APPROVED **[2022] IEHC 494**

THE HIGH COURT

2022 No. 2508 P

BETWEEN

MARTIN ENRIGHT
NOEL LEEN
TIM GUIHEEN
THOMAS WARD
MICHAEL HARTNETT
BRENDAN NOLAN

PLAINTIFFS

AND

BALLYBEGGAN PARK COMPANY LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 24 August 2022

INTRODUCTION

1. This judgment is delivered in respect of an application for an interlocutory injunction. The application is brought by the trustees and officers of an unincorporated association, County Kerry Coursing Club ("***the Coursing Club***").

2. The Coursing Club seeks orders restraining the owners of Ballybeggan Park in Kerry from obstructing access to the former racecourse by members of the Coursing Club for the purposes of preparing the lands for a coursing meeting

which is scheduled to be held in January 2023. The Coursing Club seeks keys to a third and fourth gate on the lands, saying that the access currently provided through two other gates is insufficient.

FACTUAL BACKGROUND

3. The lands comprising Ballybeggan Park are owned by Ballybeggan Park Company Ltd ("***the Landowner***" or "***the Company***"). The title to the part of the lands the subject-matter of these proceedings is unregistered. (Title to part of the overall lands is registered and the relevant folios have been exhibited). It is apparent from these title documents that the lands were not donated to the people of Tralee as had, initially, been alleged by the Coursing Club.

4. The Landowner acquired ownership of the lands on 31 October 1944 for a purchase price of £4,000. It has been explained on affidavit that the acquisition of the lands was funded by fifty individual shareholders of the company each purchasing a shareholding with a nominal value of £100.

5. The Coursing Club asserts that it holds 8,126 ordinary shares in the Company through nominees, and that this represents approximately 8 per cent of the issued shares, thus making the club the largest single shareholder in the Company. The Coursing Club also asserts that it is entitled to appoint a director to the board of the Company.

6. The coursing of hares has been carried out on part of the overall lands at Ballybeggan Park since at least 1883. There is some disagreement between the parties as to the date upon which this activity was first carried out by the Coursing Club. The Coursing Club asserts that it has been responsible for coursing on the lands since at least 1937. The Landowner asserts, conversely,

that it initially operated the coursing activities itself, and that it was only since the first years of the 1970s that coursing activities have taken place on the lands under a licence agreement entered into between the Coursing Club and the Landowner. In the initial years, fees were paid by the Coursing Club to the Landowner, but fees have not been sought in more recent years.

7. It is common case that the part of the lands used for coursing have been leased out to a local farmer and that he takes a cut of silage in May and September of each year.

8. To assist the reader in understanding the dispute between the parties in respect of access, it is necessary to describe, briefly, the layout of Ballybeggan Park. There are four access points. There are two gates at the northern boundary of the site. These are described as "*the main entrance*" and "*the Wicket Gate*", respectively. The Coursing Club has been provided with keys to these two gates since 6 July 2022 and thus has vehicular and pedestrian access to all of the lands (save the grandstand area). There are two gates at the southern boundary of the site. These are described as "*the Five Furlong Gate*" and "*the Burlington Gate*", respectively. The Coursing Club does not currently have keys to these two gates.

9. The only part of the lands to which the Coursing Club does not currently have access to is the area where the grandstand and associated buildings are located. The Landowner has stated that access to this area is provided by the caretaker on or around the date of a coursing meeting and the Coursing Club make no complaint in this regard.

10. The essence of the Coursing Club's submission in respect of access is that the club requires access from the southern end, via the Burlington Gate, from September. This is because, or so it is submitted, access from the northern end

will be obstructed from September onwards, once temporary fences have been erected by the Coursing Club for the purpose of facilitating the training of the hares for the meeting in January 2023. However, as discussed at paragraphs 46 *et seq*. below, the Coursing Club has failed to put forward any admissible evidence to the effect that fencing has ever been erected prior to the month of October in any previous year.

11. The various gates to Ballybeggan Park are kept locked. On 18 June 2022, members of the Coursing Club discovered that the locks had been changed with the consequence that the keys which they held no longer worked. The response of the Coursing Club was to notify the Landowner's solicitors, by letter dated 21 June 2022 from the club's own solicitors, of its intention to issue High Court proceedings immediately. The proceedings were issued two days later. The procedural history is set out in detail under the next heading below. For present purposes, it is sufficient to note that as of 6 July 2022, the Coursing Club had been provided with keys to the main entrance and the Wicket Gate.

