APPROVED

THE HIGH COURT

[2024] IEHC 98

Record No. 2021/5874P

BETWEEN:

MICHAEL LEAHY

PLAINTIFF

-AND-

TIPPO INTERNATIONAL LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 16th day of February 2024

INTRODUCTION

Preliminary

1. The Plaintiff is a businessman involved in the business of kitchen worktop manufacturing in County Laois. The Defendant Company carries on the business of manufacturing kitchen components at its premises in Nenagh, County Tipperary. The Plaintiff had an agency agreement with a company based in Germany for the supply of kitchen worktops and the Defendant entered into an agreement with the Plaintiff that allowed the Defendant to distribute this product in Ireland. The business premises ("the premises") was the Defendant's Factory in Kilkeary, Nenagh, County Tipperary.

2. According to the Defendant (Affidavit of Patrick Martin dated 24th March 2022, paragraph 5), it took over the production and sale of the kitchen worktops and agreed to pay a consultancy fee to the Plaintiff, also agreeing to make certain payments to the Plaintiff in respect of machinery. The (joint venture) agreement between the parties was dated and endorsed on 21st June 2008 and this business relationship came to an end culminating in a mediated settlement agreement dated 4th September 2018. The parties have subsequently been involved in a series of legal disputes and litigation.

3. In this application, issued by way of Notice of Motion and date stamped 31st March 2022, the Defendant Company seeks two orders against the Plaintiff: first, it seeks an order invoking the inherent jurisdiction of the court dismissing the Plaintiff's proceedings in this action (*Record Number 2021/5874P*) as being bound to fail; second, the Defendant seeks what is effectively an *Isaac Wunder* Order against the Plaintiff,

prohibiting him from issuing further proceedings against the Defendant or the Defendant's solicitors without the leave of the President of the High Court.

Preliminary objection: discovery

4. Mr. Leahy ("the Plaintiff") is a litigant in person. At the commencement of this application, he raised a preliminary objection stating that this application was premature in circumstances where he had an extant discovery application. Having considered the order of the Deputy Master of the High Court in that application, I decided that this application should proceed.

5. Mr. Paul Gallagher BL appeared for the Defendant.

6. There is, as stated earlier, a protracted history of litigation between the parties, and between the Plaintiff and third parties, which provides the immediate context to this application and which is referred to later in this judgment.

PLENARY PROCEEDINGS: RECORD NO. 2021/5874P

7. The Plaintiff issued a Plenary Summons in Record No. 2021/5874P on 15th October 2021 and delivered a Statement of Claim on 21st January 2022.

8. By way of general overview, in the Statement of Claim, the Plaintiff alleges certain financial consequences arising from the parties' business relationship: (i) before and

after a fire which took place at the premises on or about 26th October 2016; and (ii) from the use of machinery at the Defendant's factory through "wear and tear".

9. The Plaintiff seeks: (1) damages for the Defendant's alleged negligence and/or breach of contract and/or breach of duty (including statutory duty) and breach of duty of care whereby it is alleged that, arising from the Defendant's failures, the Plaintiff has suffered loss and loss of earnings and loss of opportunities; (2) damages for alleged loss of earnings within the last 6 years; (3) damages for alleged loss of opportunities within the last 6 years.

10. The Plaintiff alleges the following particulars of damage (the extracts referred to are quoted verbatim from the Plaintiff's pleadings):

> "*[o]n the Defendant effectively unilaterally ending the 2008 contract after the fire, the Plaintiff suffered the loss of opportunity by the Defendant not from the proceeds of the insurance claim and/or by the financial relief gained by the Defendant with the Plaintiff's "commissioned production line/facility" coming to the Defendant's business in not putting the Plaintiff back in the position of the Joint Venture and/or in the alternative depriving the Plaintiff of having a commissioned production line/facility to manufacture and carry on his trade*."

