THE HIGH COURT

[2024] IEHC 63

[Record No. 2022/1653P]

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 IRELAND SOLICITORS AND WHITNEY MOORE SOLICITORS AND BRENDAN ROBBINS

DEFENDANTS

JUDGMENT of Mr Justice Liam Kennedy delivered on the 19th day of February, 2024

1. The fifth defendant ("the Applicant") seeks orders dismissing this claim as, *inter alia*, unsustainable, an abuse of process and a collateral attack on previous orders. The Applicant (including its predecessor firm) represented the third and/or fourth defendants ("the Bank") in Circuit and High Court Proceedings ("the Original Proceedings") against the Plaintiff and his wife, Bridget Carthy ("the Borrowers"). The Original Proceedings arose from the Borrowers' default on repayments under a loan secured by a mortgage over a property ("the Property"). In these proceedings, the Plaintiff challenges Circuit and High Court orders in the Original Proceedings, including orders for the possession and sale of the Property. On 15 August 2023,

Roberts J. dismissed the claim against the first, second and seventh defendants in these proceedings. Judgment is pending on a corresponding application by the sixth defendant. This judgment will reference and rely on the judgment of Roberts J. and on another judgment in these proceedings by O'Moore J. on 24 March 2023 (directing the Plaintiff to furnish further and better particulars). Accordingly, references to those judges below are to those judgments.

The Original Proceedings

2. The third defendant ("the Bank") commenced the Original Proceedings (Circuit Court Record No. 75/2015) on 25 February 2015. On 23 November 2016, the Circuit Court dismissed the Borrowers' application to strike out the proceedings for want of jurisdiction, adjourning the proceedings to enable the Borrowers to file replying affidavits. On 30 March 2017, the Circuit Court granted the Bank an order for possession, with a twelve month stay ("the Possession Order"). The Borrowers did not appeal either order. Unusually, the Possession Order directed the Bank to provide further details of the interest rates, giving the Borrowers leave to apply to vacate the order if the rates were incorrect. On 18 April 2018, Bridget Carthy applied to re-enter the Circuit Court Proceedings and vacate the Possession Order on various grounds, including that: (a) the Bank had not complied with the direction to furnish details of rates and that the rates applied were incorrect; and (b) the "flawed" rateable valuation certificate was "*intended to mislead and deceive the court into granting the possession order*".

3. On 24 July 2018, the Circuit Court directed that the Original Proceedings be re-entered but, on 19 February 2019, it re-affirmed the Possession Order. Bridget Carthy unsuccessfully appealed the 19 February 2019 order. More than two years after the High Court had dismissed the appeal from the (second) Circuit Court possession order, the Plaintiff applied to the Circuit Court by motion dated 7 July 2022 to stay the Possession Order pending the hearing of an

intended plenary action against Bank of Ireland Mortgage Bank (i.e. this action). The Circuit Court struck out that motion with no order on 14 September 2022.

The Plaintiff's Claim against the Applicant in these proceedings

4. The Plaintiff challenges the validity of five Circuit Court and High Court orders in the Original Proceedings ("the Court Orders") which were made between 23 November 2016 and 2 March 2020. He seeks to do so by advancing broad, unparticularised allegations, including breach of duty and statutory duty, deceit, conspiracy, misrepresentation and/or nondisclosure of material facts and evidence. He claims that the orders and reliefs in the Original Proceedings were granted through fraud or deceit "*with the intention to violate the constitutional rights of the plaintiff and his spouse and children*" and alleges "*violations of the Constitutionally Protected Family Dwelling and Property Rights*" and "*Human rights entitlements*". His fundamental claim is that the Bank, for whom the Applicant acted, misled the Court. Para. 17 of the Statement of Claim sought damages against all defendants for breach of:

> "[*the Plaintiff's*] *constitutional rights under Article 1 protocol 1 of the European convention on 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.*" [*sic*]

5. Paragraph 18 of the Statement of Claim also sought:

> "*damages for breach of contract against the bank and Solicitors*".

6. Two affidavits delivered by the Plaintiff (in response to the Applicant's motion for particulars) expanded on the claim against the Applicant. The first affidavit acknowledged that the case arose from the Original Proceedings and justified the proceedings as a necessary response to "*the fraudulent evidence and falsified affidavit*" of a particular bank employee. It claimed that the bank's valuation certificate was "*obtained by deception, for the purpose of persuading the Circuit Court that it had jurisdiction*". This appears to be the Plaintiff's primary

complaint. It should be noted that the "*falsified affidavit*" appears to be the affidavit sworn in the Circuit Court proceedings grounding the application for an order for possession. That affidavit was sworn on 11 November 2016. However, the Plaintiff seems to have never availed of the opportunity to swear any replying affidavit in the Original Proceedings to deal with the substance of the claim and to refute the 11 November 2016 affidavit. Nor has he explained his delay in launching proceedings to challenge the evidence in the Original Proceedings. Nor is it suggested that any new evidence has emerged which would not have been available to the Borrowers at the time of the Original Proceedings.

