

**THE HIGH COURT**

**[2024] IEHC 226**

**[2023] 1818 P**

**ARNAUD GAULTIER**

**AND**

**SUP PLIABLE LIMITED**

**PLAINTIFFS**

**AND**

**MARK REILLY**

**AND**

**AINE McGUIGAN**

**DEFENDANTS**

**JUDGMENT (No. 3) of Mr. Justice Cregan given *ex tempore* on 8th April 2024**

**INTRODUCTION**

1. This is the third judgment I have delivered in these proceedings. This judgment deals with three applications before the Court:
  - (i) the first application is that brought by the first defendant to strike out the first named plaintiff's proceedings on the grounds that they disclosed no reasonable cause of action, are unsustainable, are bound to fail or are an abuse of process;
  - (ii) the second application is that brought by the first defendant to strike out the second named plaintiff's proceedings on similar grounds; and
  - (iii) the third application is the second defendant's application to strike out the proceedings of the first and second plaintiffs on similar grounds.
  
2. These matters were heard by me for almost a full day on 19th March 2024. I indicated to the parties two days later on 21st March 2024 that I would give an *ex tempore* decision on Friday 22nd March 2024. Unfortunately, I was unable to give my *ex tempore* decision on that date due to illness and so I indicated that I would give it on the next available date, which is today, the first day of term, 8th April 2024.

## THE LEGAL PRINCIPLES APPLICABLE TO SUCH APPLICATIONS

3. I turn now to consider the legal principles which are applicable to applications of this nature. The defendants have brought their application (1) pursuant to Article 19, Rule 27 and 28 and/or (2) pursuant to the inherent jurisdiction of the Courts.

4. Counsel for the defendants have also opened to me the revised text of Order 19, Rule 27 and 28. Order 19, Rule 27 provides that:

*“The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which is unnecessary or which amounts to an abuse of the process of the Court, or which may unreasonably prejudice or delay the fair trial of the action; and may in any such case, if it thinks fit, order the costs of the application to be paid as between solicitor and client.”*

5. Order 19, Rule 28 (1) provides as follows:

*“The Court may, on an application by motion on notice, strike out any claim or part of a claim which:*

- (i) discloses no reasonable cause of action, or*
- (ii) amounts to an abuse of the process of the Court, or*
- (iii) is bound to fail, or*
- (iv) has no reasonable chance of succeeding.”*

6. Order 19, Rule 28 sub-rule 3 provides that:

*“The Court may, in considering an application under sub-rule (1) or (2), have regard to the pleadings and, if appropriate, to evidence in any affidavit filed in support of, or in opposition to, the application.”*

7. Sub-rule 4 provides:

*“Where the Court makes an order under sub-rule (1) it may order the action to be stayed or dismissed, as may be just, and may make an order providing for the costs of the application and the proceedings accordingly.”*

8. I also note that Delaney and McGrath (Fifth Edition) at paragraph 16.45 states as follows.

*“The original Order 19 Rule 28 identified as a category of claims that could be struck out, claims that were “frivolous or vexatious.” That phrase is no longer to be found in the revised rule and it is not clear*

*whether in the future such claims will be struck out on the basis that they are bound to fail or as an abuse of process. It has been recognised that there is a degree of overlap between claims that are unsustainable or bound to fail and those that are regarded as frivolous or vexatious.”*

9. I have borne that statement in mind in this judgment.
10. The Courts have made it clear that the power pursuant to Order 19, Rule 28 is to be used sparingly. In *Aer Rianta v. Ryanair Limited* [2004] 1 IR 506, Denham J. (as she then was) emphasised that the Court should be slow to exercise the jurisdiction under Order 19, Rule 28 and that it should “*exercise caution*” when doing so. However, at page 509 of her judgment she said that “*If a Court is convinced that a claim will fail such pleadings will be struck out.*”
11. The jurisdiction of Order 19 was limited in that the Court could only have regard to the pleadings in deciding whether proceedings ought to be struck out. However, in *Barry v. Buckley* [1981] IR 306, the Court confirmed that, apart from the power conferred by Order 19, Rule 28 of the Rules of the Superior Courts, the Court has an inherent jurisdiction to strike out or stay proceedings. At page 308 Costello J. stated:

*“But apart from Order 19 the Court has an inherent jurisdiction to stay proceedings and on applications made to exercise it the Court is not limited to the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case. The principles on which the Court exercises this jurisdiction are well established. Basically, its jurisdiction exists to ensure that an abuse of the process of the Courts does not take place. So, if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the plaintiff’s claim must fail; per Buckley L.J. in Goodson v. Grierson at page 765.”*

