

THE HIGH COURT

[2023] IEHC 508

2022 No. 1653P

BETWEEN

EAMON CARTHY

PLAINTIFF

AND

IRELAND and THE ATTORNEY GENERAL and BANK OF IRELAND
MORTGAGE BANK and BANK OF IRELAND MORTGAGES BANK UNLIMITED
COMPANY and FIELDFISHER SOLICITORS and WHITNEY MOORE
SOLICITORS and BRENDAN ROBBINS

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 15 August 2023

Introduction

1. This is an application on behalf of the first, second and seventh named defendants being Ireland, the Attorney General and Brendan Robbins, (together the “**State Defendants**”) to strike out the plaintiff’s proceedings as against them pursuant to the provisions of O. 19, r. 28 of the Rules the Superior Courts and/or pursuant to the inherent jurisdiction of this court on the basis that the statement of claim discloses no reasonable cause of action as against the State Defendants and/or on the basis that the claim is frivolous or vexatious and/or bound to fail and/or is an abuse of process.

The background to this dispute

2. These proceedings issued on 27 April 2022. The plaintiff seeks damages at para 10 of the general indorsement of claim against all defendants for loss and harm and injury procured through misrepresentation, deceit and breach of constitutional rights to the plaintiff's family dwelling "*through knowing misrepresentation to the Courts*" on 23 November 2016, 30 March 2017, 19 February 2019 and 2 March 2020. He also alleges breach of duty and breach of statutory duty on the part of all defendants (paras 1 and 2).
3. While the plaintiff appears to have grouped certain defendants together in the plenary summons and described them as first or second named defendants and so on, it appears that he has described Mr Brendan Robbins as the fifth named defendant although he is in fact the seventh named defendant. Mr Robbins is described in the statement of claim as an employee of Brendan Robbins Valuation Office Irish life Centre.
4. Complaints are made against Mr Robbins (and other defendants) for misrepresentation and nondisclosure of material facts and evidence before the courts. The plaintiff seeks a declaration that a possession order made in the Circuit Court in Kilkenny is void and of no legal effect by reason of having been obtained "*in violation of constitutional and Human rights entitlements of said plaintiff*" (para 8).
5. The plaintiff delivered his statement of claim on 22 July 2022. It sets out the background to the claim advanced by the plaintiff and seeks damages against all defendants for breach of his constitutional rights and his human rights "*as a result of the manufactured evidence, deceit and misrepresentation to the court carried out by the banks and solicitors and all agents, violation of the consumer credit act, and violation of directive 93/13/EEC*". An order for accounts and enquiries is also sought.

6. It is useful at this point to consider the chronology of the matters and related proceedings in respect of which the current proceedings arise.

Chronology

7. Matters appear to have started with proceedings in Kilkenny Circuit Court (Record No. 75/2015), to which the State Defendants were not parties. Those proceedings were in the form of a civil bill for possession. Those proceedings issued on 25 February 2015 and were between Bank of Ireland Mortgage Bank, as plaintiff, and Eamon Carthy and Bridget Carthy as defendants (the “**Circuit Court Proceedings**”).
8. Bridget Carthy was the plaintiff’s wife and a co-owner and co-mortgagor of a property in Paulstown County Kilkenny (the “**Property**”) which was charged to Bank of Ireland Mortgage Bank and which was the subject of the Circuit Court Proceedings.
9. On 30 March 2017 the Circuit Court made an order against Eamon and Bridget Carthy in the Circuit Court Proceedings for possession of the Property with the stay of execution for a period of 12 months (the “**Possession Order**”).
10. Prior to this, on 23 November 2016, the plaintiff pleads that Bank of Ireland and the seventh named defendant-Brendan Robbins - misled the Circuit Court by introducing “*manufactured evidence*”. An order was made by the Circuit Court that day dismissing Eamon and Bridget Carthy’s motion to strike out the Circuit Court Proceedings for want of jurisdiction and adjourning the application for repossession to enable replying affidavits to be filed by Eamon and Bridget Carthy.
11. It is alleged by the plaintiff that the court was “*still misled*” by nondisclosure of material facts and evidence in relation to the Possession Order that was obtained on 30 March 2017. The Possession Order was not appealed by either the plaintiff or Bridget Carthy.

