists to ensure that an abuse of the process of the Courts does not take place*'.
28. However, as recognised in *Barry v. Buckley*, the jurisdiction is to be '*exercised sparingly*' and '*only in clear cases*'. However, the jurisdiction of the court is an important one and it:

"enables the Court to avoid injustice, **particularly in cases whose outcome depends on the interpretation of a contract or agreed correspondence**. If, having considered the documents, the Court is satisfied that the plaintiff's case must fail, then **it would be a proper exercise of its discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to a defendant**." (Emphasis added)
29. It seems clear therefore that in cases such as the present one, where the outcome of the case depends on the interpretation of documentation signed by the plaintiff, the court should exercise its jurisdiction to strike out the proceedings if it is satisfied, having considered the documentation, that the plaintiff's case is bound to fail. This is also clear

from the decision of the Supreme Court in *Lopes v. Minister for Justice, Equality and Law Reform* [2014] 2 I.R. 301 where Clarke J. (as he then was) explained at 310 that:

“Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss.”

30. It appears to this Court that the present proceedings are ‘wholly’ dependant on documentation and that this is not a case therefore which Clarke J. sought to distinguish in *Lopes* as one ‘*where there is likely to be significant and potentially influential other evidence as well*’.
31. A helpful summary of the position is to be found at para. 6.9 of the Supreme Court case of *Keohane v. Hynes* [2014] IESC 66 wherein Clarke J. (as he then was) states as follows:

“In summary, it is important to emphasise the significant limitations on the extent to which a court can engage with the facts in an application to dismiss on the grounds of being bound to fail. **In cases where the legal rights and obligations of the parties are governed by documents, then the court can examine those documents to consider whether the plaintiff’s claim is bound to fail** and may, in that regard, have to ask the question as to whether there is any evidence outside of that documentary record which could realistically have a bearing on the rights and obligations concerned. Second, where the only evidence which could be put forward concerning essential factual allegations made on behalf of the plaintiff is documentary evidence, then the court can examine that evidence to see if there is any basis on which it could provide support for a plaintiff’s allegations. **Third, and finally, a court may examine an allegation to determine whether it is a mere assertion** and, if so, to consider whether any credible basis has been put forward for suggesting that evidence might be available at trial to substantiate it.” (Emphasis added)

ANALYSIS

32. On this basis therefore, the claims made by Mr. Duffy must be viewed in the light of the documentary evidence in the case and furthermore, the claims made by him must be examined as to whether they amount to mere assertion and whether there is any credible basis for those claims.
33. In considering whether to strike out the proceedings, this Court must engage with the Statement of Claim delivered by Mr. Duffy on 2nd September, 2020, as the most up to date representation of the case being made by Mr. Duffy in these proceedings.
34. At the outset, it should be said that the Statement of Claim delivered by Mr. Duffy is in keeping with the approach taken by him from the time that he issued the proceedings in June 2018. This is because, just as the Endorsement of Claim on the Plenary Summons seeks over 50 wide-ranging and far-reaching reliefs, the Statement of Claim also contains numerous claims against the defendants. However, as will become clear, even the most

cursory consideration of the documentation shows that these claims are completely unsubstantiated.

35. There is an overlap between many of the claims made in various paragraphs of the Statement of Claim and it is not necessary therefore to set out each and every one of those claims. However, a number of paragraphs serve to illustrate the nature of Mr. Duffy's case against the defendants.

36. For example, at paragraph 6 of the Statement of Claim Mr. Duffy states as follows:

"The Plaintiff claims that the deed of appointment advanced and accepted by the receiver in any event is invalid and does not comply with the strict criteria required by such appointment. Notwithstanding, **the Plaintiff claims in any event the an appointment of a 'private receiver' to the private person over their private is unlawful** and contrary to the Constitutional fundamental personal and property rights of the private person. **The Plaintiff is a natural person** with private property registered in their private name advanced by home loans from the bank between the years 2004 and 2008. The Plaintiff is not a commercial or legal entity/personality holding private property in trust for partners/directors or on behalf of a business entity. **The appointment of receiver to the private person with registered private property in this State is a new phenomenon and unheard of prior to the financial crisis.**" (Emphasis added)

37. Mr. Duffy's contention that the appointment of a receiver is a '*new phenomenon*' is entirely incorrect – a mortgagee has, since at least 1881, had the power to appoint a receiver (see s. 19(1)(iii) of the Conveyancing Act, 1881). Accordingly, it is difficult from the foregoing to understand exactly the contention made by Mr. Duffy, although it seems clear that he does not accept that the Receiver was validly appointed. However, the Mortgage, which was signed by Mr. Duffy, allowed under the relevant terms and conditions for the appointment of a receiver over the Properties and this was duly done when the Receiver in this case was appointed by Instrument of Appointment on 13th April, 2018. No evidence of any defect in the Instrument of Appointment has been produced to this Court.