12. The Landowner has been critical of the fact that rather than seeking keys to the new locks from the chairman of the racecourse as had been done on previous occasions when the locks were changed, the Coursing Club instead sent a solicitor's letter and issued legal proceedings. The Landowner also asserts that the locks are changed from time to time for security reasons, and had been changed on 15 June 2022 on the advice of their security contractors because the lands were being accessed by third parties. It is said that the Burlington Gate and the Five Furlong Gate are at a significant remove from the grandstand area where the security contractors concentrate their operations and hence these gates cause the Landowner the most concern.

13. More generally, it is apparent from the affidavits that there is an ongoing dispute between the Landowner and the Coursing Club in respect of what the latter characterises as "*corporate governance*" issues. This dispute came to the fore when the Coursing Club became aware, from newspaper reportage, that the Landowner was considering the sale of Ballybeggan Park. The Coursing Club objects to any proposed sale, at least in circumstances where an alternative venue has not been provided for coursing activities. It is said that an agreement to provide an alternative venue had been reached in the context of a previous proposal to sell the lands in 2008. The proposed sale in 2008 did not ultimately proceed because of the property crash. The Coursing Club says it might take a "*pragmatic view*" to the sale of the lands now were a similar accommodation to be provided.

14. In May 2022, the Coursing Club purported to issue proceedings before the Circuit Court pursuant to Section 212 of the Companies Act 2014. This section is intended to ensure protection for minority shareholders who complain that the affairs of a company are being conducted, or that the powers of the directors of the company are being exercised, in an oppressive manner.

15. The principal complaint made in those Circuit Court proceedings had been that the directors of the landowning company were, at the time, maintaining that the board of directors alone was empowered to sell the lands and that the authorisation of the shareholders at general meeting was not required. This conduct was said to be oppressive. The Circuit Court proceedings were subsequently discontinued following a detailed letter of response from the Company's solicitors on 14 June 2022. (The notice of discontinuance was served on 11 July 2022).

16. In addition to objecting to the jurisdiction of the Circuit Court to entertain proceedings under Section 212 of the Companies Act 2014, the letter of 14 June 2022 also confirmed that a resolution would be put to the shareholders of the Company to approve any proposed sale of the lands. The resolution is, seemingly, to be put to the shareholders at a general meeting to be held in September.

17. No issues of "*corporate governance*", similar to those raised in the withdrawn Circuit Court proceedings, fall for determination in the present proceedings. These are not proceedings taken pursuant to the Companies Act 2014. The taking of the Circuit Court proceedings is nevertheless of some significance in that it confirms that the Coursing Club is opposed to the sale of the lands unless some alternative venue is provided for coursing activities.

18. This opposition is made even more explicit in a newspaper article published in the *Kerry Eye* on 23 June 2022. An extract from the relevant article has been exhibited by the Landowner. This article has evidently been written with the co-operation of the Coursing Club.

19. The headline to the article reads as follows: "*Coursing club in bid to stop €5m sale*" and the opening sentence of the article states that the Coursing Club "*is seeking a High Court injunction to prevent the sale of Ballybeggan Racecourse, which is to be sold for an estimated €5 million*".

20. This article was published on the very date the present proceedings were issued out of the Central Office of the High Court. The Landowner relies on this article as evidence that the Coursing Club has brought these proceedings in an attempt to frustrate the sale or to extract an undue payment for the club's co-operation in the sale. I will return to consider this objection at paragraphs 58 *et seq.* below.

PROCEDURAL HISTORY

21. These proceedings were issued out of the Central Office of the High Court on 23 June 2022. The plenary summons was served on the Landowner, through its solicitors, on 27 June 2022. An appearance was entered on 6 July 2022. A statement of claim was delivered on 12 July 2022 and a defence delivered on 21 July 2022.

22. There has been an extensive, and at times intemperate, exchange of correspondence between the parties' solicitors in respect of the provision of keys. In the event, the Coursing Club was provided with keys to the main entrance and the Wicket Gate by 6 July 2022. Notwithstanding this, on 20 July 2022 counsel on behalf of the Coursing Club applied *ex parte* for leave to serve short notice of a motion seeking interlocutory relief against the Landowner. The motion was made returnable for the following Monday, 25 July 2022. The motion did not go ahead on that date as the exchange of affidavits was not yet completed. Counsel on behalf of the Coursing Club then applied for a hearing date in August, saying that the matter was urgent. A hearing was fixed for 17 August 2022 and the court directed the exchange of written legal submissions.