*“This jurisdiction should be exercised sparingly and only in clear cases but it is one which enables the Court to avoid injustice, particularly in cases whose outcome depends on the interpretation of a contract or agreed correspondence. If, having considered the documents, the Court is satisfied that the plaintiff’s case must fail then it would be a proper exercise of its discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to a defendant. Having done so, the Court can also order that a lis pendens be vacated”*

12. It is clear that the test for striking out proceedings based on the *Barry v. Buckley* line of authority is high but not unsurmountable. In *DK v. King* [1994] 1 IR 166, Costello J. stated, at page 170:

*“The principles on which the Court will exercise its inherent jurisdiction to strike out a plaintiff’s action can be shortly stated. Basically, the jurisdiction exists to ensure that an abuse of the Court’s process does not take place. If it is established by satisfactory evidence that the proceedings are frivolous or vexatious or if it is clear that the plaintiff’s claim must fail then the Court may stay the action but it will only exercise the jurisdiction sparingly and in clear cases”*

13. The inherent jurisdiction of the Court to strike out proceedings is broader than the power conferred by Order 19, Rule 28 in that the Court is not limited to considering the pleadings. As Costello J. stated in *Barry v. Buckley* at page 308:

*“The Court is not limited to the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case.”*

14. In *Salthill Properties Limited v. Royal Bank of Scotland* [2009] IEHC 207, Clarke J. (as he then was) stated at paragraph 3.12 of the decision:

*“It is true that in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19, the Court must accept the facts as asserted in the plaintiff’s claim for if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim. However, I would not go so far as to agree with Counsel for Salthill and Mr Cunningham to the effect that the Court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the Court. A simple example will suffice. The plaintiff may assert that it entered into a contract with the defendant which contained certain express terms. On examining the document, the terms may not be found or may not be found in the form pleaded. On an application to dismiss as being bound to fail, there is nothing to prevent the defendant producing the contractual documents governing the relations between the parties and attempting to persuade the Court that the plaintiff has no chance of establishing that the document concerned could have the meaning contended for because of the absence of the relevant clauses. The whole point of the difference between applications under the inherent jurisdiction of the Court, on the one hand, and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other hand, is that the Court can, in the former, look to some extent at the factual basis of the plaintiff’s claim.”*

15. Counsel for the first defendant has also opened relevant paragraphs of *Lopes v. The Minister for Justice, Equality and Law Reform* [2014] 2 IR 301, and, in particular, the judgment of Clarke J. (as he then was) at paragraphs 15 to 23. I have considered the principles set out therein in this judgment also. In particular I have considered the

jurisdiction which arises under Order 19, Rule 28 of the Rules of the Superior Courts and the separate jurisdiction which exists pursuant to the inherent jurisdiction of the Courts.

16. Counsel for the defence also brought to my attention the relevant chapter and paragraphs in Delaney and McGrath on Civil Procedure (Fifth Edition) 2023, chapter 16, and I have considered the case law and commentary set out therein also.

**THE FIRST NAMED DEFENDANT'S APPLICATION AGAINST THE FIRST NAMED PLAINTIFF**

17. I turn now to consider the first application before the Court, i.e. the first named defendant's application to strike out the first named plaintiff's case against the first named defendant on the grounds that:

- (i) it fails to disclose a reasonable cause of action;
- (ii) is bound to fail;
- (iii) has no reasonable chance of success; and
- (iv) is an abuse of process.

18. As a preliminary matter, the first named defendant says that he is a partner in the accountancy firm of KPG and that the firm should have been sued and not him personally. I agree with that submission but this could be remedied by an order substituting the correct defendant. However, more substantively, the first named defendant submits that the first named plaintiff's claim against either him or the firm, KPG, is bound to fail.

19. By way of background, it is important to note that the first named defendant was retained by the first named plaintiff's estranged wife, Ms. Louise Swords, to provide professional advice to Ms. Swords. As such, the first named defendant's contractual relationship was with Ms. Swords and he had a duty of care to her. There is no contract between the first named plaintiff and the first named defendant and the first named defendant owes no duty of care to the plaintiff.