- 12.** Bridget Carthy made a separate application by motion dated 18 April 2018 seeking to re-enter the Circuit Court Proceedings and vacating the Possession Order instructing her own solicitors to argue, *inter alia*, that the interest rates applied by Bank of Ireland were incorrect and that the Possession Order should be vacated. Exhibit BC1 to her grounding affidavit includes a motion and grounding affidavit by Eamon Carthy seeking to re-enter the proceedings and to have the Possession Order vacated on the basis that Bank of Ireland Mortgage Bank did not comply with the earlier order requiring them to furnish details of the applicable interest rates and penalties they applied to the individual mortgage accounts. His motion dated 18 April 2018 also sought an order to vacate the Possession Order because the rateable valuation certificate provided to the court was “*intended to mislead and deceive the court into granting a possession order against the defendant*” and was otherwise “*flawed*” for reasons set out. It is not clear to this court whether Eamon Carthy ever issued that motion, and it is not referred to in the statement of claim he has filed in these proceedings.
- 13.** On 24 July 2018 the Circuit Court granted an order that the Circuit Court Proceedings be re-entered.
- 14.** On 19 February 2019 the Circuit Court dismissed Bridget Carthy’s motion.
- 15.** On 2 March 2020 the High Court made an order on consent striking out Bridget Carthy’s appeal against the order of the Circuit Court made on 19 February 2019. The plaintiff was not a party to that application although he was present in court for the hearing.
- 16.** By motion dated 7 July 2022 Eamon Carthy applied to the Circuit Court for a stay on the Possession Order pending the hearing of an intended plenary action against Bank of Ireland Mortgage Bank. That plenary action is in fact the present proceedings brought

against seven defendants including the State Defendants. By order dated 14 September 2022, that motion was struck out by the Circuit Court with no order.

17. The plaintiff now seeks a declaration that all reliefs granted in the various orders to date were granted “*under circumstances of deliberate deceit on the court with the intention to violate the constitutional rights of the plaintiff and his spouse and children.*” (para 15 of plenary summons).

The case against the State Defendants as pleaded by the plaintiff

18. While it is not at all clear from the pleadings, the basis for naming Mr Brendan Robbins as the seventh named defendant appears to be that he signed a certificate dated 2 November 2015 issued pursuant to an application made under s. 67 of the Valuation Act 2001 (the “**2001 Act**”). The certificate stated that the rateable valuation of the Property had been determined at €39.75 for the purpose of s. 67(9) of the 2001 Act. A copy of that valuation certificate is exhibited as exhibit “JD2” to the affidavit of John Davis filed on behalf of the State Defendants in support of this motion. This certificate appears to be the “*manufactured evidence*” of which the plaintiff complains. It was allegedly adduced in the Circuit Court Proceedings by Bank of Ireland on 23 November 2017 as evidence that the Circuit Court had jurisdiction to hear the repossession application.
19. At the relevant time, the jurisdiction of the Circuit Court in actions in which the title to land came into question extended, *inter alia*, to land the rateable valuation of which did not exceed €253.95 (reference number 8 of the Third Schedule of the Courts (Supplemental Provisions) Act 1961 as amended by section 2(1)(d) of the Courts Act 1981- IR£200 converted to €253.95 by reference to Council Regulation (EC) No. 2866/98).

20. The plaintiff's statement of claim does not set out any detail of the basis of the claims advanced against the State Defendants. This is a particularly relevant omission to the extent that the plaintiff alleges fraud, deceit or misrepresentation on the part of the State Defendants. It appears however that the essence of the plaintiff's complaint insofar as it relates to Mr Robbins, is his contention that the Property was not in fact rateable under the provisions of the 2001 Act at the time Mr Robbins issued the valuation certificate. It appears to follow from that argument that the plaintiff believes that but for this rateable valuation certificate, the Circuit Court would have lacked jurisdiction to make the Possession Order. I do not believe that this contention is correct for the reasons I set out later in this judgment.
21. The plaintiff submits that he was advised by the valuation office in an email dated 27 January 2017 that the Property is not rateable. He says that Kilkenny County Council also confirmed this fact. This confirmation appears to be a letter dated 1 July 2015 from the rates office in Kilkenny County Council which confirms that the Property "*is a private residence and is not valued for commercial rates*". The plaintiff argues that the agents for Bank of Ireland used the rateable valuation certificate with intent to mislead the court.
22. The plaintiff sets out in his letter dated 6 April 2023 that it is his understanding that "*the duty of the state solicitor is to protect the assets of the state against all corporations*". He says that the asset in question is the Property which he describes as being "*held in trust for EAMON PATRICK CARTHY by the state. Also, the CARTHY TRUST 6810825/S.I.N. 3349838j is an asset of the state also*". The plaintiff alleges that the valuation certificate was "*a fraudulent instrument*" and he says that the chief state solicitor has a "*duty to uphold the rule of law and ensure that justice is served in cases of fraud*".

