THE HIGH COURT

[2023] IEHC 39

[Record No. 2019/ 816P]

BETWEEN:

RICHARD FARRINGTON

PLAINTIFF

AND

STEPHEN TENNANT, GRANT THORNTON, ULSTER BANK IRELAND DAC AND PROMONTORIA (OYSTER) DAC

DEFENDANTS

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 30th day of January, 2023

INTRODUCTION

1. This matter comes before me on an application for orders pursuant to O.19, r. 28 of the Rules of the Superior Courts, 1986 and/or the inherent jurisdiction of the Court striking out the proceedings on the grounds that they disclose no reasonable cause of action and/or the action is frivolous and/or vexatious and/or bound to fail and/or are an abuse of process.

2. The Defendants further seek, in the alternative, an Order pursuant to s. 123 of the Land and Conveyancing Act, 2009 vacating the *lites pendentes* which, on the application of the Plaintiff and by reference to these proceedings, have been registered against the Defendants' interest in a property at Derrybeg, Ballyclough in the County of Limerick (Folio 46591F, County of Limerick) [hereinafter "the Property"].

PROCEDURAL HISTORY

3. By plenary summons dated the 31st of January, 2019, the Plaintiff issued proceedings in which he advanced a €2 billion claim for damages.

4. The pleas for relief advanced in the endorsement of claim to the plenary summons appear to be grounded on allegations, *inter alia*, of fraud, breach of GDPR rights, breach of contract, trespass and conflict of interest. Insofar as is discernible from the terms of the relief sought, these pleas appear to turn on the appointment of a receiver (the First Defendant) in respect of a bank charge over the Property (as comprised in Folio 46591F), the entry onto said Property by the Receiver and the removal of items including documentation from the property. Of importance as it appears to be the basis for the registration of *lites pendentes*, a declaration is sought that the charge held by the Fourth Named Defendants over the lands comprised in Folio 48591F County Limerick is unlawful and therefore null and void.

5. On the day following the issue of the plenary summons, *lites pendentes* were entered by the Plaintiff in respect of the property pursuant to s. 121 of the Land and Conveyancing Law Reform Act, 2009 [hereinafter "the 2009 Act"] as against the interest of each of the Defendants herein. The said *lites pendentes* have been registered since February, 2019, some four years ago.

6. An Appearance was entered to the proceedings in March, 2019.

7. The Plaintiff resisted delivering a statement of claim contending that he had not served the Plenary Summons on the Defendants, was not ready to do so and time had not yet run. Following an application to the Master of the High Court in this regard on behalf of the Defendants, the Master extended time for delivery of the Statement of Claim. In January, 2020 the Statement of Claim was delivered. There was no appeal against the decision of the Master.

8. In the Statement of Claim dated the 14th of January, 2020, it is claimed that the Plaintiff cancelled its "*perceived contracts with the third named defendant as void ab initio*". There is no identification of the contract in question or particulars of same.

9. The Statement of Claim proceeds to claim that the Defendants "*perjured the Master of the High Court by stating that no requests for data was received by the Defendants*". This is understood as a reference to the application to the Master of the High Court which post-dated the issue of the proceedings. Similarly, the Statement of Claim continues to assert a prejudice arising from the order of the Master in directing the delivery of the Statement of Claim, even though this event post-dates the issue of the proceedings.

10. Thereafter, the Plaintiff claims damages for breach of contract up to the value of €2 billion by the Defendants who it is said:

> *"accepted the Plaintiff's equity by means of fraudulent misrepresentation in respect of the implementation of the rules of Economic Measurement for Lending Institutions. The Court of Justice of the European Union (CJEU) are the only courts to have jurisdiction and competency in disputes of matters relating to Economic Measurement. Disputes in relation to the principal of Economic Measurement and its use by Lending Institutions is subject matter that can only be determined by the CJEU. All formulas for compensation will be decided by the ruling of the CJEU. The Plaintiff refers to precedent; High Court Record No. 2012/1189 and Supreme Court Record No. 350/2013, Ulster Bank Ireland Limited v. Flannan O Colieain, European Parliament correspondence dated 04.07.2017 (Exhibit No. 1) European Parliament reply and Petition No. 0638/2017 declared admissible dated 22.11.2017 (Exhibit No. 2)."*

11. No further particulars of the alleged fraud are provided in the Statement of Claim. Emails addressed to multiple recipients (including the Taoiseach) have, however, been exhibited by the Defendants in which the Plaintiff seeks a public inquiry. I have read this correspondence with a view to understanding the pleaded complaint of fraudulent misrepresentation in the Statement of Claim and the pleas for relief on the Indorsement of Claim to the Plenary Summons. I will not reproduce this correspondence in which the Plaintiff makes multiple and varied claims raising issues ranging from second degree murder and possible terrorism involvement (without any specifics) to money laundering claims and referring, *inter alia*, to a trillion-dollar class action on behalf of 30,000 people with which he associates himself. He repeatedly refers to issues being raised by him for and on behalf of 500 million European citizens. Amongst many other complaints, a complaint is advanced that First Active PLC and others were insolvent in 2007, were trading unlawfully and therefore not entitled to transfer their assets. The Plaintiff further maintains that a trillion-dollar insurance fraud was organised by Germany and "*its international criminal cartel*", it being contended that in 2002 Germany "*removed*" the Irish punt to the ultimate benefit of a German led international "*criminal secret charitable trust cartel*". I did not find any further particulars to

assist in understanding the pleaded claim of "*fraudulent misrepresentation in respect of the implementation of the rules of Economic Measurement for Lending Institutions."*

12. By Notice of Motion dated the 23rd of January, 2020, the Plaintiff sought to add additional Defendants and two other sets of proceedings, grounding his application on an affidavit sworn in January, 2020. This motion was returnable before Mr. Justice Cross on the 24th of February, 2020. I understand the Plaintiff's motion seeking to join additional Defendants was adjourned to allow the existing Defendants to bring the within application to strike out proceedings with the apparent intention at that time that the Plaintiff's and the Defendants' applications would travel together.