20. The first named plaintiff also claims that the first defendant provided services to the first plaintiff and Ms. Swords in their capacity as directors of the company, the second named plaintiff. The first defendant accepts that he did so on one occasion, i.e. on 27th October 2022. He subsequently invoiced the company for doing so. However, no cause of action arises on foot of that advice and even if it did it would be a cause of action for the company, not for the first named plaintiff.

## **ANALYSIS OF THE AMENDED STATEMENT OF CLAIM IN RESPECT OF THE PLEAS AGAINST THE FIRST DEFENDANT**

21. Counsel for the first named defendant carefully went through the various pleas in the amended statement of claim made against the first named defendant. The amended statement of claim, as drafted by the first named plaintiff, Mr. Gaultier, who is a lay litigant, is diffuse and difficult to follow. I will, however, set out the main claims and the first named defendant's submissions on them.

### **The First Claim: The Claim in Professional Negligence and/or Duty of Care**

22. The first claim made by Mr. Gaultier against Mr. Reilly is a claim in professional negligence or breach of duty of care and it is stated at paragraph 1, sub-paragraph 1(b) that it “*was highlighted that the first defendant... may independently advise Louise of her obligations as director and sole member. [sic]*”
23. The claim in this paragraph, and subsequent paragraphs is, apparently, a claim against the first defendant made by the first named plaintiff that the first defendant did not properly advise Ms. Swords in the matter of her obligations as a director and shareholder of the second plaintiff, Sup Pliable Limited, the company.
24. First, it is clear that any contract of retainer, which the first defendant had was with Ms. Swords personally and not with the first named plaintiff, Mr. Gaultier. Mr. Gaultier therefore has no *locus standi* to make a claim for professional negligence on Ms. Swords’s behalf against the first defendant.
25. Secondly, it is clear that Mr. Gaultier does not allege that he had any contractual relationship with the first defendant and therefore he cannot plead any breach of contract or professional negligence towards him by the first defendant. Mr. Gaultier's claims in this regard are clearly bound to fail.

### **The Second Claim: The “Collusion in Tort” Claim**

26. The first named plaintiff's second claim is that the first defendant did not fulfil his duty to the company by:
- “Not expressing his most vigorous criticism to the first plaintiff’s wife’s conversion or wrongful appropriation of the second plaintiff’s stock. [sic] This can be construed as a collusion in tort to the detriment of the second plaintiff”*
27. However, it is clear that such a claim, if stateable at all, is a claim for the company to make, not for the first named plaintiff.

28. Secondly, insofar as it is suggested that the first named defendant did not adequately advise Ms. Swords in relation to this matter, again these are matters for Ms. Swords to complain about to the first defendant and not Mr. Gaultier. He clearly has no *locus standi* to make this argument against the first defendant.
29. Thirdly, on the facts of this case it is not a reasonable cause of action, it is not sustainable and it is bound to fail.

**The Third Claim: The Disparagement or Defamation Claim**

30. A third claim, the first named plaintiff, Mr. Gaultier, has made against the first defendant is a plea of disparagement or perhaps defamation. The plea is that:

*“When acting in his professional capacity, the first defendant has professional ethics standards to adhere to which include propriety, respect and right of reserve. As per paragraph 6(a) APS...” (which I think refers to the amended plenary summons) “...the first plaintiff claims that the first defendant has failed those expected standards by unduly criticising the first plaintiff’s professional abilities gaining some financial benefit or interest in return.”*

31. Some particulars of that claim are given in the paragraph after that in which the first named plaintiff pleads that:

*“Louise has repeatedly mentioned to me that the first defendant has alleged that I did not do a great job in relation to the company”*

32. However, it is of some significance that the first named defendant, in his grounding affidavit at paragraph 12, states explicitly that he did not criticise the plaintiff in the manner alleged and also that Ms. Swords has also confirmed to the first defendant that he did not do so. The first named plaintiff, Mr. Gaultier, in his replying affidavit, had an opportunity to refute what the first defendant said and to provide some further factual basis or some factual basis at all for his assertion. However, Mr. Gaultier said nothing at all in his replying affidavit at paragraph 21 or elsewhere to reject the first named defendant's refutation of this allegation.
33. The first defendant submits that it is open to this Court to draw the inference that Mr. Gaultier’s claim on this issue does not disclose a reasonable cause of action – particularly given Mr. Gaultier’s omission to refute the first named defendant's averments. I agree with that submission. Even if it was said by the first named defendant, it could hardly be said that it was defamatory in circumstances where:

- (a) the statement is, in itself, a relatively anodyne statement;
- (b) the plaintiff has made similar statements about himself;
- (c) the company is *prima facie* insolvent; and

(d) the company is strike-off listed for failure to make returns.