23. The motion was assigned to me as the duty judge sitting on 17 August 2022. I had the opportunity of reading the papers in advance, including the written legal submissions filed. The motion could not be heard on that date because of the pressure of the list and was adjourned to the following day. The motion had been called on for two hours and there were a number of other more urgent

matters scheduled for hearing on 17 August 2022, including extradition and wardship matters.

24. The motion was heard on 18 August 2022. In circumstances where the parties regarded the matter as urgent, I gave my ruling at the conclusion of the hearing, dismissing the application for an interlocutory injunction, and explained that a detailed written judgment would be delivered the following week. It had not been possible to provide a detailed judgment at the time as there were a number of other urgent matters remaining to be heard in the list, including a motion for attachment and a number of extradition matters.

PRINCIPLES GOVERNING INTERLOCUTORY INJUNCTIONS

25. The principles governing the grant of interlocutory injunctions have recently been clarified by the Supreme Court in *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Ltd* [2019] IESC 65, [2020] 2 I.R. 1. In brief, a court hearing an application for an interlocutory injunction should first consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief pending the trial could be granted. The court must consider whether the plaintiff has established that there is a "*serious issue*" to be tried (sometimes referred to as an "*arguable case*" or as a "*fair issue*" to be tried). If so, the court should then proceed to consider how matters should best be regulated pending the trial. This involves consideration of the balance of justice (sometimes referred to as the "*balance of convenience*").

26. The preferable approach is to consider the adequacy of damages as part of the balance of justice, rather than as a separate step in a three-stage test. It is not

simply a question of asking whether damages are an adequate remedy. An interlocutory injunction should not be *granted* merely because the plaintiff can tick the relevant boxes of arguable case, inadequacy of damages, and ability to provide an undertaking as to damages. By the same token, an interlocutory injunction should not be *refused* merely because damages may be awarded at trial.

27. If the balance of justice is finely balanced, then it might be appropriate for the court to consider, even on a preliminary basis, the relative strengths and merits of each party's case as it may appear at the interlocutory stage. This will be necessarily dependent upon the proceedings presenting a legal issue upon which the court could confidently express a view, and also dependent upon any facts relevant to the disposition of that issue being supported by credible evidence (*Ryan v. Dengrove DAC* [2021] IECA 38).

28. Finally, the threshold to be met by the plaintiff will be more exacting in circumstances where *mandatory* relief is being sought by way of an interlocutory injunction. Rather than simply demonstrate a serious issue to be tried, it will be necessary for the plaintiff to establish a strong case that they are likely to succeed at the hearing of the action (*Lingam v. Health Service Executive* [2005] IESC 89). It is not necessary for the purpose of resolving the present case to determine whether the reliefs sought are mandatory or prohibitory in nature. This is because—as explained under the next heading below—the Coursing Club has failed to meet even the lower threshold.

NO SERIOUS ISSUE TO BE TRIED

29. The first question to be addressed by the court on an application for an interlocutory injunction is whether the moving party has established a serious issue to be tried. As reiterated by the Supreme Court in *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Ltd* (cited above), the point of the exercise is not to attempt to predict, on the balance of probabilities, the outcome of the case which is yet to be heard. Rather, the court should instead confine itself to a consideration of whether there is a serious issue to be tried. Provided that this threshold has been met, consideration of the relative strengths of the parties' rival claims will not generally be appropriate, save in those cases where the balance of justice is finely balanced.

30. The initial threshold, although modest, is not meaningless. The moving party must be able to articulate a claim which, if held to be well founded at the trial of the action, could justify the grant of relief in their favour. In the present case, the Coursing Club has steadfastly failed to articulate any sensible legal basis for its claim. The essence of the Coursing Club's claim is that it has a "*right*" to continue to use Ballybeggan Park for the purpose of preparing for, and carrying out, hare coursing, and that this right can be enforced against the Landowner. The claim is that this right is one enjoyed by the Coursing Club as an unincorporated association and that it is a right which is capable of being waived by the club. It is a constant theme of the affidavits and submissions that the Coursing Club, if provided with an alternative venue at which to carry out its coursing activities, might be prepared to take what is described as a "*pragmatic view*" and not object to the sale of Ballybeggan Park. Emphasis is placed on the fact that this is what had been intended at the time of the abortive sale in 2008.