23. The plaintiff said in his letter dated 6 April 2023 that he would seek an order of mandamus to strike out the Possession Order that he claims “*was obtained on fraud thus misleading the court*”. This statement indicates what the plaintiff hopes to achieve by the present proceedings.
24. The plaintiff claims that the relevant accounts with Bank of Ireland “*are now held in trust by KELLYMOUNT 1798 TRUST*”.
25. An affidavit was sworn by the plaintiff on 25 April 2023. This affidavit is in very confused terms. It avers that on 31 March 2021 he notified the then Attorney General that Eamon Carthy “*owns absolutely all the equity in the name EAMON PATRICK CARTHY RL 8032 9611 IIE*”. The document exhibited states that Eamon Carthy’s birth certificate is proof that he is “*the sole shareholder of the legal person EAMON PATRICK CARTHY and all Derivatives thereof*”. The document then goes on to state that Eamon Carthy appoints himself as the principal Administrator of his legal person(s) “*to ensure that the investments of i is/are protected*”. The document states that if the then Attorney General did not rebut the claim or respond to the notice within 10 days this would operate by law as an admission “*by tacit procuration to the claim set out*” and would constitute “*an Estoppel by Acquiescence*”.
26. The affidavit then confirms at para 10 that on 28 July 2022 Eamon Carthy, as settlor/beneficiary “*appointed John Callinan, Secretary General, Donal O’Donnell, Chief Justice and Gabriel Makhlouf of the Central Bank as Trustees to the CARTHY TRUST 6810825*” and that he had also appointed Eamon Martin, Primate of All Ireland and Michael Toner, PP Chancellor as Trustees to other trusts. It was stated that these were Private Trust documents but could be viewed if required.

27. There follows a very confused and nonsensical passage of pseudo-legalese in which Mr Carthy asks the court to “*uphold the Law of Trust and recognise his rights to be treated in a Court of Chancery*”. He states that “*I am the holder in due course and my original issue securities make me the first Creditor and stakeholder of my Countries (sic) wealth and the Global Wealth Pool*”. All of this is then followed by him seeking an order of mandamus to strike out the Possession Order and that the court “*remind the trustees of the KELLYMOUNT 1798 TRUST of their obligations to the beneficiaries*”.
28. A further supplemental affidavit is sworn by the plaintiff on 12 June 2023 confirming that he is a member of the Irish Republican Brotherhood and that he is “*Oath bound*” to uphold the integrity of an exhibited “*Sovereign Constitution*” of the Republic of Ireland – (clearly not the Constitution of Ireland 1937) – which provides that “*the Land of Ireland belongs to the Citizens of Ireland and TO THEM ALONE*” and that as none of the defendants are in fact citizens of Ireland “*they must not be unjustly enriched through these Courts...by way of an Order for Possession obtained in Possession Proceedings over Land in Ireland*”.
29. The plaintiff argues that the Circuit Court has no jurisdiction for constitutional law matters and that “*any Order for Possession is absent consideration for Constitutional Law and the Rights of Sovereign Men and Women and therefore any such Order for Possession has no standing in Law*”.
30. On 24 June 2023 Mr Carthy wrote to the Chief State Solicitor’s office (exhibited to his supplemental affidavit sworn 29 June 2023) in the following terms: –

“*This matter is **inter alia** in relation to a concern of fraud being perpetuated by an employee of the State and you have failed refused or neglected to date to furnish the remedy sought in those circumstances.*”

As Chief State Solicitor you have a duty of care to the State and to its Citizens under our Constitution and it is incumbent on you to assist in the process of determination of the salient point that any Repossession Order from a Circuit Court does not, and cannot, infringe on the Constitutional Rights of the Citizens of Ireland. This is a matter of Extreme Public Importance”.