13. A further appearance was entered to the proceedings, this time on behalf of the Third Named Defendant, on the 5th of March, 2020.

14. The application which is before me for determination, being the application to strike out the proceedings, proceeds on foot of a motion which issued in 2020 during the COVID-19 Pandemic and was originally made returnable to May, 2020 (when the intention was for it to be listed with the Plaintiff's motion) and subsequently January, 2021, these dates on the Plaintiff's motion having been vacated because of the Pandemic.

15. While all motions were adjourned generally due to pandemic restrictions, the Defendants brought an application to re-enter their application. The application to re-enter came before the Court in February, 2022, almost a full year ago. Following an adjournment to ensure that the Plaintiff was served with all papers, the matter was listed for mention on the 5th of May, 2022 when a date for hearing in January, 2023 was assigned by the Judge in charge of the list. Affidavit evidence before me confirms that the Plaintiff was physically in attendance in court when the hearing date was assigned and that he was furnished with a complete book of papers that day. The Plaintiff had not then or since brought an application to re-enter his separate application to join additional parties, despite reminder by letter dated the 22nd of February, 2022 from the Defendants' solicitor that the Plaintiff's motion had not been re-entered and recommending independent legal advice. In consequence of the Plaintiff's failure to re-enter his motion, the only application before me is the application to strike out albeit that the papers grounding the Plaintiff's application to join additional defendants have been

included with the papers before the Court. The Plaintiff has not filed any replying affidavit in respect of this application.

FACTUAL BACKGROUND

16. This application is grounded on affidavits from one Ms. Sarah Mulvey (x 2), one Mr. Gerard Hughes, one Mr. Brendan Campbell and one Mr. Robert Nash together with various affidavits of service. I do not propose to recite the contents of these affidavits in full and refer to them only by way of partial summary insofar as they provide useful context.

17. Ms. Mulvey swore her affidavits as Manager of the Third Named Defendant. In her affidavit she sets out the background to the issue of these proceedings and the registration of the *lites pendentes* by the Plaintiff starting with the grant of lending facilities by First Active PLC to the Plaintiff and one Ms. Audrey Farrington. Loans with First Active PLC were secured by mortgage and charge dated the 24th of September, 2003, registered as a charge on the Property in October, 2003.

18. Under the Mortgage Deed exhibited by Ms. Mulvey and opened by counsel on behalf of the Defendants the covenants entered into by the parties are clearly set out and include a covenant to repay the total debt owed to the Lender and to permit the Borrower to hold and enjoy the mortgage property until the total debt became immediately payable which would occur in prescribed circumstances including in the event of default in making payment.

19. The Lender's Remedies as set out in the Mortgage Deed in the event of a prescribed default are wide and clearly set out. They include the entry into possession of the mortgaged property. The Mortgage Deed also preserves onto the Lender the Power to Transfer the benefit of the mortgage and rights and interests of the Lender and the Borrower irrevocably authorises the Lender for the purpose of or in connection with the transfer to disclose details as might reasonably be required in connection with the transfer (in accordance with clause 9(d)) and the Borrower consents to such disclosure for the purpose of the Data Protection Act, 1988.

20. The Mortgage Deed further specifically provides that if upon entry by the Lender into possession of the mortgaged Property or any part thereof, furniture or chattels were found and the Borrower failed to remove them within 28 days of being required in writing to do so, then

the Lender shall thereupon become agent of the Borrower with full authority to remove to storage any such items.

21. The Mortgage Deed further provides for the appointment of a receiver and expressly specifies a right of entry by any Receiver appointed by the Lender, a power to take possession of he Property and a power to sell. A power of attorney vesting the Borrower's authority in the Receiver was agreed to by the Borrower in executing the Deed. The date of execution recorded on the Mortgage Deed is September, 2003 and it bears a Land Registry stamp of 16th of October, 2003.

22. Ms. Mulvey confirms the transfer of First Active PLC's interest to Ulster Bank Ireland Limited (the Third Defendant) in February, 2010 (effected by way of statutory instrument no. 481/2009) and also exhibits correspondence calling for payment of sums due and owing in October, 2013 and further correspondence including a formal demand for repayment of the mortgage debt by letter dated the 18th of September, 2014.

23. Ms. Mulvey then confirms that by Global Deed of Transfer Ulster Bank Ireland Limited transferred its interest in the Facility Agreement and Mortgage to Promontoria (Oyster) DAC (the Fourth Defendant) and exhibits the Global Deed of Transfer. The fact of this assignment was notified to the Plaintiff by Ulster Bank Ireland Limited in correspondence which is exhibited.

24. The folio entry for Folio 46591F of County Limerick exhibited by Ms. Mulvey shows the registration of a charge in favour of First Active PLC in October, 2003 and the transfer of this charge to Promontoria (Oyster) DAC in March, 2017. It also records the registration of a *lis pendens* on foot of these proceedings in February, 2019.

25. The narrative is continued by Mr. Gerard Hughes who is an accountant with the Second Defendant. He says the Second Defendant was appointed to assist the First Defendant, who is the Receiver appointed over certain of the Plaintiff's assets, as secured by the Mortgage Deed, by the Fourth Named Defendant. The Deed of Appointment of the Receiver is exhibited by Mr. Hughes. From the terms of the Deed of Appointment it is clear that the Receiver was appointed by Promontoria (Oyster) DAC, the Fourth Defendant, in reliance on the transfer of the security document which had originally been executed for the benefit of First Active PLC

and transferred from them to Ulster Bank Ireland Limited and finally from Ulster Bank Ireland Limited to Promontoria (Oyster) DAC.