11. The Plaintiff also pleads the reservation of his right to amend the Statement of Claim.

12. Six particulars of negligence are pleaded by the Plaintiff under the sub-heading "Particulars of Negligence."

13. In the first paragraph under the sub-heading "Particulars of Negligence", for example, the Plaintiff alleges that "*[t]he Defendant was negligent in that the factory while been built over the years with add on buildings, that in 2008 a new era of fire protection when building Hall 3 of which contained the Plaintiff's machinery there ought to have been sufficient fire wall and fire door protections from other areas of the factory to contain the fire away from the Plaintiff's machinery and the production facility full preventing the destruction of the commissioned production line/facility the Plaintiff relied on and/or reduce the damage to the commissioned production facility the Plaintiff relied on.*"

14. The commissioned production line facility is described in paragraph 12 of the Statement of Claim as "*[c]ore machinery all connected through the servicing lines formed a commissioned production unit while specified and designed to produce innovation contoured worktops was in addition a self-contained universal production facility for the related products within the kitchen industry.*"

15. There then follows four particulars of negligence which pleads variations of a plea alleging the Plaintiff's machinery and "*commissioned production line/facility*" came to the Defendant's business at zero cost and that the Defendant was allegedly negligent in not repairing/replacing their "*wear and tear*".

16. The sixth paragraph, alleging particulars of negligence, pleads that "… *the Defendant was negligent in that they did not insure the Plaintiff's losses at all and/or in full*."

17. Variations of the aforesaid pleas are also alleged in ten paragraphs setting out particulars of "breach of duty" alleging *inter alia* that the Defendant breached its duty to the Plaintiff in, for example, not having financial relief to replace (i) the Plaintiff's machinery due to wear and tear; (ii) the commissioned production line facility after the fire of 26th October 2016 (irrespective of the Defendant's insurance claim). It is also alleged, for example, that the Defendant breached its duty to the Plaintiff in that, as of the agreement dated 21st June 2008, the Defendant did not insure the Plaintiff's risk, has not fully compensated the Plaintiff for his alleged loss of income resulting from the October 2016 fire, and has not placed the Plaintiff in the equal position of the Defendant following the commissioning of the rebuilding the factory.

18. The Plaintiff pleads six particulars of alleged breach of contract, two of which refer to the "2008 agreement" (alleging failure to insure the Plaintiff against risk and ending the agreement) and one of which refers to the 2018 agreement (alleging a failure to bring the Plaintiff back to the status quo position prior to the 2018 agreement), and others alleging no priority to worktop production in the fully commissioned rebuilt factory, not insuring the replacement of the Plaintiffs' commissioned production line/facility at all or 'old for new.'

19. Accordingly, it is the above action – *Record No. 2021/5874P* – which the Defendant seeks to dismiss as bound being bound to fail in this application in addition to seeking an *Isaac Wunder* order against the Plaintiff.

20. I now briefly set out the arguments of the Defendant and the Plaintiff.

SUMMARY OF THE DEDENDANT'S ARGUMENTS

Affidavit of Patrick Martin sworn on 24th March 2022

21. The rationale grounding the Defendant's application to dismiss and to seek an *Isaac Wunder* order is set out in the Affidavit of Patrick Martin, sworn on 24th March 2022.

22. Mr. Martin states by reference to proceedings issued by the Plaintiff – *The High Court, Between Michael Leahy (trading as Ideal Kitchens) (Plaintiff) v Tippo International Ltd (Defendant)* (*Record No. 2014/1623S*) dated 23rd June 2014 – that the Plaintiff has issued proceedings *arising out of the same matters* in dispute in these proceedings, namely (*Record Number 2021/5874P*).