31. His arguments are expanded upon in a further letter dated 27 June 2023 in which he alleges that the chief state solicitor has an obligation to fully investigate “*a perpetuation of fraud by a State Corporation and/ Employee that benefits a corporation with a loss to a Citizen of the Republic of Ireland*”. He states that any Circuit Court order for possession “*does not and cannot infringe on Constitutional Rights and no Order for Possession was sought or obtained in the High Court and I did not consent to any High Court Order*”. He says that he is seeking confirmation of the Chief State Solicitor’s position in relation to the “*protection of the Constitutional Rights of the living men and women of Éire*”.
32. There are other documents exhibited by Mr Carthy regarding his release of obligations and association from the Roman Catholic Church and various declarations he has made as “*Heir to the Kingdom of God*”. I do not propose to outline those documents in any detail in circumstances where, having reviewed them, I am satisfied they have no relevance to establishing any cause of action by him against the State Defendants.

The submissions of the State Defendants on the plaintiff’s proceedings against them

33. Counsel for the State Defendants argues that because the pleadings disclose no material facts on which the claims made against them have been grounded, the proceedings should be struck out pursuant to O. 19, r. 28 of the RSC.

34. He argues that if the court looks beyond the pleadings, it is equally clear that the proceedings against the State Defendants are misconceived. The focus of the plaintiff's grievance against the State Defendants appears to be a valuation certificate adduced by Bank of Ireland to persuade the Circuit Court that it had jurisdiction to determine the Circuit Court Proceedings. Counsel says that while there is no reason to doubt the validity of that valuation certificate, it is clear that the Circuit Court had jurisdiction on one if not two other grounds to hear this matter. He says the Circuit Court Proceedings are therefore not infirm by reason of any infirmity in the valuation certificate.
35. Counsel submits that the State cannot be either vicariously or directly liable to a disappointed litigant by reason of the outcome of civil proceedings. He says the plaintiff cannot use these proceedings as a collateral attack on the Circuit Court Proceedings or as an alternative form of appeal. He says the plaintiff's claim is bound to fail and is an abuse of process for that reason.

Analysis and Decision

General

36. In this case the court has to determine the following issues: –
- (a) Whether the plaintiff has any cause of action against the State Defendants arising from the seventh named defendant's signature on the valuation certificate dated 2 November 2015;
 - (b) Whether the plaintiff has any other cause of action against the State Defendants arising from the hearing and determination of the Circuit Court Proceedings or relating to the Possession Order ;

- (c) Whether the proceedings should be dismissed pursuant to O. 19, r. 28 as being proceedings that are frivolous, vexatious and/or bound to fail; and
 - (d) Whether the proceedings should be dismissed pursuant to the court's inherent jurisdiction on the grounds that the proceedings are an abuse of process.
- 37.** None of the State Defendants were parties to the Circuit Court Proceedings. The Possession Order dated 30 March 2007 was never appealed. It was effectively affirmed when the Circuit Court later dismissed an application on 19 February 2019 to vacate the Possession Order. The order of 19 February 2019 was appealed, albeit not by the plaintiff, but that appeal was struck out by consent. The issues that arose for determination in the Circuit Court Proceedings are therefore *res judicata*..
- 38.** The specific question of the jurisdiction of the Circuit Court to hear the Circuit Court Proceedings and to make the Possession Order was determined by the Circuit Court on 23 November 2016 and that order was not appealed. It is clear from the Circuit Court pleadings that precisely the same arguments now advanced regarding fraud, deceit or misrepresentation regarding the valuation certificate were ventilated in full before the Circuit Court. The issue of jurisdiction is *res judicata*.
- 39.** The pleadings do not contain any particulars of the alleged fraud or deceit, misrepresentation or presentation of manufactured evidence as pleaded.