7. Other grounds apparently asserted in support of the challenge to the Original Proceedings were that: (a) the mortgages were invalid because the loan documents were for a commercial loan whereas the Borrowers were private individuals; (b) the Plaintiff denies signing the mortgage deed in the presence of the solicitor who was supposed to have witnessed it; and (c) the figure claimed in the affidavit sworn by the Bank employee in the Original Proceedings was inconsistent with a figure of which the Plaintiff claims to have been advised by the Central Bank at a later date. The affidavit stated that the Plaintiff contacted the Bank by registered post on five occasions between 24 March 2021 and 11 May 2021 requiring proof of their claim, receiving no reply, and it appeared from his oral submissions that a primary objective of the proceedings was to negotiate with the Bank concerning the amount due under the original facility. The Plaintiff's supplemental affidavit also challenged the Circuit Court's jurisdiction on the basis that the proceedings raised constitutional issues:

> "*any Order for Possession is absent consideration for Constitutional Law and the Rights of Sovereign Men and Women and therefore … has no standing in law*."

The Applicant's Oral and Written Submissions

8. The Applicant argues that the proceedings should be struck out because: (a) the pleadings disclose no material facts on which stateable claims can be advanced against the Applicant; and (b) they are an impermissible attempt to mount a collateral attack on or appeal from the Circuit Court Proceedings. The claim is bound to fail and is an abuse of process.

The Plaintiff's Oral Submissions

9. The Plaintiff failed to deliver an affidavit on this motion despite being afforded ample opportunity to do so. His oral submissions focussed on the allegedly fraudulent testimony in the Circuit Court proceedings. He acknowledged that his claim was primarily against the Bank not the Applicant, but maintained that the Applicant was also liable for evidence furnished to the Circuit Court. He said that law cannot be a "*cloak*" for fraud, and that he would stand on his constitutional rights, as a "*living man*". It was clear that the Plaintiff's core complaint about the evidence in the Circuit Court was his objection to the valuation certificate (which he saw as essential to establishing the jurisdiction of the Circuit Court) and he also queried the accuracy of the Bank's figures in the affidavit grounding the order for possession in the Original Proceedings, asserting that this led to the judge erroneously concluding that the Borrowers were in arrears without adequately explaining the basis for that contention. He also asserted that neither he nor his wife ever signed any documents relating to the mortgage. He characterised the alleged fraud as a "*deliberate attempt*" to "*do* [*his*] *family out of their dwelling*", which, he stated, was "*constitutionally protected*".

10. The Plaintiff said that he had no desire to sue anyone and that if the bank were to prove the existence of a debt on his part, he would willingly settle it. However, he said, having made numerous efforts to resolve the issue with the Bank, he had been left with no option but to issue these proceedings against all the various parties. He acknowledged that the thrust of his claim

was against the Bank, but maintained that the Applicant was on record, and was thus responsible for information furnished to the Circuit Court. He also justified the allegations against a multitude of parties on the basis that the "*buck*" had constantly been passed amongst the defendants, and, hence, the alleged fraud had never been addressed. He emphasised that "*fraud vacates all*" and deemed it "*ludicrous*" that a possession order was procured on foot of fraudulent documents furnished to the court.

Applicable Legal Principles

11. There was no dispute as to the applicable legal principles. Furthermore, although the Plaintiff is a lay litigant, he has now participated in the hearing of three similar applications to strike out these proceedings on behalf of different parties. Accordingly, rather than repeat uncontroversial principles, I will adopt the entirety of the helpful summary provided by Roberts J. in her decision, while singling out some particularly pertinent passages. I will also highlight certain authorities which consider the appropriateness a claim against solicitors (or barristers) on the basis of their role representing other parties in litigation and those dealing with the attempt to relitigate issues already canvassed in earlier litigation.

Jurisdiction under Order 19 or pursuant to Inherent Jurisdiction

12. There is no need for me to repeat the helpful summary of the principles pertaining to an application to strike out proceedings under Order 19 of the Rules of the Superior Courts ("RSC") or pursuant to the Court's inherent jurisdiction provided by Roberts J. at paras 40 – 48. Clarke J. (as he then was) compared the two jurisdictions in *Lopes v Minister for Justice* [2014] 2 IR 301, at p. 309:

> "*An application under the RSC is designed to deal with a 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, as Costello J pointed out at p. 308 of his*

judgment in Barry v Buckley [1981] IR 306, 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."