31. The Coursing Club has never identified the legal basis for this asserted right. The most that is done is to say that the coursing has been carried out at Ballybeggan Park for more than one hundred years. It has never been explained how long user, in and of itself, could translate into a right enforceable against the Landowner. No attempt was made to outline to the court, even at the level of generality, the legal principles which are relied upon in support of the asserted right.

32. This failure has to be seen in the context of the chronology of the proceedings: the application for an interlocutory injunction was heard some eight weeks after the proceedings had been instituted, and following the delivery of a defence and the exchange of written legal submissions. This is not a case where the application came on at very short notice without the parties having had time to formulate, even in outline, the nature of their claim.

33. A party who invokes the solemn jurisdiction of the court to grant an interlocutory injunction cannot rely upon the admittedly low threshold, i.e. that there is a serious issue to be tried, as absolving that party of any obligation to outline the legal basis for their claim.

34. There is reference in the statement of claim to user "*as of right*" in excess of twenty or forty years. These periods coincide with those stipulated under the Prescription Act 1832. If and insofar as this plea is intended to imply that a right has been acquired by prescription—and none of the pleas were elaborated upon in either written or oral submission—this is untenable. The statutory periods laid down for prescription under statute are only applicable to easements. The asserted right to use land for coursing cannot, in the absence of a dominant tenement, constitute an easement.

35. It is pleaded in the statement of claim that the Coursing Club enjoys "*traditional and customary rights*" of coursing. Any reliance upon customary rights is entirely inconsistent with the Coursing Club's stated position that the club would be entitled to waive its rights in the event of a suitable alternative venue being provided. As correctly observed by counsel for the Landowner, if a customary right did exist it would vest in the local inhabitants and it would not be in the gift of the Coursing Club to waive such a communal right. Again, no attempt was made on behalf of the Coursing Club to address this glaring contradiction in its case.

36. Leaving aside this contradiction, no attempt whatsoever was made to identify the legal principles governing the recognition of customary rights. It was not explained, for example, whether it is being contended that a customary right can be acquired by prescription.

37. There is some suggestion in the statement of claim of the possible existence of a deed of grant. This suggestion was not pursued in either written or oral submission. The only evidence put before the court in this regard is that of the Landowner. The title documents have been exhibited and there is nothing therein which even hints at the existence of a deed of grant conferring sporting or recreational rights in respect of the lands.

38. I am very mindful of the admonitions in the case law that the judge hearing the interlocutory injunction should avoid adjudicating on the underlying merits of the case but should instead confine their analysis to determining whether there is a serious issue to be tried. However, this does not absolve the moving party from, at the very least, outlining the legal basis for its claim.

39. It does not trespass on the underlying merits of the proceedings for this court to observe that basic principles of land law require something more than long user *per se* to establish a legal right enforceable against the owner of lands. The use must have been "*as of right*" and not with the permission of the owner of the lands. If, conversely, the use had been with the permission of the relevant landowner, then neither an easement nor a customary right can arise. The Coursing Club has failed to engage with this requirement in any meaningful way.

40. The documentary evidence put before the court indicates that coursing meetings were held with the permission of the Landowner, and, until more recent times, had involved the making of some payment or provision of benefit-in-kind, e.g. the Coursing Club paid over part of the gate receipts or agreed to use the Landowner's bar facilities. The Coursing Club also paid a fee and in some years was expressed to be responsible for the caretaker's wages. Relevantly, the Coursing Club is recorded as having sought permission from the Landowner for an extra meeting in January 1977. The Coursing Club expressly sought permission in September 2016 from the Landowner to carry out certain remedial works. Again, such requests for permission are inconsistent with an alleged user as of right.

41. It is also relevant to have regard to the history of ownership. The Coursing Club appears to be contending that it acquired prescriptive rights against the owner of the racecourse, i.e. the very company in which it is a shareholder. Again, no explanation is provided as to the legal basis for such a contention.

42. The court must be satisfied that there is a serious issue to be tried. If the moving party puts forward no tenable arguments in support of its claim, then this

(admittedly low) threshold is not met. For the reasons explained above, the Coursing Club has failed to meet this threshold.

BALANCE OF JUSTICE / BALANCE OF CONVENIENCE

43. The finding that the Coursing Club has failed to meet the threshold of establishing a serious issue to be tried is sufficient, on its own, to dispose of the application for an interlocutory injunction. Lest this finding be incorrect, however, I propose to move on to consider, *de bene esse*, the balance of justice.