26. Mr. Hughes also exhibits correspondence with the borrowers advising them of the appointment of the Receiver in 2018, inviting them to remove items from the Property (in the manner specified in the Mortgage Deed which had been agreed by the Plaintiff) and alerting them to the Receiver's intention to dispose of all contents of the property pursuant to the terms of the Mortgage. In apparent response to this correspondence the Plaintiff emailed more than 32 recipients including the then Taoiseach of other TDs in relation to alleged insurance fraud, calling for a public tribunal of investigation on the 18th of April, 2018. This email is exhibited and includes in the chain other emails which have been widely disseminated.

27. Mr. Hughes avers that on the 19th of April, 2018, the Receiver peacefully took possession of the Property and directed that the locks be changed. Indeed, it appears from a report exhibited to the affidavit that the Plaintiff had not been occupation of the Property for several years at that stage and has his primary residence at an address in Dublin.

28. Mr. Hughes refers to a complaint of breach of GDPR which was communicated by the Plaintiff with seeming reference to "*private*" and "*sensitive*" personal data including thirty years of private personal and business correspondence, fifty years of family photographs and health records allegedly removed from the Property following the appointment of the Receiver. From Mr. Hughes' Affidavit it appears, however, as already referred to above, the Receiver wrote by letter dated the 17th of April, 2018 before taking possession of the Property referring to the contents of the property and inviting the Plaintiff to arrange for collection of items in the property within a period of twenty-eight days. A further letter affording the Plaintiff the opportunity to retrieve his possessions was sent some time later in March, 2019. Notwithstanding this correspondence, Mr. Hughes confirms that no proposal was ever made by the Plaintiff to view or remove his possessions from storage, albeit that the Plaintiff has requested a full inventory of all items removed by email dated the 16th of April, 2019.

29. The Plaintiff's correspondence also includes a complaint of an illegal breaking and entry and theft which complaints appear to relate to the actions of the Receiver following his appointment. Claims for compensation were made in respect of the allegedly illegal actions of the Receiver following his appointment. Mr. Hughes confirms that the Plaintiff has failed

and/or refused to engage with his requests to him to make arrangements to collect his personal items which were removed from the property and have been kept in storage since pending the Plaintiff's collection of same.

30. Mr. Hughes, an accountant, expressly avers that the Plaintiff's plea in relation to "*the rules of Economic Measurement for Lending Institutions*" is "*unintelligible and corresponds to no identifiable subject matter.*"

31. Mr. Campbell swore his Affidavit as an agent of the servicer for Promontoria Oyster DAC. In his affidavit he addresses the transfer of the security to Promontoria Oyster DAC and correspondence with the Plaintiff in this context on behalf of Promontoria. He exhibits letters of demand which issued in March, 2018 and refers to the appointment of the First Defendant as Receiver on behalf of Promontoria. He further refers to the *lites pendentes* registered by the Plaintiff in respect of these proceedings and states that the Fourth Defendant has been unable to progress the sale of the Property in consequence thereof. Mr. Campbell addresses the Plaintiff's delay in delivering the Statement of Claim and exhibits the correspondence which issued in this regard before resort was finally had to an application to the Master of the High Court seeking to dismiss the proceedings for want of prosecution. The Statement of Claim delivered was only delivered following upon this application to Court.

ADJOURNMENT APPLICATION

32. The Plaintiff is not legally represented. He appeared in person before me and advanced various arguments and submissions despite his failure to put in any replying affidavit to the Defendants' application. At the outset of the hearing the Plaintiff made an application for an adjournment. His application was advanced on the basis, *inter alia*, that the Plaintiff wished to be legally represented, had not been served with all papers and had not been aware that the matter was listed for hearing.

33. Although he claims to seek representation in urging an adjournment of this application, the Plaintiff has never applied to the Legal Aid Board for legal aid to assist him in the prosecution of his claim even though proceedings issued more than four years ago. Accordingly, I do not consider the Plaintiff to genuinely have a wish to secure legal

representation. It seems to me that advising the Court that he wishes to seek legal representation at this late stage is really a form of delaying tactic. The Plaintiff has had ample opportunity to seek legal advice before now and has not done so. Indeed, in early correspondence prior to the issue of proceedings he refers to a planned meeting with his "*attorney*".

34. The Plaintiff also claims that he is unable to respond to the Defendants' application or advance his claim because his papers relating to his loans were amongst items taken from his property following the appointment of the Receiver in 2018. While the Plaintiff denies that he has access to these papers, correspondence on behalf of the Receiver in evidence before me demonstrates that he has invited him to make an arrangement to retrieve his possessions. For his part the Plaintiff has not exhibited or produced correspondence which demonstrates agreement on his part to attend to retrieve his papers. The correspondence before me from the Plaintiff in this regard suggests an insistence by him on an inventory and allegations of breach of GDPR rather than a willingness to attend to take possession of his property.

35. In the absence of evidence that he has attempted to recover his records either by taking possession of the items in storage or by making applications for disclosure of documentation under the Data Protection Acts and pursuing same appropriately or otherwise, the Plaintiff's contention that his ability to advance his proceedings has been impaired due to the absence of documentation is simply not plausible. Indeed, important documentation relied upon by the Defendants has been exhibited in the affidavits sworn in support of this application and the Plaintiff has not identified any specific missing documentation which he contends would support his position.

36. Given the evidence before the Court that the Plaintiff was not even living in the property and had not done so for several years when the Receiver was appointed, I do not find the contention that important documents were removed from the property to be very convincing. I note also that correspondence in relation to the transfer of the charge and the Plaintiff's indebtedness pre-dated the appointment of the Receiver and his entry into possession of the Property and subsequent removal of property including documentation to storage which means that the Plaintiff had opportunity to remove any documents which he considered important.