Jurisdiction to strike out proceedings

- 40.** The jurisdiction of this court to strike out proceedings pursuant to O. 19, r. 28 and its inherent jurisdiction, are well established and I do not intend to set them out in detail in this judgment. It is the case that pursuant to O. 19, r. 28 the court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or where it is shown to be frivolous and/or vexatious. Any such application must be

decided on the assumption that the statements in the statement of claim are true and will be proved at the trial. In other words, when considering such applications for strike out this court must assume the plaintiff's claim at its height and enquire whether the plaintiff could possibly succeed on the case as pleaded.

41. In *Burke v Beatty* [2016] IEHC 353, Noonan J stated at para 12 that:

*“An application under O. 19, r. 28 is concerned solely with what appears on the face of the pleadings. If the facts as pleaded by the plaintiff could not conceivably give rise to a cause of action, then the proceedings may be dismissed. The court does not, and cannot, look outside the pleadings or examine the facts or the evidence to determine if the cause of action is sustainable. In such an application, the court has jurisdiction to strike out an entire pleading but not a portion thereof, so that it is all or nothing – see *Aer Rianta v Ryanair* [2004] 1 I.R. 506. The court must further be satisfied that the impugned pleading does not admit of any amendment that could save it...”*

42. In *Riordan v An Taoiseach (No.5)* [2001] 4 IR 463, Ó Caoimh J cited the identification by the Ontario High Court of certain indicia of “vexatious” proceedings including the following, which appear relevant to the present proceedings: namely, relitigating an issue which has already been determined by a court of competent jurisdiction or rolling forward the same issues into subsequent actions often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings.
43. The courts have a broader inherent jurisdiction to strike out a case that is bound to fail. In those cases, the court can also have regard to affidavit evidence adduced for the purpose of the application to strike out and is not limited to the pleadings. As Clark J

(as he then was) noted in *Lopes v Minister for Justice* [2014] IESC 21, [2014] 2 IR 301 (at pp 309-310):

“An application under the RSC is designed to deal with the case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why... an inherent jurisdiction exists side-by-side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the court to prevent abuse can be invoked.”

44. The jurisdiction to strike out proceedings must of course be exercised sparingly. A litigant should be excluded from pursuing a claim only in very clear cases.

Does the allegation of fraud in this case change the position on res judicata?

45. The question arises as to whether there is any possibility that the allegation of fraud in this case could provide a basis for the plaintiff to have the final orders in the Circuit Court Proceedings (and appeal therefrom) set aside. It is clear that final orders made in proceedings can be set aside if it is proved that they were obtained by fraud. In *Kenny v Trinity College Dublin* [2009] IESC 19 the plaintiff sought to overturn a High Court order refusing him leave to apply for judicial review of the principal planning decision given to Trinity College to redevelop Trinity Hall. He pleaded that the High Court

judge was misled by fraud on the part of Trinity who, inter alia, had failed to disclose that prior to the oral planning hearing, they had applied for a fire safety certificate based on plans and drawings showing boiler houses in the basement of one building.

46. At para 36 of his judgment in *Kenny*, Fennelly J noted that:

“In the absence of fraud, it would be vexatious and an abuse of the process of the Court to litigate any matter which was already concluded by a final and binding Order of the Court. Fraud is the only basis on which such an Order could be set aside.”

47. Having considered various authorities, Fennelly J stated at paras 54 and 55 as follows:

“I am satisfied that, in order to ground an action to set aside a judgment, the plaintiff must allege fraud in the true sense, that is deliberate and purposeful dishonesty, knowing and intentional deceit of the court...In addition, the fraud alleged must be such as to affect the impugned decision in a fundamental way. It will not suffice to allege that the new situation revealed by the uncovering of the fraud might have affected the judgement. It will not be enough to show, for example, that the witness lied unless it is shown that the true version of his evidence would probably have affected the outcome...There must be something fundamental, something that goes to the root of the case.”

48. Fennelly J also noted that *“the allegation of fraud said to have deceived the former court must be pleaded with particularity and exactness”* (para 57).