44. The two aspects of the present case of most immediate relevance to this exercise are as follows: first, the absence of any harm to the Coursing Club and, secondly, the conduct of the Coursing Club. These are addressed, in turn, below.

45. The essential function of the court, in determining an application for an interlocutory injunction, is to attempt to find a just solution pending the hearing of the action. One of the principal matters to be considered is the risk of harm which either the grant or the refusal would cause to the respective parties. As part of this exercise, the court will consider whether damages would be an adequate remedy to either party for the harm caused to them were an injunction to be granted or refused, only for that party to succeed at trial.

46. The striking feature of the present case is that the Coursing Club has been unable to point to any material harm which it would suffer were an interlocutory injunction to be refused. The height of the Coursing Club's case is that once the temporary fencing has been erected in the paddocks, the club then requires access from the southern end of Ballybeggan Park, i.e. access via the Burlington Gate.

47. The Coursing Club has failed, however, to put forward any admissible evidence to the effect that the fencing has previously been erected prior to the month of October. Indeed, counsel for the Coursing Club very properly conceded that there was no such evidence. The evidence before the court establishes that whereas hares are introduced incrementally to the lands throughout September each year, the fences are only erected subsequently when silage has been cut by a local farmer and when the number of hares has reached 150. It is only in October or November, therefore, that any question of the Coursing Club requiring access via the Burlington Gate could arise. Even then, it is not clear that adequate access cannot be achieved by the two other gates. Whereas the members of the Coursing Club might regard it as more *convenient* to gain access from the southern end, this does not establish that this route of access is essential.

48. (For completeness, it should be observed that the harm which is alleged to arise once the fencing is in place is not convincing. The allegation is that the taking of access from the north will lead to "*unnecessary disturbance and consequent stress on the hares*". As submitted on behalf of the Landowner, it is incongruous for a coursing club to cite the welfare of the hares.)

49. The Coursing Club has failed to demonstrate any necessity for access via the Burlington Gate until, at the very earliest, October. The Landowner has indicated, in correspondence dated 14 July 2022, that it is open to the Coursing Club to put a request for the keys to the Burlington Gate and the Five Furlong Gate "*at the appropriate point later this year, namely in or around October of this year*".

50. In the absence of any material harm to the Coursing Club, the application for an interlocutory injunction is precipitous. Certainly, there was no justification for the Coursing Club seeking an urgent hearing during August.

51. Counsel for the Coursing Club submits that the grant of an interlocutory injunction would not cause any material harm to the Landowner. In particular, attention is drawn to the fact that, having the benefit of the two keys provided to it in early July, the Coursing Club already has access to all areas of Ballybeggan Park. The implication being that the provision of keys to the third and fourth gates would not adversely affect the position of the Landowner. With respect, this submission seeks to draw a false equivalence between the right baldly asserted by the Coursing Club and the property rights of the Landowner. Even taken at its very height, the claim advanced by the Coursing Club recognises that the Landowner is entitled to exercise its property rights over the lands, save in a manner which would interfere materially with the sporting rights asserted by the club. The Landowner is entitled, therefore, to take reasonable security measures such as the fitting of locks to the various gates on the lands. Indeed, the evidence indicates that locks have been in place for many years now. The Coursing Club cannot, even if it establishes a sporting right, object to the fitting of locks. The most it could seek is reasonable access. This has been afforded to the club by the provision of keys to the main entrance and the Wicket Gate.

52. The courts traditionally place some weight on the protection of property rights in deciding whether or not to grant an interlocutory injunction. The reliefs sought in the present case would involve the imposition of a restriction on the exercise of the right of the Landowner to secure its own property.

53. For the reasons outlined above, I am satisfied that the balance of justice lies in favour of the refusal of an injunction. Even if I am incorrect in this assessment, the most that might be said is that neither side has shown that it would suffer irremediable harm were an interlocutory injunction to be granted or refused. To the extent that the balance of justice might be regarded as finely balanced, the court would then be entitled, as explained in *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Ltd* (cited above), to consider the relative strengths and merits of each party's case as it may appear at the interlocutory stage. For the reasons explained at paragraphs 29 to 42 above, I have concluded that the Coursing Club has failed to meet the low threshold of a serious issue to be tried. The same reasons apply *a fortiori* to the more searching consideration permitted in the context of an assessment of the balance of justice.