37. The Plaintiff further maintains that he has not been served with papers and was unaware this application was listed for hearing. On the basis of the Affidavit evidence of one Mr. Alex Henderson in relation to the service of papers and setting out in detail what transpired in Court in May, 2022, I am satisfied that the Plaintiff was properly on notice of the hearing date. It is clear, verifiable by digital audio recording (DAR), that the Plaintiff was present in Court when the date for hearing was fixed. The date given when the matter was listed before Meenan J. on the 5th of May, 2022 was at that stage more than six months in the future, with a call-over listing in the normal way the previous week. With more than six months' notice of the hearing date the Plaintiff had ample opportunity to prepare for hearing including opportunity to seek legal representation and/or file replying affidavits, should he wish. He has elected not to do so.

38. It appears to me from the affidavits filed and indeed from his attendance before me, that the Plaintiff has resisted the progression of his own proceedings both as regards the delivery of a Statement of Claim and the progression of the Defendants' application to strike out proceedings. He has maintained variously that the matter cannot proceed because exhibits were omitted from one affidavit, even in circumstances where the Affidavit was re-sworn and served and because he does not have papers.

39. On the basis of the Plaintiff's insistence that he had not received papers (despite affidavit evidence to the contrary), a full set of papers was served on him in Court in May, 2022. Despite this, he attended before me without the papers which were served on him in Court in May, 2022 and maintained that he did not have papers. The index to the papers served has been exhibited and I am satisfied that he was served with a full book of papers. I consider his approach with regard to court papers served on him a blatant delaying tactic.

40. To assist him the Defendants had a further set of papers in Court and these were handed to the Plaintiff at the commencement of the hearing before me following on from my indication that I was refusing his adjournment request and proceeding to hear the application. I am satisfied that the Plaintiff was already in possession of all relevant papers, including his own Plenary Summons and Statement of Claim but elected not to bring them to court. The most likely explanation for this is that formed part of his strategy of attempting to prevent the application proceeding.

41. While the Plaintiff also objected to being furnished with the Defendants' book of authorities in Court, I did not consider there to be any unfairness arising from same and the Plaintiff was equally entitled to present authorities to the Court during the hearing, if he sought to do so. Indeed, in view of the fact that he was a lay litigant, the Plaintiff was not restricted by me as to the submissions he advanced notwithstanding his failure to adduce evidence in response by affidavit. As he was representing himself he was also afforded several comfort breaks over the space of two hours at his request, prolonging the hearing somewhat beyond its allocated time.

SUBMISSIONS

42. Counsel on behalf of the Defendants advanced submissions in which he referred the Court to O.19 of the Rules of the Superior Court with especial emphasis on the requirement for particularity where fraud is alleged as occurs in this case (Order 19 rule 5(2)) and the Court's jurisdiction to strike out a pleading on the grounds that it discloses no reasonable cause of action pursuant to Order 19 rule 28. Reliance was placed on the decision of Finlay-Geoghegan J. in *Keaney v. Sullivan & Ors.* [2007] IEHC 8 with regard to the power to strike out for failure to properly particularise complaints of fraud. I was also referred to the decision of Irvine J. in *Allied Irish Banks Mortgage Bank v. Lannon* [2018] IECA 224 with regard to the principles guiding the exercise by a court of an inherent jurisdiction to strike out or stay proceedings which it is satisfied are bound to fail.

43. In respect of the Receiver's storage of the Plaintiff's data because the Plaintiff had not made arrangements to collect it, I was referred to ss. 2, 2A(a) and 2A(d) of the Data Protection Act, 2008 (together with Article 6 of Regulation EU 2016/679 of the European Parliament and of the Council of 27th of April, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) which provide for processing where consent has been given (as per Mortgage Deed) and to the extent necessary for the purposes of the legitimate interests pursued by the data controller.

44. Sections 121 and 123 of the 2009 Act were opened. It was submitted that s. 121 provided for the registration of a *lis pendens* in respect of proceedings to have a conveyance or an estate or interest in land declared void and that the pleadings in this case did not ground the

registration of a *lis pendens* in this case where the relief sought is a declaration that the charge is void. It was further contended that the power to vacate a *lis pendens* under s. 123 of the 2009 Act is triggered where the court is satisfied that there has been an unreasonable delay in prosecuting the action or the action is not being prosecuted *bona fide* and is properly exercisable in this case. I was referred to the recent decision of Butler J. in *Ellis v. Boley View Owners Management Company Limited (by guarantee)* [2022] IEHC 103 in which the new jurisdiction to vacate a *lis pendens* created under s. 123 of the 2009 Act was considered, establishing that it is only necessary to demonstrate unreasonable delay to establish an entitlement to have a *lis pendens* vacated.

45. Helpfully, some light was shed on the proceedings referred to as precedents in the Plaintiff's Statement of Claim by the terms of the determination of the Supreme Court refusing leave to appeal in *Ulster Bank Ireland Limited v. Collins* [2020] IESCDET 8. From the terms of the Determination it appears that in that case Mr. Collins had sought to introduce arguments relating to accounting principles and practices adopted by banking institutions in Ireland and the EU, but this argument was not entertained by the Supreme Court in its conclusions.

46. For his part, the Plaintiff made oral submissions notwithstanding that he had not filed a replying affidavit to the motion. As noted above, he was afforded some latitude in this regard as a lay litigant. He maintained that I had no jurisdiction to entertain the Defendants' application on various grounds including the fact that his proceedings concerned a question of European law which required a reference to the Court of Justice of the European Union [hereinafter the "CJEU"] and in respect of which he maintained only the CJEU had competence. Despite being asked several times to identify what the question of European law he sought to have referred is, the Plaintiff was unable to articulate the terms of a question. This notwithstanding he emphatically and repeatedly argued that the High Court had no jurisdiction in relation to this matter of EU competence and that he would appeal the refusal to refer a question.