13. In *Riordan v Ireland (No. 5)* [2001] 4 IR 463, Ó Caoimh J. cited (at p. 466) the identification by the Ontario High Court of various indicia of "vexatious" proceedings. Those particularly apposite include: (a) the bringing up of successive actions to determine an issue which has already been determined in previous proceedings; (b) the pursuit of a claim which obviously cannot succeed, or which would lead to no possible good, or where no reasonable person can reasonably expect to obtain relief; and (c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multiple proceedings brought for purposes other than the assertion of legitimate rights. However, the example of vexatious litigation most relevant to this application concerned claims:

"*where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for and against the litigant in earlier proceedings.*"

Jurisdiction to set aside final determination of an issue in earlier proceedings

14. There is no doubt that courts have an inherent jurisdiction to set aside final orders granted in proceedings which were obtained by fraud. In *Tassan Din v Banco Ambrosiano SPA* [1991] 1 IR 569, Murphy J. accepted that, in principle, a Supreme Court order could be set aside for fraud/wilful concealment of material evidence, citing Lord Simon's observation in the House of Lords decision in the *Ampthill Peerage Case* [1977] AC 547:

"*The impugner of a judgment as obtained by fraud must adduce evidence of facts discovered since the judgment which show a reasonable probability (which I take to mean a prima facie case) of such fraud as would invalidate the judgment...*"

15. Murphy J. also cited the observations of Lord Wilberforce in the same case:

"*There must be conscious and deliberate dishonesty, and the declaration must be obtained by it. … anyone wishing to attack a judgment on the grounds of fraud must make his allegation with full particularity, must when he states it be prepared to prove what he alleges and ultimately must strictly prove it*".

16. However, the jurisdiction to revisit the final decision of another court will not be exercised lightly. Roberts J. noted the observations of Fennelly J. in *Kenny v Trinity College Dublin* [2008] IESC 18 ("*Kenny*"):

"*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.*" (para. 36)

…

"*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 judgment. It will not be enough to show, for example, that a witness lied unless it is shown that the true version of his evidence would probably have affected the outcome… The test would be whether new evidence "changes the whole aspect of the case"… in an action to set aside a judgment based on an allegation that the court was deliberately deceived into making the impugned decision no less stringent test should be required. There must be something fundamental, something that goes to the root of the case.*" (paras 54 and 55)

…

"*the allegation of fraud said to have deceived the former court must be pleaded with particularity and exactness*" (para 57).

Res Gestae, Henderson v Henderson, Collateral Attacks & Abuse of Process

17. These proceedings raise issues in respect of several interrelated doctrines concerning the circumstances in which the pursuit of a particular claim will be deemed impermissible because it would be an abuse of process or otherwise unfair to seek to revisit issues which were (or should have been) resolved in earlier related litigation. There is a long-established jurisdiction to strike out a claim if it seeks to relitigate a matter which has already been decided by a court of competent jurisdiction. In *Reichel v Magrath* (1889) 14 App. Cas. 665, Lord Halsbury stated that:

> "[*I*]*t would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again*".

18. Likewise, as McKechnie J. observed in *First Active Plc v Cunningham* [2018] 2 IR 300, at p. 332, it is not appropriate that proceedings "*should be used as a backdoor by which the appellant can mount an appeal against the earlier decision, when said appeal has already been dismissed by the court*".

19. This is an important matter of principle. While citizens enjoy a constitutional right of access to the courts there is also a need to avoid an abuse of this right to the detriment of other parties. In *Donohoe v Browne* [1986] IR 90, at p. 99, Gannon J. noted it was "*a matter of justice*" to prevent "*the apparent disclaimer of a binding court order by the party bound by it*".

20. Likewise, in *Vico Limited v Bank of Ireland* [2015] IEHC 525, at para. 23, McGovern J. noted that the right of access to the courts under the Constitution or under the European Convention on Human Rights is not unlimited:

> "*The right of access to the courts carries with it the responsibility to accept the decisions of the courts and not to use a court process to launch a collateral attack on or undermine earlier decisions of the courts on similar issues between the same parties or parties with a privity of interest.*"

21. As cases such as *Sweeney v Bus Atha Cliath* [2004] 1 IR 576 show, the courts may dismiss proceedings on the basis that they constitute an abuse of process even though the strict requirements of issue estoppel are not met (because the parties to the different proceedings are not identical). The courts will ensure that the right of access to the courts is not unfairly restricted while preventing litigants from abusing that right of access by the ruse of reconstituting the parties to the proceedings. Keane J. summed up the considerations in its Supreme Court judgment in *McCauley v McDermott* [1997] 2 ILRM 486 (at p. 498):

> "*Res judicata must be applied in all its severity, however, where to do otherwise would be to permit a party bound by an earlier judgment to seek to escape from it, in defiance of the principles that there should ultimately be an end to all litigation and that the citizen must not be troubled again by a lawsuit which has already been decided*".

