



**APPROVED**

**[2024] IEHC 356**

**THE HIGH COURT**

**[Record No. 2022/4351P]**

**BETWEEN**

**JAMES OSBORNE**

**PLAINTIFF**

**AND**

**GOREY BUSINESS PARK (RAMSTOWN) LIMITED**

**DEFENDANT**

**NO. 2**

**JUDGMENT of Mr Justice Nolan delivered on the 18<sup>th</sup> day of June, 2024**

**Introduction**

1. This judgement is supplemental to the judgement which I delivered on the 14<sup>th</sup> of May 2024 in which I decided that the proceedings should be struck out on the grounds that they are frivolous and vexatious and bound to fail since they relate to precisely the same lands, namely Folio 62501F County Wexford (“the lands”), which were referred to in the decision of O’Moore J. in *Osborne v Tyrell* [2022] IEHC 343.

2. In that judgment, O’Moore J. refused permission to issue an intended set of proceedings on the grounds that they would facilitate vexatious and oppressive litigation. He said that the intended set of proceedings could have been raised in earlier proceedings. I have found that

these proceedings should not have been issued without the permission of the High Court and that ownership of the lands, as recorded in the Land Registry, is conclusive.

3. The Defendant sought further relief in these proceedings in the form of an Isaac Wunder order. To avoid unnecessary court time, I invited the Plaintiff to consider giving an undertaking not to issue any further proceedings in relation to the lands, given that O'Moore J. had found he had already given such an undertaking to McGovern J. previously (*Osborne v KBC Bank* [2016] IEHC 220). The Plaintiff declined to give such an undertaking. Therefore, I asked the parties for short-written submissions, which they furnished and made further oral submissions.

### **The Jurisdiction of the Courts To Make an Isaac Wunder Order**

4. The jurisdiction to make an order prohibiting a party from issuing further proceedings derives from the decision of the Supreme Court in *Wunder v Irish Hospitals Trust* [1966] WJSC-SC 383 (Supreme Court, unreported). In that case, the Plaintiff, who was a persistent litigant, had instituted several sets of proceedings against the Defendant alleging he had won prize money in the Irish Sweepstakes. However, there was no evidence to support his claim. The Supreme Court directed that no further proceedings should be taken without prior leave of the High Court.

5. The leading authority is *Riordan v Ireland (No.4)* [2001] 3 IR 365. In fact, the matter came before the court on two separate occasions, giving rise to separate judgments. The second being *Riordan v Ireland (No.5)* [2001] 4 IR 465.

6. In *Riordan v Ireland (No.4)*, Keane C.J. said:-

*“It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the*

*rights of other citizens including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation... This court is extremely reluctant, as the High Court has been, to restrain the access of any citizen to the courts. The stage has clearly been reached, however, where the proper administration of justice requires the making of such an order as against the applicant.”*

7. In *Riordan v Ireland (No.5)*, O'Keefe J. in the High Court noted, that the matter had to be seen in the context of the European Convention on Human Rights. He relied upon a Canadian decision *Re Lang Michener and Fabian*, High Court of Ontario, (1987) 37 D.L.R. (4th) 685, which set out six matters to show if proceedings were vexatious. The Plaintiff relies upon these.

8. In *Kearney v Bank of Scotland* [2020] IECA 224, Whelan J. set out a useful summary of the factors that a court should have regard to in making an Isaac Wunder order. She found that such an order should only be made to the extent necessary so as to prevent the abuse of court processes and the pursuit of vexatious litigation and no further. Other factors include the history of the litigation between the parties connected with common issues, that there are good grounds for believing that there would be further proceedings instituted, unless such an order was made, the balancing exercise between the competing rights of the parties in regard to the constitutional rights of a Plaintiff, that no legitimate claim should be precluded from being heard and determined, save in exceptional circumstances. Where possible, the litigant should be forewarned of any intended application and that a clear and compelling case must be identified as to why the order is necessitated.

9. In *Gunning v Sherry* [2012] IEHC 88, Hogan J. noted that whilst the Plaintiff in that case had only issued one set of proceedings in relation to the cottage, the subject matter of the case, a considerable amount of judicial time and resources had been expended in considering the rights of the parties to the dispute. Further litigation would only add to the misery of “*the tragic case*” caused by the disputed ownership of the cottage. He therefore made an order that the Plaintiff was precluded from commencing any further new proceedings which directly or indirectly concerned the cottage, without prior leave of the President of the High Court.