47. The Plaintiff contended that the papers grounding the application were not in order on various grounds including the failure to give the Third Named Defendant the same name in the title to the Notice of Motion as appeared in the proceeding and the omission of certain exhibits to an affidavit which had subsequently been reserved. He separately maintained that the

proceedings had been "*adjourned generally*" and were not before me. He did not accept that it was his motion to join additional parties which stood adjourned generally.

48. The Plaintiff further argued that the Mortgage Deed secured a loan with First Active PLC and was not transferrable and that the Receiver appointed by the Fourth Defendant did not have authority by virtue of the terms of the Mortgage Deed. He pointed out that no court order had been obtained. He contended variously that the Receiver had no licence, that entry to his property constituted trespass, the removal of his possessions on instruction from the Receiver constituted theft and that his data had been processed in breach of GDPR. He did not identify any authorities in respect of these propositions.

49. There were elements of the Plaintiff's submissions which were not easily comprehensible. The Plaintiff adopted a "*scatter gun*" approach in making broad statements without developing his argument. The absence of focus made it difficult to identify whether the Plaintiff had a real complaint. The Plaintiff repeatedly told me he would be appealing my decision, although no decision had yet been made.

50. In response to an issue raised by the Plaintiff with regard to the title to the Notice of Motion, Counsel for the Defendants referred me to O.19, r.26 which provides that a technical objection shall not be raised to any pleading on grounds of alleged want of form, noting also that there was no doubt as to the identity of the Third Named Defendant an appearance having been entered by his instructing solicitor and the title to the proceedings being clear from the Plenary Summons. Counsel for the Defendant pointed out that the Receiver did not require a licence to enter into possession of the Plaintiff's property and that a licence is not required for data processing. He submitted that it is established on the case-law that the transfer of security is permissible and there is no impediment to Promontorio Oyster DAC appointing a receiver on foot of the Mortgage Deed duly transferred from First Active PLC.

DECISION

51. I propose to address all submissions to the extent that I understood them or considered them to be of any potential substance.

Application to Strike Out

52. The jurisdiction to strike out proceedings is to be exercised sparing and only in clear cases. In this case I am also mindful of the fact that the Plaintiff is a lay litigant and I must be careful to safeguard his right of access to the Court in any decision I make.

53. The jurisdiction under O.19, r.28 is a jurisdiction which falls to be exercised by reference to the pleadings only. In exercising that jurisdiction, the court does not engage with the facts set out on affidavit. The Court also proceeds on the basis that the allegations made are true. This notwithstanding, there is an obvious air of unreality to the Plaintiff's case as evidenced by his claim for damages of up to €2 billion.

54. There is also a divergence between the indorsement to the Plenary Summons and the Statement of Claim. The claims advanced in the Statement of Claim, insofar as they are at all intelligible, does not provide a basis for much of the relief claimed in the indorsement of claim on the plenary summons.

55. The first two paragraphs of the Statement of Claim delivered by the Plaintiff relate to events in the Master's Court after the proceedings issued which could not therefore be the basis relied upon to ground the relief claimed in the Plenary Summons which issued. No reasonable cause of action is thereby identified.

56. The claimed fraudulent misrepresentation is inadequately particularised. The reference to the implementation of the rules of Economic Measurement for Lending Institutions is unintelligible. No question which is capable of consideration, let alone referral to the Court of Justice of the European Union (CJEU) has been identified.

57. Careful consideration of the precedents identified does not assist in identifying a stateable cause of action. However, the determination of the Supreme Court in refusing leave to appeal in *Ulster Bank Ireland Limited v. Collins* [2020] IESCDET 8 (which appears to be in relation to the precedent case identified by the Plaintiff in the Statement of Claim) establishes that accountancy practices or standards were not considered by the Supreme Court to have a bearing on whether money is owed unless it is suggested that the standards impacted on the calculation of the amount when it ruled as follows (at para. 13):

"The contention that there may be an issue to be considered regarding the accountancy practices or standards of banks as to the manner in which they calculate their assets and liabilities would add nothing to the defence of the claim against Mr. Collins. The court finds it difficult to understand how such standards be they good, bad, legal or illegal, could have any bearing on whether a company or an individual owes money which they contracted to repay, unless it is suggested, which it is not, that those accountancy standards have impacted on the calculation of the amount claimed as due and owing. Mr Collin's motion was concerned with the law as applied to an application to admit new evidence on appeal and nothing new arises which might flow from the calculation or computation of the sum claimed."

58. As no argument is advanced on the pleadings in this case that the sums due on foot of the loans were not owing or were improperly calculated, the plea advanced does not identify a reasonable cause of action. Indeed, looking beyond the pleadings in case an amendment might save the proceedings, nowhere in the correspondence exhibited is it denied that loan monies were received and not repaid. At no point does the Plaintiff point to the level of indebtedness and challenge the sums calculated as due as being incorrect. The complaints he makes are of a far more grandiose and disconnected nature involving an international fraud.

59. In the circumstances, I am at a loss as to what the Plaintiff's cause of action is. The relief claimed in the indorsement on the plenary summons, however, is advanced on the basis of various allegations which are not further pleaded in the Statement of Claim including pleas of unlawful entry, theft and breach of GDPR. In view of the failure to develop these pleas in the Statement of Claim, it is my view that the Statement of Claim as currently drafted does not disclose a reasonable cause of action. Given that the Plaintiff is a lay litigant, however, the possibility that a stateable case might be advanced arising from the matters identified in the indorsement of claim by an application to amend the Statement of Claim requires to be considered. This is difficult and even speculative in the absence of proper pleading. Nonetheless, adopting the rule that the jurisdiction must be exercised with caution and proceeding on the artificial basis that the intimated basis for these pleas, as urged in submissions by the Plaintiff, are true and the Plaintiff can prove either that there was an unlawful entry or theft of a breach of GDPR in this case, despite the failure to properly particularise same in the Statement of Claim, then it seems to me that I should not strike out

the proceedings in their entirety in exercise of an O. 19, r. 28 of the Rules of the Superior Court jurisdiction.