54. Counsel for the Coursing Club placed great emphasis on the maintenance of the *status quo ante*. It was submitted that the Coursing Club had always been provided with keys to all four gates and that the court should ensure that this continues by directing the provision of the keys to the third and fourth gates.

55. One of the factors which may inform the assessment of the balance of justice is whether it would be appropriate, in the circumstances of the particular case, to seek to maintain the *status quo ante*. This factor is not, however, preeminent. As recently reiterated by the Court of Appeal in *Ryanair DAC v. Skyscanner Ltd* [2022] IECA 64, there is no hard and fast rule easing the burden on a plaintiff who seeks interlocutory relief directed to the maintenance of the *status quo ante*.

56. The ultimate objective of the court in determining an application for an interlocutory injunction is to arrange affairs pending trial so as to minimise the risk of injustice. The preservation of the *status quo ante* is not an objective to

be desired for its own sake: rather, it may be relevant in deciding how best to balance the rival legal rights asserted by the parties pending the trial of the action. The court is not concerned with the protection of an existing state of factual affairs *per se* but rather with the protection of legal rights.

57. Here, the relevant question is whether the Coursing Club has established a serious issue to be tried that it has an enforceable right against the Landowner. That it may have previously been allowed keys to all gates does not support the grant of an interlocutory injunction in the absence of an arguable case that this was done as of right rather than by the permission of the Landowner. Moreover, as explained earlier, the Coursing Club has failed to adduce admissible evidence that it ever required access via the Burlington Gate in September.

58. The absence of any material harm to the Coursing Club leads to the second aspect of the proceedings of immediate relevance to the balance of justice, namely the conduct of the Coursing Club. The only reasonable inference which can be drawn from the conduct engaged in by the Coursing Club in pursuing an application for an interlocutory injunction in the absence of any material harm is that the supposed urgency in obtaining access to the other gates is contrived, and that the actual objective is to disrupt the proposed sale of Ballybeggan Park. This inference flows from the newspaper article published in the *Kerry Eye* on the very date that the proceedings were issued out of the Central Office of the High Court.

59. The headline to the article reads as follows: "*Coursing club in bid to stop €5m sale*" and the opening sentence of the article states that the Coursing Club "*is seeking a High Court injunction to prevent the sale of Ballybeggan Racecourse, which is to be sold for an estimated €5 million*".

60. Notwithstanding that the Coursing Club had been on notice that the Landowner would be relying on the newspaper article, the club made no attempt to dissociate itself from the article nor to suggest that their views were incorrectly recorded.

61. It is apparent from the content of the article that it had been written with the co-operation of the Coursing Club and their solicitor. The article was published on the very date the proceedings issued, at a time when the existence of the proceedings could only have been known to the newspaper if disclosed by the members of the Coursing Club. The article contains quotations from the Coursing Club's principal deponent, Mr. Thomas Ward, and from the solicitor acting for the club. Three of the nominated plaintiffs (including Mr. Ward) are depicted in a posed photograph taken outside Ballybeggan Park under the caption "LOCKED OUT".

62. It is thus apparent that the members of the Coursing Club took steps to ensure that the proceedings were publicised in a form which indicated that the intention of the proceedings was to halt the proposed sale.

63. The newspaper article clearly indicates that the intention of the proceedings is to prevent the sale of Ballybeggan Park. This intention has never been denied in terms by the Coursing Club. The most that is said on affidavit in response to the Landowner's reliance on the newspaper article is to criticise the reference in the affidavit to the Coursing Club's solicitor having given an "*interview*" to the newspaper, as opposed to his having been asked for and supplied a "*comment*". The deponent, Mr. Ward, offers no explanation for his own involvement in the newspaper article, still less does he state that the article misrepresents the views of the Coursing Club as conveyed to the journalist.

64. At the hearing before me, counsel for the Coursing Club submitted that I should attach no weight to the newspaper article, describing the comments as "*nonsense*" and "*silliness*" and the result of "*frothy enthusiasm*" on the part of his clients.