49. I do not believe that the pleadings in this case contain sufficient particulars of the fraud alleged as against Ireland or the Attorney General. Insofar as the allegation of fraud against Mr Robbins is concerned, this is not particularised adequately in the pleadings but I am prepared to accept that it may be possible for the plaintiff to amend his

pleadings to provide details of the alleged fraud relating to the valuation certificate, insofar as it appears this is the real issue based on what is set out in correspondence and affidavits.

50. Assuming therefore that this fraud could be particularised, and indeed proven, the question arises as to whether the alleged fraud would be sufficient to entitle the plaintiff to set aside the final orders in the Circuit Court Proceedings. This will depend, in turn, on whether the alleged “*manufactured evidence*” is, in the words of Fennelly J, something that goes to the root of the case. I do not believe it is. Firstly, the facts allegedly concealed from or misrepresented to the Circuit Court with fraudulent intent were in fact fully ventilated before the Circuit Court. Furthermore, these facts (even if unknown to the Circuit Court) would not have materially affected the decision as to whether the Circuit Court had jurisdiction to make the Possession Order if the Circuit Court had been aware of them. I say this for the following reasons:

- (1) There is no plea or evidence to impugn the validity of the section 67 certificate dated 2 November 2015. Even if I were to assume that it was incorrect or indeed “fraudulent”, the Circuit Court would still have had jurisdiction to make the Possession Order. Indeed, having been appraised by Mr Carthy of all his complaints regarding this certificate, the Circuit Court specifically declared it had such jurisdiction by order dated 23 November 2016.
- (2) Even if the certificate was fraudulent, it was not a necessary prerequisite at all to the Circuit Court assuming jurisdiction. In *Permanent TSB plc v Langan* [2017] IESC 71, [2018] 1 IR 375, the Supreme Court held that the Circuit Court had jurisdiction to entertain possession proceedings in cases where the relevant property had a rateable valuation below €253.95 **or** where the property was

shown not to have a rateable valuation at all (as Mr Carthy appears to contend is the correct position in this case).

- (3) Furthermore, there is an independent basis of jurisdiction provided under s. 3 of the Land and Conveyancing Law Reform Act 2013. This section provides that the Circuit Court shall have exclusive jurisdiction to hear and determine possession proceedings relating to land which is the principal private residence of the mortgagor concerned where the mortgage was created prior to 1 December 2009. The mortgage in the present case was, on the evidence, created prior to 1 December 2009 and the Property is claimed to have been the plaintiff's principal private residence.
- (4) On 30 March 2017 (being the relevant date of the Possession Order and thus the relevant date to assess whether the Circuit Court had jurisdiction), the law had changed such that rateable valuation was no longer a basis for the Circuit Court's jurisdiction. Instead "*rateable valuation*" was replaced by "*market value*" by s. 45 of the Civil Liability and Courts Act 2004 (which was commenced on 11 January 2017 by the Civil Liability and Courts Act 2004 (Commencement) Order 2017 (S.I. No. 2 of 2017), art. 2), allowing the Circuit Court to hear cases where the market value of the land did not exceed €3 million. There is no suggestion on the part of the plaintiff that the market value of the Property ever exceeded €3 million.
- 51.** On any view therefore, at all material times, the Circuit Court had jurisdiction to hear and determine the Circuit Court Proceedings and to make the Possession Order. This is so even if there was some infirmity with the valuation certificate. The Circuit Court had jurisdiction in this case, even if the certificate was fraudulent. Any fraud relating to the valuation certificate therefore would not form a basis to set aside the final orders made

as this fraud (even if it could be proven) did not go to the root of the case and was immaterial to the outcome of the Circuit Court's jurisdiction.

Is there any basis for a damages claim against the State Defendants?

- 52.** The decision in *Kemmy v Ireland* [2009] IEHC 128, [2009] 4 IR 74 is authority for the proposition that a plaintiff's disappointment at the outcome of proceedings cannot give rise to an action in damages against the State. In that case Mr Kemmy sued Ireland and the Attorney General for damages for breach of his constitutional rights to a fair trial and for negligence and breach of duty. McMahon J found at paragraph 59 that the State cannot be vicariously liable for the errors which a judge may commit in the administration of justice. He stated at para 66 of his judgment that:

“The State cannot guarantee that no error will ever occur in the judicial process. The judges it appoints are human and inevitably will make mistakes. In these circumstances, it is incumbent on the State to provide for a corrective mechanism to address these errors. This is the appeal process. In my view, failure by the State to do so would be a breach of its obligations to guarantee “as far as practicable” the citizen's right to a fair trial. But by doing so, the State has fulfilled its obligation under the Constitution”.