60. This is not the end of the matter, however, as the Court has an inherent jurisdiction which permits me to strike out proceedings where I consider a case bound to fail. The Court's inherent jurisdiction is a wider jurisdiction than the jurisdiction to strike out under the Rules, existing to prevent a party abusing the process of the Court.

61. Where the bare pleadings are largely deficient in appropriate particulars and unintelligible, to even understand what might be intended by the pleadings, bearing in mind the Plaintiffs submissions urged on me orally, and to endeavour to do justice as between the parties, it has been necessary for me to consider the affidavit evidence for background and context. This serves a dual purpose. It allows me to assess whether a claim is disclosed which has not been properly pleaded or particularized in a manner thereby limiting a risk of injustice due to lack of legal representation. It also limits the risk of an abuse of Court process because knowledge of the background and context can allow the Court to be satisfied that no basis exists for the allegations made such that the proceedings are bound to fail. As this is a case in which the legal rights and obligations of the parties are largely governed by documents, the exercise of an inherent jurisdiction allows me to examine the documents to consider whether the Plaintiff's claim is bound to fail.

62. The principles guiding an application to dismiss as bound to fail were succinctly summarized by Irvine J. in *Allied Irish Banks Mortgage Bank v. Lannon* [2018] IECA 224 (at para. 37) as follows:

> *"I will summarise in skeletal form the principles to be applied on an application to dismiss a claim as bound to fail before proceeding to consider this aspect of Mr. Lannon's appeal:-*
>
> *1. Because the jurisdiction to dismiss a claim has the effect of denying a plaintiff their constitutional right of access to the courts, the jurisdiction should be exercised sparingly. (See for example the judgment of Costello J. in Barry v. Buckley). The court should be satisfied on the facts of the case that the continued existence of the*

proceedings simply cannot be justified and that it would be manifestly unfair to the defendant to allow the claim proceed.

2. The court is not entitled in the exercise of its inherent jurisdiction to dismiss an innovative or novel case on those grounds alone. (See, for example, the decision of Charleton J. in Mill Steam Cycling Limited v. Tierney [2010] IEHC 55).

3. The Court's inherent jurisdiction should not be used to seek an early determination of issues which ought, in the normal course of events, be determined on a plenary hearing.

4. Before dismissing a claim as bound to fail the court should be satisfied that, no matter what might possibly arise on discovery or in the course of the evidence at trial, that the plaintiff's claim cannot succeed. (See, for example, Sun Fat Chan v. Osseous Limited).

5. If an amendment to the pleadings as currently drafted might afford the plaintiff a prospect of success, then the court should allow the amendment to permit of such a prospect. (See, for example, Moffitt v. Agricultural Credit Corp PLC [2007] IEHC 245).

6. The court is not precluded from engaging with the facts of the case and may in certain circumstances engage in some analysis of relevant documentation. There are however significant limitations in the extent to which such engagement is appropriate. (See, for example, Clarke J. in Moylist Construction Limited v. Doheny & Ors. [2016] IESC 9, [2016] 2 I.R. 283).

7. A court will but rarely dismiss proceedings as bound to fail where there is a dispute as to facts which are not capable of being resolved by reference to admitted documents. (See, for example, Ruby Property Co. v. Kilty [1999] IEHC 50).

8. In order to decide if a case is bound to fail the court can look to documentary evidence to analyse whether a plaintiff's factual allegations amount to nothing more than a mere assertion for which no evidence or no credible evidence can be advanced. (See Clarke J. (as he then was) in Keohane v. Hynes & Ors. [2014] IESC 66).

9. Where there are factual disputes or issues of law which are in themselves complex the court should not engage its inherent jurisdiction. It can however do so if the issues are relatively straightforward."

63. In determining whether it would be appropriate to strike out the within proceedings in exercise of my inherent jurisdiction, I propose to adopt this statement of principle and apply it.

64. The affidavit evidence on the application before me addresses the various intimations of wrongdoing which might flow from the terms of the relief claimed on the indorsement of claim on the plenary summons but not properly pleaded or pursued in the Statement of Claim delivered to include intimations of unlawful entry, theft and breach of GDPR. I have considered this evidence with a view to determining whether a basis for a sustainable claim is identifiable as open from the indorsement of claim on the plenary summons in the event that an application to amend the Statement of Claim were properly and successfully pursued.

65. Much of the wrongdoing intimated by the Plaintiff in the relief claimed in the Indorsement of Claim to the Plenary Summons and the oral arguments pressed before the Court is addressed by the Mortgage Deed. The evidence of non-payment of loan sums due adduced has not been contested by the Plaintiff. The Mortgage Deed is clear in providing a legal basis for the appointment of a Receiver, entry into possession of the property, removal of items left in the property to storage and data sharing. No basis has been identified on the pleadings to ground a claim that the Mortgage Deed does not provide a lawful basis for the actions complained of in the Receiver entering into possession, removing property to storage and thereby the storing of data occasioned by the Plaintiff's failure to make arrangements to retrieve his property or to disclose data in securing the property.

66. The Plaintiff's contention in oral submission that the Mortgage Deed is not transferrable and does not vest the Fourth Defendant with power to appoint a Receiver is not supported by authority and is unsustainable. Similarly, his complaint that the intervening transfer from First Active PLC to Ulster Bank Ireland Limited was not registered on the folio does not undermine the lawfulness of that transfer and the case urged in this regard is also unsustainable.

67. I am satisfied that the Receiver was duly appointed and was therefore entitled, in reliance on the Mortgage Deed, to enter onto the Property and to deal with items left at the Property in the manner agreed by the Plaintiff when executing the Mortgage Deed. In this way, I see no basis for alleging either theft or trespass against the Defendants or any of them. As the Mortgage Deed was executed long before the enactment of the 2009 Act, there is no requirement for a Court order before the Receiver can enter into possession and deal with the Property where he is entitled to rely on the Mortgage Deed which properly vests authority.