In that case proceedings were issued against the driver of a car involved a motor traffic accident after the plaintiff had failed in his claim against the car owner. The Court struck out the claim as an abuse of process even though the parties differed.

22. As Costello J. observed in *Morrissey v Irish Bank Resolution Corporation* [2015] IEHC 200, at para. 5, a decision endorsed by the Court of Appeal ([2017] IECA 162):

> "*the courts have always been prepared to balance the rights of parties to have their cases heard and determined by the courts with the rights of the opposing parties to fair procedures in the conduct of litigation and, where necessary, to strike out proceedings if they amount to an abuse of process....*"

23. In *Bula Limited v Crowley* [1997] IEHC 72, Barr J. identified three questions to determine whether a party was bound by findings in earlier proceedings: (i) whether the party was seeking to reopen issues decided against him in the earlier proceedings (ii) whether the finding in question was necessary to the determination, in the earlier proceedings, of the issue to which it relates; and (iii) whether the finding is relevant to an issue raised by that party in the instant proceedings.

24. A party may also be precluded from litigating an issue which – even if it was not actually litigated or decided in earlier proceedings – could and should have been brought forward in those earlier proceedings. This is the rule in *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson v Henderson*"). Wigram L.C. stated that:

> "[*W*]*here a given matter becomes the subject of litigation… the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time*".

25. Palles C.B. endorsed that approach in *Cox v Dublin City Distillery Company (No. 2)* [1915] 1 IR 345, concluding that the defendants were estopped by the decision in an earlier case "*from raising … not only any defences which they did raise in that suit, but also any defence which they might have raised, but did not raise therein*" (p. 372). See also *Doran v O'Reilly* [2011] 1 IR 544, *Cox v Dublin City Distillery Company Limited (No. 3)* [1917] 1 IR 203 and *Martin v Keilty* (1902) 2 NIJR 250. As Bingham M.R. observed in *Barrow v Bankside Members Agency Limited* [1996] 1 WLR 257:

> "*The rule in Henderson v Henderson … requires the parties… to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise … It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not*

be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

26. Hardiman J. commented to similar effect in *Carroll v Ryan* [2003] 1 IR 309, at p. 318, and, in *AA v Medical Council* [2003] 4 IR 302, at p. 316, cited Lord Bingham in *Johnson v Gore Wood* [2002] 2 AC 1, at p. 31:

"*The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interest of the parties and the public as a whole.*"

27. The rule continues to reflect the law in Ireland. In *McFarland v Director of Public Prosecutions* [2008] 4 IR 117, Finlay J. noted that the rule "*discourages parties from keeping points over from one legal proceeding to another*".

28. Defendants are also obliged to bring forward their full case in defending proceedings. In *Fuller v Minister for Agriculture, Food and Forestry* [2013] IESC 52, Clarke J. stated that:

"*the Court has a discretion to prevent a defendant from raising an issue which could and should have been advanced in previous connected proceedings.*"

Claims against Solicitors (or Barristers) by parties against whom they acted in litigation

29. In *Moffitt v Bank of Ireland* (Unreported, Supreme Court, 19 February 1999), Keane J. (as he then was) had observed:

"*the fact that the second named defendant, a solicitor, arranged for the swearing of an affidavit which subsequently turned out to be false, if indeed it is false, affords no cause of action whatsoever against the solicitor. The solicitor merely acts on his instructions. His instructions may be correct or they may be incorrect, but he must act in accordance with his instructions. If those instructions are incorrect or false then, of course, that may give rise to a cause of action to Mr and Mrs Moffitt as against the Bank, but it gives them no cause of action whatever against the solicitor who is merely discharging his professional duties to the client that he is acting for…*".

30. See also *Gilroy v Callanan* [2019] IEHC 480 which, like the present case, involved proceedings issued against solicitors who had represented a bank in summary judgment proceedings against the plaintiff. The proceedings were duly dismissed.