- 53.** In, *Ewing v Ireland* [2013] IESC 44, MacMenamin J noted at para 29 of his judgment (in respect of which Mr Ewing had sued Ireland and the Attorney General) that

“neither defendant owed a duty to the appellant or his late father in the initiation conduct or conclusion of the Circuit Court proceedings, the appeal therefrom, the later High Court proceedings, or appeals to this Court. The action is, therefore, entirely misconceived.”

He went on at para 30 to note that

“The court system contains within itself its own system of appeals. That system operates within parameters laid down by the Constitution and by statute...The very purpose of the present proceedings is to mount a collateral attack on the earlier decisions of the courts. This is not a permissible procedure and would, of itself, warrant the proceedings being struck out”.

- 54.** Similarly, in the present proceedings, I find that there is no basis on the pleadings which identify any direct or vicarious basis on which the State Defendants could be liable in damages to the plaintiff for anything arising from the Circuit Court Proceedings. Furthermore, even if the valuation certificate was erroneous or fraudulent this could not have had any material effect on the outcome of the Circuit Court Proceedings as it is clear that the Circuit Court had jurisdiction entirely independently of the valuation certificate. Accordingly, the plaintiff has not suffered any loss by reason of any act or omission of the seventh named defendant or any of the State Defendants.
- 55.** The real purpose of these proceedings appears, from the plaintiff’s own words, to be to seek to strike down the Possession Order. Having exhausted or failed to avail of the opportunities to appeal that Order, it would be an abuse of process for the plaintiff to now use these proceedings against the State Defendants to seek to achieve that objective as a collateral attack on the final court orders in place.
- 56.** Mindful that Mr Carthy is a lay litigant I have tried to understand the various additional arguments (other than those advanced on the pleadings) which he made in later affidavits and at the hearing of this motion. I have summarised those arguments earlier in this judgment.

57. I do not accept that the creation of any “trusts” changes the fundamental contractual obligations that Mr and Mrs Carthy entered into with their lenders. Insofar as Mr Carthy believes that creating these trusts and appointing the Attorney General or other members of government or the court as “trustees” has any legal effect, this view is clearly misconceived. Such actions do not make his property immune from court orders for possession. Nor do such actions create any obligation on the Chief State Solicitor or on the Attorney General to protect this property as though it were a state-owned asset.

Conclusion

58. For the reasons set out in this judgment, I am of the view that the statement of claim in the present action discloses no stateable cause of action against the State Defendants and that this position would not be altered by any amendment to the pleadings.

59. I do not believe that the Circuit Court was dealing with constitutional questions in the Circuit Court Proceedings. I am satisfied that the Circuit Court was correct in holding that it had jurisdiction to make the Possession Order.

60. I also believe that these proceedings constitute an impermissible collateral attack on the decisions made in the Circuit Court Proceedings and, on appeal, in the High Court. These issues are finally determined and are *res judicata*. So too is the issue of the jurisdiction of the Circuit Court to make the Possession Order.

61. Even if there was fraud established in relation to the rateable valuation certificate, that fraud would not form a basis to set aside the orders made in the Circuit Court Proceedings. The Circuit Court clearly had jurisdiction on multiple bases independent of any rateable valuation certificate.

62. I make an order in all the circumstances to dismiss these proceedings both under O. 19, r. 28 and pursuant to this court’s inherent jurisdiction as proceedings which are

frivolous or vexatious and which are bound to fail as against the State Defendants. I will also make an order pursuant to this court's inherent jurisdiction striking out the plaintiff's claim against the State Defendants on the grounds that it is an abuse of process.

- 63.** Therefore, I propose to make an order in the terms of paras 1, 2 and 3 of the State Defendants' notice of motion dated 21 March 2023.
- 64.** I will list this matter before me for 10.45am on Tuesday 3 October 2023 to deal with any issues arising from this judgment, including legal costs.