68. I have no doubt but that the Receiver was entitled to rely on the terms of the Mortgage Deed in storing data contained in documents abandoned by the Plaintiff at the Property. Sections 2, 2A(a) and 2A(d) of the Data Protection Act, 2008 (as amended) (together with Article 6 of Regulation EU 2016/679 of the European Parliament and of the Council of the 27th of April, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) provide for processing of data where consent has been given (as per the Mortgage Deed) and to the extent necessary for the purposes of the legitimate interests pursued by the data controller. No actionable wrong has been identified by the Plaintiff in this regard. There is no basis for the Plaintiff's contention that a "*licence*" is required by the Receiver either in relation to the storage of data contained in items abandoned at the Property or entry onto the Property beyond the authority vested under the terms of the Mortgage Deed.

69. Accepting the Plaintiff's contention that he is a "*consumer*" and in view of the acknowledged *ex officio* obligation existing under ECJ case law for a national court to assess, of its own motion, whether a contractual term falling within the scope of the Unfair Contract Terms Directive (93/13/EEC) is unfair (See *AIB v Counihan* [2016] IEHC 752), I have considered whether the Plaintiff may be entitled to the protection under the Unfair Contract Terms Directive and its transposing regulations. The Plaintiff did not identify a particular provision or provisions of any contractual document as being "*unfair*" under the Unfair Contract Terms Directive. In discharge of my "*own motion obligations*", I have not been able to discern any term that has operated unfairly against the Plaintiff in the context of these proceedings.

70. None of the Plaintiff's arguments as to my lack of jurisdiction to deal with this application have been made out.

71. Insofar as there is a typographical error in the name of the Third Defendant in the title to the Motion, nothing turns on this error.

72. Insofar as the Plaintiff contends that the papers grounding the application were not in order on various grounds including the failure to give the Third Named Defendant the same name in the title to the Notice of Motion as appeared in the proceeding, I am satisfied that an error of this kind does not defeat the application and is excusable as an error in form but not substance (O. 19, r. 27 of the Rules of the Superior Court, 1986).

73. I do not understand the basis for the Plaintiff's objection to my jurisdiction arising from the omission of certain exhibits to an affidavit where the affidavit in question has been re-sworn and re-served. Nothing turns on this error of omission which was corrected. No prejudice arises to the Plaintiff where the omitted documents have been re-reserved on more than one occasion and well in advance of the hearing date.

74. The Plaintiff's argument that the proceedings had been "*adjourned generally*" and were not before me is, in my view, simply an attempt to deny the reality that the Defendants have progressed their application by re-entering their motion but he has not similarly progressed his proceedings. In circumstances where correspondence is exhibited before me in which the Plaintiff's attention was drawn to the fact that his application had not been re-entered and the Defendants' preference for all applications to be dealt with together was stated, I do not accept that the Plaintiff's position in this regard is based on simple ignorance. The Plaintiff was well aware that the Defendants were progressing with their application despite the fact that his motion remained adjourned generally.

75. As for the charge registered on the folio in favour of the Fourth Defendant, no pleaded or other basis has been identified to substantiate an entitlement to a declaration that the charge is void. I am satisfied no reasonable cause of action exists in this regard. It is telling that while there was delay in delivering the Statement of Claim and a distinct lack of expedition in progressing proceedings, a *lis pendens* was sought to be registered within a day of the issue of proceedings. The unavoidable inference is that a primary motivation in bringing the proceedings was to secure the registration of *lites pendentes*. Having achieved this end, the Plaintiff has consistently sought to delay any further progress of the case to conclusion. Issuing

proceedings for the purpose of registering a *lis pendens* but with no real intention of prosecuting the proceedings promptly is an abuse of process. I am satisfied that the maintenance of the Plaintiff's proceedings is an abuse of the process of the courts.

76. Having regard to the principles which guide the exercise of a discretion to strike pursuant to the inherent jurisdiction of the Court, I am satisfied that the Plaintiff's case is bound to fail. No basis for amending the Statement of Claim to properly advance a cause of action identified as potentially open to the Plaintiff and thereby saving the claim from failure has been established.

Application to Vacate Lis

77. Where I am satisfied to strike out the proceedings in exercise of my inherent jurisdiction in this case because I consider the proceedings bound to fail, it is not strictly necessary to proceed to consider whether it would be appropriate to make an order under s. 123 of the 2009 Act as such an order is not required where the proceedings are struck out.

78. In circumstances where the Plaintiff has made it clear that he will appeal my decision, I nonetheless propose to separately consider the Defendants' application to vacate the *lites pendentes* registered against the property in case I am wrong in the conclusions I have reached in respect of the proper exercise of my inherent jurisdiction.

79. The plea that the charge on the folio is void appears to be the only basis for the registration of a *lis pendens* under s. 121. Section 121 provides:

> *"121.— (1) A register of lis pendens affecting land shall be maintained in the prescribed manner in the Central Office of the High Court.*
>
> *(2) The following may be registered as a lis pendens:*
>
> > *(a) any action in the Circuit Court or the High Court in which a claim is made to an estate or interest in land (including such an estate or interest which a person receives, whether in whole or in part, by an order made in the action) whether by way of claim or counterclaim in the action; and*

(b) any proceedings to have a conveyance of an estate or interest in land declared void.

(3) Such particulars as may be prescribed shall be entered in the register.