38. Mr. Duffy goes on at paragraph 7 to claim that he was '*completely unaware*' that a receiver could or would be appointed over the properties. Once again, this claim flies in the face of the fact that Mr. Duffy signed with the benefit of legal advice the Mortgage which clearly provides under its terms and conditions for the appointment of a receiver in the event of default. It is not now open to Mr. Duffy to claim that he was unaware that a receiver could be appointed, and this claim seems to this Court to be a mere assertion which has no credible evidentiary basis. Further in paragraph 7, Mr. Duffy makes certain claims regarding the family home:

"The Plaintiff claims there is no difference between provided mortgaged deeds on the family home property and another private property. The lawful registered owners are still private persons supporting housing loans and deeds just at the

'family home'. **The Plaintiff claims the family may move home to another such mortgaged property over which they have a personal loan and in effect that becomes the family home.** The Plaintiff claims it is the private person who is Constitutionally protected in the acquisition of their private property and in that event, **the same appointment of a private receiver over a legal personality of a company may not be applied or translated to the private person as such activity is impermissible trespass on the rights and entitlements of the Constitutionally protected private person** as will be further demonstrated by this Statement of Claim." (Emphasis added)

39. Yet again, Mr. Duffy's claims in this regard amount to mere assertions. The family home is not the subject of these proceedings and Mr. Duffy's proposition that the fundamental nature of a commercial loan can be altered by a borrower simply moving into the property is incorrect as a matter of law - see *Fennell v. Creedon* [2015] IEHC 711.
40. At paragraph 9 of the Statement of Claim, Mr. Duffy claims that his rights under the '*EU Convention*' have been violated as a result of the appointment of the Receiver:

"The Plaintiff claims that the appointment of receiver in the current financial scene seeks to bypass the natural person and **their fundamental rights 'act in their name, using their private name and on their behalf'**. This is impermissible trespass on the natural person and violates all manner of fundamental and human rights including rights enshrined by Article 7 & 8 of the EU Convention." (Emphasis added)

Once again, it is difficult to interpret this claim, although it follows the common thread insofar as it takes issue with the receivership. However, a plaintiff cannot simply assert illegality or breach of rights simply because they have become unhappy with how matters have transpired. Mr. Duffy may feel hard done by as a result of his dealings with the defendants, however, when one examines the documentary evidence, it is clear that Mr. Duffy willingly accepted the terms of the loan facilities and the Mortgage conditions and he cannot now escape the consequences of that acceptance simply because events have not turned out as he may have wished.

41. At paragraph 11, Mr. Duffy appears to take issue with the security rights that have thus far been exercised by the defendants:

"The Plaintiff claims he granted the bank a first legal charge on the property for security of loans. The Plaintiff claims further, granting first legal charge was a burden privilege that grants no right of estate or possession and the Plaintiff relies on the law and legal precedent in this precise matter. The Plaintiff claims he is the lawful legal owner of this private property and the bank and purportedly the SPV [Special Purpose Vehicle] has an inferior privilege of security only. **The Plaintiff claims the SPV has no right of possession nor are entitled to demote or derogate private property (and personal) rights in the pursuit of debt.** The Bank are entitled to a debt and the security aspect of the property is the registered

owner cannot sell without repayment of that debt. The Plaintiff's claims the bank has effective legal remedy in they are entitled judgment over the debt but the property is not subject to any such remedy as it only provides security." (Emphasis added)