65. The difficulty with this submission is that the Coursing Club has not disavowed the description of its intention as recorded in the newspaper article. Moreover, the intention expressed in the newspaper article is not an aberration, but rather is consistent with the stance adopted on behalf of the Coursing Club throughout the correspondence. The Coursing Club has consistently objected to the proposed sale of Ballybeggan Park in the absence of the provision of an alternative venue for coursing. This opposition is apparent, for example, from a letter dated 9 May 2022 from the Coursing Club's solicitors to the Landowner's solicitors in the following terms:

> "The purpose of this letter is to advise that our clients strenuously object to any proposed sale of the property and failing hearing from you within seven days of the date hereof confirming that there is no such intention to seek to dispose of the property then we are instructed to take such legal action as is appropriate in the circumstances."

66. The Coursing Club's solicitors, in their letter of 29 June 2022, assert that the Landowner has no right to exclude the Coursing Club from Ballybeggan Park and that the park is not the Landowner's property in the conventional sense. The letter then goes on to state as follows:

> "With regard to your statement that the proceedings are '*jeopardizing the proposed sale of Ballybeggan Racecourse for the sum of €5,000,000*' we take this as unequivocal confirmation of your intent to sell the Park without reference to your client's members and despite, or without accommodation, of our client's legal rights.
>
> We have already objected in the most strenuous terms, over a month ago, in ours of the 23rd May 2022, to any alleged

> right of your client to sell Ballybeggan Park and have issued High Court proceedings. We are surprised that yours of 28th June, 2022 manifests an intention to persist in your most unfortunate course. If so, we require WITHIN 7 DAYS the name and address of your proposed purchaser, which should clearly be on notice of, if not in fact joined to the proceedings already issued."

67. As appears, a direct connection is drawn between the proceedings and the proposed sale of Ballybeggan Park. The letter demands that the identity of the proposed purchaser be disclosed in order that the purchaser can be put on notice of or joined to the proceedings.

68. There is no necessity to join a potential purchaser to legal proceedings which make a claim to an estate or interest in land. Rather, the litigant's position is protected by the registration of a *lis pendens* in accordance with Part 12 of the Land and Conveyancing Law Reform Act 2009. See, generally, *Fay v. Promontoria Oyster DAC* [2022] IEHC 483 (at paragraphs 13 to 18).

69. The only reasonable inference which can be drawn from the correspondence is that the Coursing Club seeks to deter the proposed purchaser from pursuing the sale of the lands, at least not without first entering into negotiations to provide an alternative venue for coursing. The Coursing Club places great emphasis in its affidavits and oral submissions on the accommodation reached at the time of the proposed sale in 2008 to provide an alternative venue. The Coursing Club goes on to state that it might well take a "*pragmatic view*" of the sale were a similar accommodation to be provided now.

70. In summary, the combination of (i) the absence of any material harm to the Coursing Club; (ii) the newspaper article; and (iii) the correspondence, leads to the irresistible inference that the supposed urgency of the application for an interlocutory injunction has been contrived and that the actual objective of the

application was to disrupt the proposed sale of Ballybeggan Park. The Coursing Club has ensured that the application was well publicised in advance and had sought the identity of the proposed purchaser with a view to involving them in the proceedings. In all the circumstances, I am satisfied that the application for an interlocutory injunction is vexatious. I am also satisfied that the Coursing Club did not comply with its duty of candour to the court and did not come to court with clean hands.

CONCLUSION AND FORM OF ORDER

71. The application for an interlocutory injunction is refused for the reasons explained above. In brief, the Coursing Club has failed to establish that there is a serious issue to be tried. This finding is sufficient, on its own, to dispose of the application for an interlocutory injunction. Lest this finding be incorrect, however, I have also considered, *de bene esse*, the balance of justice and concluded that it tells against the grant of an interlocutory injunction. In particular, the Coursing Club has had full vehicular and pedestrian access to the lands since 6 July 2022, i.e. some two weeks before the application for an interlocutory injunction was first moved. The Coursing Club has failed to demonstrate any necessity for access via the Burlington Gate until, at the very earliest, October. The supposed urgency is contrived and the application for an interlocutory injunction is vexatious.

72. Accordingly, an order will be drawn up refusing the reliefs sought in the notice of motion of 20 July 2022.

73. The proceedings will be listed before me at 11 o'clock on 25 August 2022 to address (i) the costs of the motion, and (ii) the directions necessary to ready the proceedings for hearing.

Appearances

David Sutton SC and Elizabeth Murphy for the plaintiff instructed by O'Donoghue Griffin LLP
Arthur Cush (with Henry Downing SC) for the defendant instructed by Downing, Courtney & Larkin LLP

Approved
Garrett Simons