23. Mr. Martin then refers to a successfully mediated settlement agreement dated 4th September 2018 and quotes the terms of that agreement as follows:

> "*(11) I say that as per the settlement agreement the parties:*
>
> - *Acknowledged the termination of the [agreement] entered into on the 21st June 2008 and the termination of all and/or any variation of the said agreement entered into thereafter;*

- *Agreed that the Defendant would pay the Plaintiff the sum of €550,000. A payment of €100,000 was to be made on the 8th October 2018 and subsequent payments of €50,000 per month were payable on the 8th day of the month;*
- *Agreed that the sum was to be in full and final settlement of all claims howsoever arising between the parties, including but not limited to claims for machinery, fees due and notice period;*
- *The Plaintiff agreed to discontinue proceedings between the parties Record No. 2014/1623S.*

(12) I say and believe that the Defendant has complied with the settlement agreement …".

24. Reference is then made to unrelated proceedings entitled *Circuit Court Record No. 2010/EJ003: Michael Doyle v Michael Leahy t/a Ideal Kitchens*.

25. In these unrelated proceedings, Mr. Michael Doyle obtained an order from the Circuit Court (Her Honour Judge Doyle) on 28th September 2018 against the Plaintiff in the sum of €29,796 and on 6th November 2018 the Circuit Court (His Honour Judge O'Donoghue) directed that the Defendant (Tippo International Ltd) pay into court the sum of €29,796 and €20,000 towards costs (to be taxed in default of agreement) pending the outcome of the Plaintiff's appeal, and these sums were paid into court on 26th November 2016.

26. The Plaintiff did not appeal that order but did appeal the substantive case to the High Court (Murphy J.) which dismissed the appeal on 28th March 2019 in a judgment which is reported as *Doyle v Michael Leahy t/a Ideal Kitchens & Bedrooms* [2019] IEHC 192. The Plaintiff then issued new proceedings against Mr. Doyle and his legal advisers bearing record number 2019/922OP. I was informed at the date of this application that the proceedings bearing Record No. 2019/922OP remain extant.

27. Apparently, the Plaintiff then issued fresh proceedings against the Defendant and the Defendant's solicitors, Andersen & Gallagher Solicitors on 5th March 2020, stating that the order of Judge O'Donoghue directing the payment of the sums into court should not have been complied with. The Defendant brought a motion to dismiss these new proceedings on 14th July 2020 and that application, in addition to other motions, were ultimately heard by the Circuit Court (His Honour Judge Quinn) who *inter alia* acceded to the order to dismiss.

28. Mr. Leahy then brought an application for leave to apply for judicial review against the decision of Judge Quinn. This court (Hyland J.) refused the leave application and in *Leahy v Circuit Court Judge* [2023] IECA 6, the Court of Appeal (Allen J.) confirmed the decision of this court (Hyland J.) refusing Mr. Leahy leave to apply for judicial review seeking an order of *certiorari* against the decision of Judge Quinn dated 14th July 2020. The Court of Appeal found that Mr. Leahy had failed to identify any error in the judgment of the High Court. The complex background to these various proceedings, including those commenced in the Circuit Court and, in some cases appealed to the High Court (Circuit Appeal) or sought to be judicially reviewed, are set

out in detail in the judgment of the Court of Appeal (Allen J.) in *Leahy v A Circuit Court Judge & Ors* [2023] IECA 6, particularly at paragraphs 3 to 16.

29. Returning to the Defendant's application, under sub-heading "*1st Relief Sought in the Notice of Motion– Proceedings Bound to Fail*", Mr. Martin states the following at paragraphs 25, 26, 27 and 28 of his Affidavit:

> "*(25) I say that it is clear that the proceedings herein relate to the same matters raised in the proceedings bearing record number 2014/1623S.*
> *(26) I say that the Plaintiff has previously engaged in mediation in relation to this dispute and has agreed a settlement agreement with the Defendant covering this dispute and all other disputes between the parties. I say that the Defendant has complied with all terms of the settlement agreement. I say that the proceedings herein make no reference to the previous proceedings or to the settlement agreement.*
> *(27) I say that the settlement agreement clearly covers the issues referred to in the proceedings herein and in the circumstances the Plaintiff can have no prospect of success in these proceedings.*
> *(28) I say and believe and am advised that in the circumstances the proceedings herein are bound to fail.*"