42. This claim is somewhat confusing. Mr. Duffy appears to accept that the debt is due as a result of his default in repaying the loan facilities. However, he claims that this default does not entitle the defendants to exercise their rights under the terms of the Mortgage, including the right of Permanent TSB to transfer the loans to Havbell, as well as the right to appoint a receiver. This is yet another example therefore of a claim that flies in the face of the documentary evidence.
43. Mr. Duffy claims that his property rights have been breached because Havbell and the Receiver have tried to sell the lands. However, under the Mortgage, Havbell have a right to sell the mortgaged property, something which Mr. Duffy should have been aware of when he signed that document thereby agreeing to the terms and conditions contained therein. Furthermore, it seems clear that the Receiver has not sold the lands and has merely engaged an auctioneer for the purpose of marketing the property and there is no breach in this regard therefore.
44. Various complaints are made by Mr. Duffy in the Statement of Claim in respect of the use of his private data and his data protection rights. These claims are numerous and set out in detail. The general complaint in this regard is perhaps best encompassed however by the following statement at para. 18:

"The Plaintiff claims that all defendants in this precise matter failed, refused and neglected to adhere to and honour the fundamental Constitutional, Statutory and EU privacy rights of the Plaintiff and their spouse. The Plaintiff claims this is repugnant to rights under the former Data Protection Acts, GDPR, Constitutional rights guaranteed by Article 40.3 including Articles 7 and 8 of the EU Convention."

45. While complaint is made regarding the way in which the defendants have used Mr. Duffy's data, at no point does Mr. Duffy claim that any loss has been suffered by him as a result of the way in which his data has been processed or used during the course of his dealings with the defendants. In any case, it is clear from Clause 24 of the Mortgage conditions that Mr. Duffy agreed as mortgagor to authorise the processing of his details and the transfer of his data for the purpose of allowing Permanent TSB to carry out its functions under the Mortgage:

"24.1 **The Mortgagor**, the Guarantor (if any) and all other parties to the Mortgage and any deed of postponement or confirmation relating to the Mortgage **respectively authorise permanent tsb, its subsidiaries, servants and agents to maintain in any form (including a form in which it can be processed) and to process details relating to each of them and their respective transactions with permanent tsb** for as long (after as well as before redemption of the Mortgage) as it in its absolute discretion considers necessary for any of its purposes.

24.2 **The Mortgagor**, the Guarantor (if any) and all other parties to the Mortgage and any deed of postponement or confirmation relating to the Mortgage **respectively authorise permanent tsb, its subsidiaries, servants and agents to disclose such information about them and/or the facility secured by the Mortgage as they may consider appropriate to any sub-participating bank or institution, any person with whom they are associated (including the Irish Credit Bureau) and/or any actual or potential assignee or transferee.**

permanent tsb will inform any person to whom any disclosure is made that it is requested that the information disclosed except any in the public domain is treated in confidence (but permanent tsb will not be responsible for insuring that it is so treated by any such person).” (Emphasis added)

46. In respect of these alleged breaches of his data and privacy rights, Mr. Duffy seeks a declaration that the defendants have committed an offence under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. However, any complaints of a criminal nature are not a matter for this Court. In that regard however, this Court would confine itself to say that allegations of a criminal nature are not claims that should be made lightly, especially in circumstances where there is not a shred of evidence to support those allegations, as is the case here.

CONCLUSION

47. It is the case that when Mr. Duffy’s Statement of Claim is viewed in the context of the documentation, there is no evidence to support the claims made by him and the claims he has advanced are, *per* Clarke J. in *Keohane v. Hynes*, mere assertions for which no credible basis has been put forward. As this is a case that is wholly dependent on documentation, it is highly unlikely that the position will change at the trial of the action. Mr. Duffy has not established that he has any reasonable cause of action and it is clear therefore that Mr. Duffy’s proceedings are bound to fail. Moreover, as is clear from the select passages quoted above from the Statement of Claim, Mr. Duffy’s claims against the defendants are frivolous and vexatious insofar as they encompass a wide-range of very serious allegations against the defendants that are completely unsubstantiated by any of the documentary evidence in the case.
48. Based on the foregoing therefore, this Court has no hesitation in granting the reliefs sought by the second and third defendants. The proceedings will therefore be struck-out and the *lis pendens* vacated.
49. Insofar as the form of order is concerned, this Court would ask the parties to engage with each other to see if agreement can be reached regarding all outstanding matters without the need for further court time. If it is necessary for this Court to deal with final orders, this case will be put in for mention one week from delivery of this judgment, at 10.45am.