Analysis and Decision

The role of the Applicant and the lack of particulars of claim

31. The Applicant represented the Bank in the Original Proceedings. It was not itself a party to those proceedings. No facts in relation to the Applicant have been particularised in the pleadings (or in the affidavits on the particulars motion) to provide a stateable basis to suggest that it failed to act properly and professionally at all times. However, the Plaintiff has advanced sweeping, unparticularised allegations that the defendants, including the Applicant, misled the Circuit and High Court in the Original Proceedings by knowingly misrepresenting, concealing, failing to disclose and manufacturing evidence. These are extremely serious claims. However, beyond his apparent inability to accept the outcome of the Original Proceedings, the Plaintiff has consistently failed to furnish any particulars of such claims or to provide a stateable basis for advancing such serious allegations against the Applicant.

32. Any party (including an unrepresented party) who makes such serious allegations must provide meaningful particulars to explain and support them. The Court would be severe in its criticism of any lawyer who drafted proceedings making such serious allegations without a proper basis to do so. Order 19, rule 5(2) RSC provides that proper particulars of such allegations must be provided. The rules require:

> "*In all cases alleging misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be set out in the pleadings.*"

33. The Applicant issued a Notice of Motion because the Plaintiff failed to provide such particulars in his original pleadings and then also failed to respond to its Notice for Particulars. O'Moore J. noted that:

> "*... very serious allegations are made against all defendants (without precisely distinguishing materially between each of them). These allegations include assertions of "manufactured evidence", deceit and misrepresentation.*"

34. O'Moore J. directed the Plaintiff to furnish particulars within eight weeks (i.e. by 10 May 2024) in paragraphs 12 – 14, 16 – 19 and 22 - 23 of his judgment. The Plaintiff has not furnished ***any*** of the particulars directed. No explanation has been provided for that default. The Plaintiff's failure to provide proper particulars of his claim in his original pleadings was a grave omission. His failure to meet his obligations to properly plead his claim in the first place was exacerbated by his failure to provide such particulars when requested by the Applicant. His ongoing failure to provide the particulars even when directed to do so by O'Moore J. is even more egregious and calls into question the basis for such allegations and the way in which the claim is being pursued.

35. I do not consider that it would be appropriate (or fair to the defendants) to give any weight for the purposes of this application to allegations in the pleadings which must be regarded as defective and lacking in substance because the Plaintiff has thrice failed to provide proper particulars. Accordingly, I give very short shrift to the unparticularised assertions of fraud, deceit, misrepresentation, concealment or manufacturing of evidence. Such claims are not credible without particulars. It is unfair to defendants to make such allegations years after the alleged events without providing such particulars, all the more so in this case when the allegations relate to events alleged to have taken place between five and seven years ago and when the Plaintiff has not explained his failure to challenge the evidence at the relevant time. The Plaintiff is not entitled to assert fraud purely because he does not like the outcome of the proceedings. His oral submissions did not allege any wrongdoing against the Applicant save

that it or its predecessor firm had represented the Bank against the Applicant. It also appeared from the submissions that a factor in issuing the proceedings against so many parties was to put pressure on the Bank in the hope that a settlement would be forthcoming. This is not a legitimate reason to issue such proceedings or make such claims without a proper foundation. It is an exceptionally grave matter to make allegations of fraud against any person and no such allegation should be filed without good reason and without proper particulars. I have seen no basis whatsoever for the Plaintiff to advance such a plea, particularly against the Applicant.

The Valuation Certificate

36. The claims of "fraud", "deceit" and "manufactured evidence" seem to hinge on the valuation certificate. Despite repeated rulings in the Original Proceedings and the judgment of Roberts J., the Plaintiff still seeks to challenge that document but without putting forward any basis to do so (other than unsubstantiated assertions of fraud). His unhappiness with the outcome of the Original Proceedings is not enough to provide a basis to litigate that issue. The arguments regarding the valuation certificate were (or should have been) fully ventilated in the Original Proceedings. He was legally represented, and the Borrowers defended the proceedings in both courts. They duly challenged the Circuit Court's jurisdiction, the Valuation Certificate and the Plaintiff's interest rate calculations. They failed on all points, a fact the Plaintiff appears unable to accept. There is no basis to reopen such issues.

37. The Plaintiff's position on the valuation certificate is also undermined by the Borrowers' previous application in the Original Proceedings on that very issue (which the Plaintiff did not appeal). The Circuit Court ruled against them. Roberts J noted that:

> "*having been appraised* [*sic*] *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*".

38. In addition, something fundamental going to the root of the case would be required to justify an application to set aside. The Plaintiff has not alleged any such facts. Merely using words such as "fraud", "deceit" or "conspiracy" are not enough. Specific facts must be alleged to support such a plea. Even if the Plaintiff could identify a coherent basis to challenge the valuation certificate and explain his failure to raise any such issue in the Original Proceedings, the valuation certificate would not be the knockout blow he seems to imagine. Roberts J. observed that, even if the Court was to assume that the certificate was "fraudulent", the Circuit Court would still have had jurisdiction. She explained in detail why the Circuit Court would still have had jurisdiction in any event. She concluded that:

> "*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*".