(4) A lis pendens registered under section 10 of the Judgments (Ireland) Act 1844 which has not been vacated before the repeal of that section continues to have effect as if that section has no"

80. The question of whether the *lites pendentes* are properly registered pursuant to s. 121 of the 2009 Act is not before me so I will refrain from expressing any view on whether the existence of a challenge to a charge suffices for the purpose of registering a *lis* under s. 121. The question which is before me is whether the *lites pendentes* which have been registered should be vacated under s. 123 of the 2009 Act. Section 123 provides:

"123.— Subject to section 124, a court may make an order to vacate a lis pendens on application by—

(a) the person on whose application it was registered, or

(b) any person affected by it, on notice to the person on whose application it was registered—

(i) where the action to which it relates has been discontinued or determined, or

(ii) where the court is satisfied that there has been an unreasonable delay in prosecuting the action or the action is not being prosecuted bona fide."

81. In *Ellis v. Boley View Owners Management Company Limited (by guarantee) [2022] IEHC 103,* Butler J. considered the earlier decisions of Barniville J. in *Hurley Property ICAV v. Charleen Limited* [2018] IEHC 611 and Cregan J. in *Tola Capital Management LLC v. Linders* [2014] IEHC 324, being among the first cases to consider the newly introduced jurisdiction to vacate a *lis pendens*. From her review of these cases, Butler J. concluded (at paras. 36-38):

"36. my view, the distinction drawn by Barniville J. between the Primor line of jurisprudence and the statutory jurisdiction under s. 123(b)(ii) is a significant one. Under Primor, the party seeking to strike out proceedings must establish that the other party's delay is, firstly, inordinate (i.e. excessively long) and, secondly, inexcusable (i.e. there is no justification for it). In cases where it is established that the delay is both inordinate and inexcusable, the court then moves to conduct a balancing exercise in order to determine whether, notwithstanding inordinate and inexcusable delay, the plaintiff should be permitted to continue the proceedings. The statutory jurisdiction under s.123(b)(ii) requires only that it be shown that there has been an unreasonable delay in the prosecution of an action by a person who has registered a lis pendens. It is not necessary that this delay be inordinate, although there is obviously a significant overlap between delay that is unreasonable and delay that is inordinate, nor must it be shown that the delay is inexcusable. Therefore, the reason for the delay is less significant when it would be in a case under the Primor principles although it may still have a bearing on whether the delay is reasonable.

37. Whilst the analysis of whether there has been unreasonable delay for the purposes of s. 123(b)(ii) does not move through the same stages nor apply the same tests as the Primor jurisprudence, the concept of delay being " unreasonable" does import some consideration of the reason proffered for that delay. As Barniville J. put it in Hurley v. Charleen (at para. 83), the proffering of a good reason for the delay may be crucial:-

"Further, while the question of unreasonableness in the context of a delay in the prosecution of proceedings will always depend on the context and on the particular facts, the policy of the section and the intention of the Oireachtas is clear. There is a particular and special obligation on a person who has issued proceedings and then registered a lis pendens for the purpose of those proceedings to bring those proceedings on expeditiously. That person is not permitted to sit back or to proceed with the action at leisure or to take time which might otherwise be tolerated or excusable in the conduct of the action. Since the expeditious prosecution of the proceedings is essential, a court considering whether to vacate a lis pendens under the first part of s. 123(b)(ii) should not tolerate delays in the prosecution of the action, such as in the service of the proceedings or subsequent pleadings in the proceedings without very good reason. The

absence of a good reason for a delay is likely to lead the court to conclude that the delay has been unreasonable for the purposes of the section."

38. Once it has been established that the delay is unreasonable, the court does not proceed to conduct a balancing exercise between the respective interests of and prejudice to the plaintiff and the defendant. This may be because the vacation of a lis pendens does not deprive the party who has registered the lis pendens of their right of action in the way that striking out the proceedings would. The proceedings may continue but the additional security obtained through the registration of the lis pendens is lost. In this case if the plaintiff were to establish the existence of an enforceable agreement in the terms he alleges, he might well be entitled to relief (although arguably not as against the company). That relief would take the form of declarations and perhaps monetary orders reflecting the plaintiff's entitlements in respect of the proceeds of sale of the houses already sold. All of these reliefs remain available to the plaintiff even if the lis pendens is vacated."

82. It seems to me that in the event that the Plaintiff were to establish an entitlement to any of the relief claimed in the plenary summons because he persuades another Court that I am wrong in concluding that the proceedings should be struck out as showing no reasonable cause of action, such relief as might flow from him successfully advancing his case is not in any event dependent on the Property being available. Indeed, the primary relief pursued by him is a very large sum in compensation. This claimed relief is unaffected by the sale of the Property.

83. By any standard, there has been delay by the Plaintiff in prosecuting these proceedings. The Plaintiff endeavoured to contend that he had not served his plenary summons some 11 months after the issue of proceedings and that time had therefore not run for delivery of a Statement of Claim and he objected to being required to deliver it. He only delivered a Statement of Claim when the Master of the High Court rejected his arguments and limited an extension of time for delivery to six weeks. While the Plaintiff resists this application, he has not taken steps to advance his separate application to join additional parties and to link the within proceedings with other existing proceedings despite the passage of some three years after delivery of the Statement of Claim. His proceedings have been allowed to lie dormant. This constitutes delay in the prosecution of the action but in an action relied upon to register a

lis pendens, it is wholly unreasonable. Once a *lis pendens* has been registered, proceedings must be robustly pursued. This has not occurred.

84. Allowing for the fact that delay was caused by court cancellations due to the Covid Pandemic, I am satisfied that the delay in delivering the Statement of Claim and in then applying to re-enter his motion and advance his proceedings is patently unreasonable such that were I not persuaded to strike out the proceedings, I would nonetheless make an order vacating the *lites pendentes* registered pursuant to the power vested in me to do so under s. 123(b)(ii) of the 2009 Act.

CONCLUSION

85. For the reasons set out above, I will make an order pursuant to the inherent jurisdiction of the Court striking out the Plaintiff's proceedings in their entirety on the basis that they are bound to fail and an abuse of the Court process.