34. So, it is clear that the company is not in great shape. It is also clear that the first defendant had a professional duty to advise Ms. Swords of his views. In such a case, the first defendant clearly can avail of the defence of qualified privilege and/or justification. I am satisfied that the plea in this regard does not disclose a reasonable cause of action and/or is unsustainable and/or is bound to fail.

**The Fourth Claim: Advising Ms Swords “Not to Buy Material and Immaterial Assets of a Third Party Company”**

35. The fourth plea which the first named plaintiff makes in the amended statement of claim is that the first defendant was apparently negligent in giving, or not giving, certain advice to Ms. Swords, quote: “*Not to buy material and immaterial assets of a third-party company.* [sic]”
36. However, again it is clear that this is a plea for Ms. Swords to make, not for the first named plaintiff. He has no locus standi to make such a plea. If there was any professional negligence as between the first defendant and Ms Swords, that is a matter between Ms. Swords and the first defendant. To date, no such claim has been made by Ms. Swords against the first defendant.
37. The first named plaintiff also pleads that this has created financial damage for the second named plaintiff, the company. Again, this is a claim for the company to make, not for Mr. Gaultier. Mr. Gaultier has no locus standi to make such a claim and his claim as the company's creditor certainly does not give his *locus standi* to make such a claim.

**The Fifth Claim: The Filing of Late Tax Returns for Ms. Swords**

38. Mr. Gaultier also claims that the first name defendant filed late tax returns for his wife and failed to consider losses she had incurred in Northern Ireland through her partnership with Mr. Gaultier. Again, such a claim, if one were ever to be made, is one for Ms. Swords, not the first named plaintiff. Mr. Gaultier has no *locus standi* to make such a claim.

**The Sixth Claim: The Claim About Remortgaging Ms. Swords’s House**

39. The first named plaintiff, Mr. Gaultier, also claims that the first defendant failed to advise Ms. Swords about the necessity for refinancing and/or re-mortgaging Ms. Swords’s property, and as such has created financial difficulties for the second named plaintiff. Again, such a claim is, in my view, unstateable, unsustainable and bound to fail. If it were a claim, it is a claim for Ms. Swords to bring, not for the first named plaintiff, Mr. Gaultier. In the alternative, if it has created financial difficulties for the second named plaintiff, the company, then, again, this might give rise to a claim by the company but certainly not by Mr. Gaultier.



### **The Seventh Claim: The Claim of Deceit or Deceitful Engagement**

40. Mr. Gaultier has also claimed that the first defendant engaged in a “*deceitful engagement ... to facilitate a positive engagement between the first named plaintiff and his wife*” and acted in such a way as to aggravate the differences between Mr. Gaultier and Ms. Swords thereby causing damage to the second plaintiff.
41. Again, it is clear that this is essentially a plea of professional negligence against the first defendant in circumstances where the first defendant has no contract with Mr. Gaultier and owes no duty of care to Mr. Gaultier.
42. Secondly, insofar as it is a plea in deceit, it has not been pleaded with any particularity or detail or completeness. The facts as pleaded do not disclose anything which would justify a plea in deceit and I would strike out such a plea as scandalous.
43. Thirdly, the first named plaintiff explicitly says that these actions have caused damage to the second named plaintiff. In such circumstances this would be a matter giving rise to a cause of action, if at all, for the second named plaintiff but certainly not for Mr. Gaultier.

### **The Eighth Cause of Action: The Alleged Breach of Contract Between the First Named Plaintiff and the First Named Defendant.**

44. The nearest Mr. Gaultier comes to pleading a breach of an alleged contract between Mr. Gaultier and the first defendant is paragraph 12 of his amended statement of claim wherein he pleads that the first defendant  
*“failed to fulfil his part of the contract, Plan A, as agreed by email dated 16th January 2023.”*
45. However, it is clear from this email, which was opened in Court by counsel for the first defendant, that this email refers to two proposals, A and B, under which either Mr. Gaultier or Ms. Swords would obtain full ownership of the company. Whilst the first defendant replied to that email indicating a preference by Ms. Swords for proposal A, it is abundantly clear that this exchange of emails is only a preliminary negotiation. It falls a long way short of a contract. Even if it were a contract (which it is not) it would be a contract between Mr. Gaultier and Ms. Swords, not between Mr. Gaultier and the first named defendant. Here again the first defendant’s claim for a breach of a contract with the first defendant is doomed to fail.
46. In these circumstances, I will strike out the claim against the first named defendant.