I agree with that conclusion (and the underlying detailed analysis).

39. One of the limited circumstances in which it might be appropriate to reopen a final determination of an issue would be where that determination had been procured by fraud. The Plaintiff has failed to furnish any particulars to suggest any basis for such a claim. Nor is there material before the Court suggesting a basis for the Plaintiff to amend to plead fraud. As Roberts J. noted at para. 50, even if a fraud could be particularised and proven, the alleged fraud would need to be sufficient to entitle the Plaintiff to set aside the final orders in the Original Proceedings, and that this would depend, in turn, on whether the alleged "manufactured evidence" went, in the words of Fennelly J., to the root of the case. The analysis of Roberts J. is equally applicable to the claim against the Applicant:

> "*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 am not satisfied that there is any basis to allege fraud relating to the valuation certificate but, in any event, such an issue would not form a basis to set aside the orders made, as it would not go to the root of the case and would not determine the Circuit Court's jurisdiction.

40. For completeness I should note that, independently of the foregoing points, it is difficult to see a basis upon which the Plaintiff can continue to maintain a claim against the Applicant on the basis that the rateable valuation certificate was fraudulent or fabricated in circumstances in which Roberts J. has dismissed his corresponding claim against the seventh named defendant, who is the individual who drafted and issued the certificate in the course of his official duties. It seems to me that, in those circumstances, it would be impossible to maintain the claim against the Applicant unless extraordinary circumstances were alleged, such as that the certificate was secured under false pretences.

Computation of the Bank's claim

41. The position is similar with regard to the belated attempt to challenge the Bank's calculations. Although he accuses the Bank of misrepresenting the position, the Plaintiff's own position is opaque. Candour is required from a party seeking to set aside an earlier, final, judicial determination. However, the Plaintiff does not explicitly confirm or deny whether: (a) he and his wife borrowed from the Bank to fund the purchase of the Property; (b) the loan was secured by a mortgage over the Property (although he does raise an issue as to execution, albeit somewhat cryptically); or (c) the Borrowers defaulted on repayments. Nor has he disclosed what, if any, figure he accepts as due and payable.

42. As with the valuation certificate, exceptional circumstances would be required before the Plaintiff would be entitled to seek to raise issues about the computation of the debt since

that issue has already been conclusively and validly determined in the Original Proceedings in which the Plaintiff participated. The issues that arose for determination in the Circuit Court Proceedings, including the computation of the debt and the issue as to the Circuit Court's jurisdiction to determine those proceedings, are *res judicata*.

43. For completeness, I should note the Plaintiff's reliance on a supposed discrepancy between a figure appearing on the CBI register as of 25 May 2022 and the figure proved to the satisfaction of the Circuit Court on both 30 March 2017 and 19 February 2019 and reaffirmed by the High Court's dismissal of the appeal on 2 March 2020. I do not consider that, without more, such a reference to a figure cited in a different context and on a different date, can justify allegations of fraud, misrepresentation or concealment of evidence. In any event, there is no suggestion that there would have been a different outcome or that the order for possession would have been refused if the amount outstanding had been €364,837, (the figure apparently provided to the Plaintiff by the Central Bank on a much later occasion), rather than €404,691 (the figure proven to the satisfaction of the Circuit Court years earlier).

44. The computation of the claim has already been confirmed by the courts on three occasions: (a) firstly, at the original hearing in 2017, the Circuit Court was evidently satisfied by the Bank's proofs and gave judgment accordingly. The Borrowers did not appeal that ruling; (b) secondly, in an unusual accommodation, which was evidently designed to offer additional protection to the Borrowers above and beyond the significant safeguards already built into the process for obtaining possession orders, and also to address any concerns raised by the Borrowers about the figures claimed, the Court directed the Bank to provide further details of the applicable interest rates and gave the Borrowers leave to apply to vacate the order for possession if the interest rates were incorrect. As is noted at paragraph above, Bridget Carthy availed of that opportunity. The Circuit Court re-entered the proceedings but re-affirmed the original order for possession in 2019, having afforded the Borrowers a second opportunity to

probe the Bank's figures; and (c) thirdly, Bridget Carthy unsuccessfully appealed that decision but on 2 March 2020 (in the Plaintiff's presence) the High Court affirmed that order. Although the application to vacate the original possession order was brought by Bridget Carthy, it appears that the application and appeal were a joint enterprise. Roberts J. noted at paragraph 12 that the affidavit grounding the application itself included:

> "*a motion and grounding affidavit by* [*the Plaintiff*] *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* [*the Plaintiff*] *ever issued that motion, and it is not referred to in the statement of claim he has filed in these proceedings*."