10. In *Scanlan v Gilligan* [2021] IEHC 825, Butler J. in the High Court, approved in the Court of Appeal, said:-

*“Although an Isaac Wunder order undoubtedly represents a restriction on the otherwise unqualified right of a litigant to bring proceedings before the courts, it does not necessarily prevent a litigant from litigating. The requirement to obtain the leave of the High Court in advance of proceedings being instituted acts as a filter to ensure that unmeritorious proceedings cannot be instituted by a litigant against parties whom or concerning subject matter about which that litigant has already engaged in litigation, usually unsuccessfully. It is rare for an application for an Isaac Wunder order to be made unless the previous litigation has been prolonged, repetitive and unsuccessful. The making of such an order ensures that the opposing party is not subjected to an endless stream of litigation from the same litigant unless a court has determined that there is some objective merit to the proposed proceedings. It also ensures that the time of the courts is not needlessly taken up with either unmeritorious proceedings or applications such as these to strike out unmeritorious proceedings.”*

11. She went on to say that:-

*“Whilst in general it will not be appropriate to make such an order against a litigant who has not previously instituted proceedings, this is not an invariable rule as the conduct of the*

*litigant in the earlier proceedings may be such that they have de facto become the moving party in the unreasonable or unnecessary extension or prolongation of that litigation.”*

12. This is something which has resonance in this case, bearing in mind that I have been told that the Plaintiff's daughters, Sharon and Deirdre, have applications pending to register a *lis pendens* on the same lands. However, they are not party to these proceedings, and I have not been invited to make any order in relation to them.

### **The Application of the Law**

13. The first issue to note is that I invited the Plaintiff to give a further undertaking not to issue further proceedings in relation to the lands. He has declined to do so, as is his right. Therefore, I believe it is reasonable to infer that unless restrained by an order of the court, he will continue to litigate the ownership of the lands.

14. To date, there have been five sets of proceedings in relation to the original debt and the lands, three taken by the Plaintiff. These include these proceedings, *Osborne v KBC Bank* [2016] IEHC 220, and *Osborne v Tyrell* [2022] IEHC 343.

15. He then sought to bring further proceedings against KBC, JC Hogan and Company (as agents for KBC), Mr. Tyrrell, the receiver, and Sean Doyle, to whom the lands were sold. As O'Moore J. noted, the issue in relation to the map of the lands was an issue which could and should have been agitated in earlier proceedings. These are the same map and the same lands which was at issue in this case.

16. The Plaintiff, in his submissions, relies upon the judgment of O'Keefe J. in the High Court in *Riordan v Ireland (No.5)*, making the point that further proceedings, to be prohibited, should be against the same parties as in the earlier proceedings. However as both *Gunning and Kearney* and, indeed, *Riordan (No.4)* show, there is no such prohibition. It can

be made in relation to the subject matter of property and, in some circumstances, against parties who may not have issued proceedings yet.

17. The criteria set out in *Re Lang Michener and Fabian* is in many ways a repeat of Whelan J.'s views in *Kearney*. Therefore, applying those criteria, it seems to me that the history of the litigation, in relation to this land, is long and torturous. I have set out the cases which the Plaintiff has brought, but there were two other proceedings in which he was a party, namely, *KBC Bank Ireland PLC v Osbourne* [2015] IEHC 795 and *The Governor and Company of Bank of Ireland v Osbourne* [2021] IECA 127. Any one of them would have allowed Mr. Osborne the opportunity to air his issue in relation to the common areas of the lands. As I have found, this is an unsustainable argument.

18. As I have found, this is an unsustainable argument, but this did not stop him attempting to continue to argue that there were substantial reasons why he was willing to mortgage only the footprint of certain buildings to the bank and not the common areas.

19. Therefore, there are very good grounds for believing that he will not stop and intends to continue the fight. In those circumstances, I must balance the competing rights between Mr. Osborne, on the one hand, who already has given an undertaking which he has tried to resile from and the other potential parties to any further litigation. These would include Mr. Doyle and any of his other companies. By making an Isaac Wunder order in relation to the lands, I am not in any way precluding him from bringing any further legitimate case or cases he may have. The whole purpose of an Isaac Wunder order is to allow the matter to come before the President of the High Court or his nominated judge. This is what happened before O'Moore J.

20. I believe the common good will be served by making such an order in the exceptional circumstances that this case has presented. I have no doubt that a clear and compelling case has been made out.

21. Even if I were to apply the principles set out in *Re Lang Michener and Fabian*, I believe the issue, namely the map and the ownership of the lands, has been determined by a court of competent jurisdiction. Whilst the Plaintiff says that is not the case, I disagree. The matter has been aired countless times, and with precision before O'Moore J. and this court. I have little doubt that the issues in this case have been rolled forward into subsequent actions and repeated and supplemented.

22. Therefore, having carefully considered the submissions by both parties, I have conclude that the court should exercise its inherent jurisdiction, in a proportionate manner and make an Isaac Wunder order prohibiting the Plaintiff instituting any further proceedings in relation to the lands at Folio 62501F County Wexford.