### **THE FIRST NAMED DEFENDANT'S APPLICATION AGAINST THE SECOND NAMED PLAINTIFF**

47. The first named defendant's application against the second plaintiff was grounded on the affidavit of the first defendant which affidavit makes a number of points.

48. The second plaintiff has no legal representation and never has had. It has at all times purportedly been represented by Mr. Gaultier, a director and shareholder of the company. Mr. Gaultier is not permitted to represent the company because of the rule in *Battle v. Irish Art Promotion Centre Limited* [1968] IR 252, the Supreme Court decision in *Allied Irish Banks v. AquaFresh Fish Limited* [2019] IR 517 and the third decision of the Supreme Court in *Gaultier v. The Registrar of Companies* [2019] IESC 89. I have already, in my *ex tempore* decision in these proceedings on 16th of May 2023, and my reserved written decision of 28th July 2023, held that these decisions are binding on me, that Mr. Gaultier has not shown any exceptional circumstances and therefore he is not entitled to represent the plaintiff.
49. The second named plaintiff has not retained any other legal representation since that time nor has it done so to defend this application to strike out the proceedings. I am satisfied that the second named plaintiff was properly served with this application and, is on notice of it. The second named plaintiff is therefore not defending this application. I am also satisfied for these reasons, and also for the reasons set out above, that the second named plaintiff's case against the first defendant should be struck out as disclosing no reasonable cause of action, as being bound to fail and as an abuse of process.

### **THIRD MOTION: THE SECOND DEFENDANT'S CASE TO STRIKE OUT THE PROCEEDINGS BROUGHT BY THE FIRST AND SECOND NAMED PLAINTIFF**

50. The second defendant has brought a similar application to seek to strike out the proceedings brought against the second defendant by the first and second plaintiffs. Counsel for the second defendant adopted the submissions of counsel for the first defendant. Similarly, he proved that service on the second named plaintiff of the motion was good. As the second named plaintiff has not contested this motion, and as the second named plaintiff was not represented at the hearing of this motion, I am satisfied that the second defendant is entitled to an order striking out the second named plaintiff's proceedings against the second defendant.
51. It is important to note that the second defendant is the solicitor originally retained by Ms. Swords to represent her in future matrimonial proceedings.
52. In order to assess the second named defendant's application, the second defendant's counsel also went through the amended statement of claim as filed, and carefully identified the causes of action pleaded against his client, the second named defendant.

### **The First Cause of Action: Professional Negligence**

53. Mr. Gaultier has pleaded that Ms. McGuigan, the second named defendant, has been guilty of professional negligence in the legal advice which she has given to Ms. Swords. Again, it is clear that any such cause of action rests with Ms. Swords, not with Mr. Gaultier. Mr. Gaultier has no contract with Ms. McGuigan and Ms.

McGuigan owes him no duty of care. Mr. Gaultier therefore has no *locus standi* to make this claim and it is bound to fail.

### **The Second Cause of Action: The “Alleged Collusion in Tort”**

54. The second cause of action pleaded by Mr. Gaultier against the second defendant is the alleged collusion in tort to the detriment of the second named plaintiff. Again, the facts as pleaded do not give rise to this tort. Secondly, any such claim is one for the second named plaintiff, not Mr. Gaultier. Again, Mr. Gaultier has no *locus standi* to make this argument. Thirdly, I am satisfied that the case, as pleaded by the second and the first named plaintiffs against the second defendant, is bound to fail.

### **The Third Cause of Action: Erroneous Legal Advice Given to Ms Swords in Relation to Property Registered in Ms. Swords’s Name in Northern Ireland.**

55. This plea is set out at paragraph 15 of the amended statement of claim and it states as follows, that it is: *“further alleged that the second defendant gave erroneous legal advice in relation to the sale of the property registered in the name of the first named plaintiff's wife with full disregard to the equity of the first plaintiff in relation to same and the contractual agreement between the first named plaintiff and his wife through their business partnership in Northern Ireland, Megalithic.”*

56. It is clear that this is a cause of action for Ms. Swords, not for the first named plaintiff who has no *locus standi* in respect of this matter. Any contractual arrangement between Ms. Swords and the second named defendant is a matter for them and it is clear that Ms. McGuigan owes a duty of care to Ms. Swords but not to Mr. Gaultier.