Roberts J. also noted that the Plaintiff was in court on 2 March 2020 when Hyland J. upheld the Circuit Court order and struck out the appeal on consent.

45. Accordingly, the Plaintiff has not established a legitimate basis to seek to relitigate the amount due. The pleadings (or the two affidavits) do not disclose a stateable basis to reopen the final determination in respect of the valuation certificate or computation issues.

"Constitutional Issues"

46. I see no merit in the Plaintiff's suggestion that these proceedings were required because the proceedings raised constitutional issues and the order for possession was:

> "*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*".

47. It is a truism that all court proceedings, especially possession proceedings, affect the rights of the parties. The Irish courts' procedures are designed to balance, respect and vindicate

such constitutional and other rights. This is also reflected in the judicial oath of office. There is no suggestion that the courts' procedures were not followed. To the contrary, by offering the Borrowers the opportunity to seek a rehearing, and subsequently actually granting them such a rehearing, the Circuit Court – correctly in my view – went even further than normal to ensure the Borrowers had every opportunity to challenge the claim against them. Accordingly, notwithstanding the Plaintiff's broad, unparticularised assertions of breaches of his constitutional or human rights, I am not satisfied that there is a stateable cause of action in that regard. He does, of course, enjoy constitutional rights but the judicial processes in which he has been fully engaged are designed to vindicate those rights. Authorities such as *Kemmy v Ireland* [2009] 4 IR 74 show that many features of our system of justice, including legislation, rules of court, the provision of an independent judiciary and access to appropriate appeal processes are among the safeguards designed to protect constitutional rights. I agree with the observation of Roberts J. at para. 52 of her judgment on this issue. Roberts J. also noted the observations of MacMenamin J. in *Ewing v Ireland* [2013] IESC 44, at para 30 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*".

48. Although the Plaintiff repeatedly refers to his constitutional rights, he ignores the fact that those rights have been vindicated by the exhaustive legal proceedings in which he has already had the opportunity to participate and has indeed participated in practice. As Murray C.J. noted in *Re Vantive Holdings* [2010] 2 IR 118, at p. 124:

> "*Citizens have the right of access to the courts so that their entitlements, rights and obligations may be determined in accordance with due process. Due process means a right to a fair and complete hearing of the issues of law and fact in any proceedings. The courts have always had an inherent jurisdiction to stay or dismiss proceedings which*

abuse the due process of the administration of justice where to do otherwise would seriously undermine its effectiveness or integrity. In addition under the rules of court the courts have, in civil proceedings, the power to dismiss proceedings on the grounds that they are 'frivolous' or 'vexatious'".

Other pleas advanced by the Plaintiff

49. The Plaintiff sought to raise other issues but, even leaving aside the absence of the particulars required to ground claims against the Applicant, such issues were (or should have been) raised in the Original Proceedings. For example, if he or his lawyers had believed that there was any substance in the issue, the Plaintiff would doubtless have contested the Original Proceedings on the basis of his contentions that: (a) the mortgages were invalid because the loan documents were for a commercial loan, whereas the Borrowers were private individuals; or (b) the Borrowers did not actually sign the mortgage in the presence of the solicitor who was supposed to have witnessed their signature. If either point ever had any substance, the Borrowers should have raised them in the Original Proceedings. They do not provide a basis to reopen those proceedings or to relitigate issues years after the issues have been determined. It seems to me that these current proceedings are clearly a last-ditch collateral attack when one attempts to raise matters which are *res judicata.* It would be an abuse of process to allow them to be prosecuted in the current circumstances.

50. Although the point was not pursued with any conviction, I should briefly refer to the plaintiff's assertion in submissions that neither he nor his wife had entered into the mortgage. The basis for this contention was not explained by the plaintiff – there seemed to be no dispute as to the fact that the monies were borrowed and that they were not repaid. Clearly as part of its proofs in the original proceedings, the Bank would have needed to satisfy the Court that the monies had been loaned, the mortgage entered into and that a default occurred. It is not at all clear whether the Plaintiff actually seriously disputes any of those propositions or whether he

is making a more obscure point that he and his wife signed the mortgage deed but not in the presence of the solicitor who was supposed to have witnessed it. In any event, if there was a genuine dispute as to whether the plaintiff and his wife entered into the loan and mortgage or as to the Bank's entitlement to enforce its security then the plaintiff could and should have raised those issues in the original proceedings. There was no indication from the plaintiff of anything new which had emerged in respect of such issues or any new point emerging in respect of these core proofs of the original proceedings. Accordingly, I see no basis to maintain these new proceedings on the basis of such vague, unparticularised assertions.

51. The two affidavits also raised other points (such as para. 10 of the supplemental affidavit) which offered no plausible basis for a claim against the Applicant and which I do not propose to summarise either because they were incomprehensible, extraneous and/or plain wrong and/or because they do not appear to be directed to the Applicant. O'Moore J. dealt at paras. 5 – 7 of his judgment with some of these points, including the Plaintiff's reliance on the creation of a trust and on certain exhibited documents (the Plaintiff sought to adduce similar documentation for the current application). I agree with O'Moore J. in respect of these points and the lack of reality of the Plaintiff's contentions. I would also endorse the comments of Roberts J. (at paras 24 – 32 and 56 – 57 of her judgment) in respect of other points raised and peculiar documents produced by the Plaintiff (similar documentation having been informally presented to the Court on this application). To the extent that such points are advanced against the Applicant, I believe that those arguments and documents are devoid of merit for the reasons articulated by Roberts J..

52. I am satisfied that the Statement of Claim in the present action discloses no stateable cause of action against the Applicant, and I see no plausible basis on which this position would be altered by any amendment to the pleadings. The Original Proceedings conclusively resolved the issues which the Plaintiff now seeks to resurrect. The Borrowers had ample opportunity to

challenge the Circuit Court's jurisdiction or the Bank's computations, or the quality of the evidence relied upon. The outcome in both Courts confirmed that the evidence was in order, the debt was due and owing and the Bank was entitled to an order for possession and sale. All material points raised by the Plaintiff in these proceedings have already been resolved in the Original Proceedings - the Plaintiff has not identified any points which he could not have raised in the Original Proceedings. Accordingly, the claims raised are *res judicata* and/or precluded by the rule in *Henderson v Henderson* and it would be an abuse of process for them to be relitigated, long after the event.

53. There is no basis on the pleadings on which the Applicant could be liable in damages to the Plaintiff for anything arising from the Circuit Court Proceedings. It is not sufficient that they acted for the Bank and that the Plaintiff disagrees with the Bank's evidence. It would be different if, for example, evidence had emerged to suggest a conspiracy to mislead the Court. However, particulars would need to be provided to support such a serious allegation. No such particulars have been forthcoming. The conclusion of Roberts J. that the valuation certificate did not have any material effect on the outcome of the Original Proceedings (because the Circuit Court had jurisdiction independently of it) is a further difficulty confronting any damages claim. It appears that the Plaintiff has no basis to allege that he has suffered any loss by reason of any wrongful act or omission on the part of the Applicant.

54. For completeness, I note that the Plaintiff has also alleged a claim for breach of contract against the Applicant but there is no contract between him and the Applicant. The claims based on breach of duty or breach of statutory duty are equally misconceived since it is not clear what duty the Applicant is alleged to have owed the Plaintiff or how any such duty may have been breached. I do not see any basis for any claim in professional negligence simply based on the Applicant's retainer (by the other side) in litigation against the Plaintiff but, in any event, the Courts have repeatedly made clear that it is inappropriate to initiate any such claims of

professional negligence without expert evidence to substantiate them. There is no suggestion that such evidence is available in this case, and it is very unfair that such allegations should be advanced without such evidence, particularly so long after the event.

55. I also agree with the observation of Roberts J. at para. 55 of her decision, that, having exhausted or failed to avail of the opportunities to appeal orders in the Original Proceedings, it would be an abuse of process for the Plaintiff to now use these proceedings to seek to achieve that objective as a collateral attack on the final court orders in the Original Proceedings. Her conclusion is equally applicable to the claim against the Applicant.

56. Because the Plaintiff has failed to provide any particulars as directed by O'Moore J., the pleadings are entirely deficient. The facts as pleaded could not conceivably give rise to a cause of action without such particulars. In view of the Plaintiff's failure to provide any particulars to support his claims of fraud, conspiracy, deceit, misrepresentation etc. or which would justify reopening issues already determined in the Original Proceedings, I am satisfied that I should dismiss and strike out the claim against the Applicant pursuant to O. 19, r. 28 RSC on the grounds that it is frivolous and/or vexatious and/or that the pleadings disclose no reasonable cause of action and that, in the alternative, I should dismiss the proceedings pursuant to the Court's inherent jurisdiction.

57. I will make an order in the terms of paras. 1, 2 and 3 of the Notice of Motion. I will list this matter before me for 10.45am on Tuesday, 27 February 2024 to deal with any issues arising from this judgment, including legal costs.