### **The Fourth Cause of Action: The Disparagement Claims**

57. The plaintiff’s fourth cause of action is a similar disparagement claim or defamation claim against the second defendant pleaded at paragraph 13 of the amended statement of claim. However, for the reasons set out above in relation to the same claim made by Mr. Gaultier against the first defendant, I am satisfied that such a claim is bound to fail. I would also note in passing that in fact the particular pleaded appears to be that any disparagement of Mr. Gaultier was made by the first defendant and not by the second defendant.

### **CONCLUSION**

58. Mr. Gaultier was given an opportunity to make replying submissions to these applications in open Court. He declined to do so. He did, however, file 18 pages of written submissions which I have considered.

59. First, these submissions purport to be on behalf of the first and second named plaintiffs. This is clearly impermissible. Mr. Gaultier has no right to represent the company, as he well knows, because he has repeatedly lost this point before me. It is

also clear that his continued insistence on representing the second named plaintiff is an abuse of process.

60. Secondly, much of these submissions are taken up with rearguing the “*Battle point*” which is now before the Court of Appeal and the Supreme Court. These submissions are therefore not relevant to the issues which I have to decide.
61. Thirdly, Mr. Gaultier reiterated much of his personal invective against me and added some more for good measure. However what he singularly failed to do was to address the issues before the Court in this application by the first and second defendants to strike out his claims.
62. It is also clear that these proceedings arose because of the breakdown of the marriage between Mr. Gaultier and Ms. Swords. Mr. Swords retained the first defendant as her accounting and tax adviser and the second defendant as her solicitor. Mr. Gaultier has seen fit to issue proceedings against his wife and her two advisers even though there was never any contractual relationship between Mr. Gaultier and the two advisers and they owed him no duty of care. Their duty of care was at all times to Ms. Swords.
63. Whilst Mr. Gaultier has discontinued the proceedings against Ms. Swords, he has seen fit to continue these proceedings against her advisers. I have no doubt at all, and it was so submitted by counsel for the first and second defendants, that not only does Mr. Gaultier have no reasonable cause of action against the first and second defendants but that he has instituted and maintained these proceedings against both defendants as an abuse of process. In my view, he has issued these proceedings in a spiteful and vengeful manner to cause maximum professional embarrassment to the first and second defendants who have had to notify their professional indemnity insurance company about this wholly unmeritorious claim.
64. Moreover, it is abundantly clear that Mr. Gaultier is engaging in a clear abuse of process when one considers his email of 6th November 2023 to both defendants. This email, which is from Mr. Gaultier to Mark Reilly and Aine McGuigan, dated Monday the 6th of November 2023, states, in part, as follows:

*“Dear Mark and Aine, I trust this will find you well...”*

and then down a few paragraphs he says

*“... You and I perfectly understand that there are no Court of Justice or Court of Law in this country, but what a registrar best describes as a Court of Shenanigans. The biggest of which is the battle and threat of legal costs: “grow the other side [sic] legal bill or force it to pay for yours”*

*With 5 current proceedings in the High Court, you may understand that I am not afraid and that I know how to deal with those (Cf. Judgment of Faherty J. and Barr J. in the matter Gaultier v CRO).  
Over the last 10 years, I put all my wealth in my wife's name to protect*

and not expose my family to such possible legal costs (some of which pre-dated our marriage).

So, the question is: “Do we keep going or do you want to settle out of Court?”

I give you until the end of business (5pm) on Tuesday 07.11.20223[sic] to decide.

That should give you enough time to discuss same with your partners and insurers. Please note that in my 4 High Court cases against the state, I have not seen a junior counsel standing without a senior counsel by his side since January 2017.

Kind regards,

Arno” (emphasis added)

65. It is clear, in my view, that Mr. Gaultier has engaged in a deliberate process of putting all his wealth in his wife’s name to protect himself and his family against any exposure to legal costs. This allows him to expose the defendants to considerable legal costs while he himself, apparently, believes he is fully insulated against adverse costs orders of which three have already been made against him by me in these proceedings. This is clear evidence in my view that these proceedings in their entirety are an abuse of process.

66. In conclusion, I have no hesitation in striking out the first and second named plaintiffs’ proceedings in full against the first and second defendants on the grounds:

- (i) that they disclose no reasonable cause of action;
- (ii) that they are bound to fail;
- (iii) that they stand no reasonable chance of success; and
- (iv) that they amount to an abuse of process.

67. I will hear the parties further on the issue of costs.