30. Under sub-heading "*2nd Relief Sought in Notice of Motion – Prohibiting the Plaintiff from issuing further proceedings against the Defendant or the Defendant's solicitors without leave of the President of the High Court*", Mr. Martin states the following at paragraphs 29, 30 and 31 of his Affidavit:

"*(29) I say that it is clear from the foregoing that the Plaintiff has habitually and persistently instituted vexatious or frivolous civil proceedings against this Defendant and the Defendant's solicitors, and there is [a] [sic.] clear pattern of similar conduct by the Plaintiff in the Michael Doyle v Michael Leahy trading as Ideal Kitchens proceedings.*

(30) I say and believe that this Defendant should not have to meet proceedings repeatedly issued by this Plaintiff in circumstances where a full and final settlement agreement was entered into between the parties in 2018 and where the Defendant has complied with the terms of same.

(31) Accordingly I beg this Honourable Court for an Order in terms of the Notice of Motion herein with such other Reliefs as the court deems fit."

The application of Henderson v Henderson

31. Mr. Gallagher BL, on behalf of the Defendant, maintains that this action against it should be dismissed and the Plaintiff be conditionally prohibited from issuing any further proceedings against the Defendant and its solicitors because the Plaintiff has *already litigated* these matters before the courts – Circuit Court, High Court and Court of Appeal – which, he submits, has already addressed and determined the disputes. Against that submission, the Plaintiff claims that these proceedings are new proceedings.

32. Counsel makes reference to paragraph 9 of Mr. Leahy's Affidavit sworn on 2nd February 2023, where the Plaintiff avers that these proceedings in Record No. 2021/5874P arise out of "… *two fundamental issues (i) The breach of the Mediation agreement [,] [sic.] the missed payment due on the 8th November 2018 (ii) Misrepresentation by the defendant as to the [statue] [sic.] and value of which the Plaintiff's machinery would be treated by the Defendant's insurance firm.*"

33. Mr. Gallagher BL points out that the first issue – "*(i) [t]he breach of the Mediation agreement, the missed payment due on the 8th November 2018*" – was the subject of the matters ultimately addressed in the judgment of the Court of Appeal in *Leahy v A Circuit Court Judge* [2023] IECA 6 and before that, the Circuit Court and the High Court.

34. Mr. Gallagher BL further submits that the second issue – "*(ii) [m]isrepresentation by the defendant as to the [statue] [sic.] and value of which the Plaintiff's machinery would be treated by the Defendant's insurance firm*" – is covered by the rule in *Henderson v Henderson* and that the limited exceptions to that rule (such as fraud) have no application in this case.

35. Counsel submits that the following averment by Mr. Leahy at paragraph 32 of his affidavit sworn on 2nd February 2023 does not bring the Plaintiff within the limited exceptions of the rule in *Henderson v Henderson*:

> "*[t]he Mediation financial settlement was grounded on what I now believe was a misrepresentation by Paddy Martin that my machinery*

as destroyed in the 2016 fire – would only realise the financial used value of the machinery on the date of the fire – of which would not put me back in the position prior to the 2008 Tippo/Leahy contract – when in fact, my machinery was replaced by the insurance CRITERIA of OLD for NEW – I say that fundamental the defendant engaged in a CON against the plaintiff and his spouse by the misrepresentation of the insured value – and this misrepresentation has made the 2018 Mediation Agreement invalid as an alternative to the Defendant missing a payment in November 2018 – and as of that the Applicant's Motion should be struck out …".

36. It is submitted on behalf of the Defendant that this is the height of the Plaintiff's case.

37. It is further submitted on behalf of the Defendant that the seeking of discovery by the Plaintiff in this regard, as exemplified by the Plaintiff in his argument that this application should await the discovery, is an attempt by the Plaintiff to come at the same issues from a different perspective.

SUMMARY OF THE PLAINTIFF'S ARGUMENTS

38. In his replying submissions, the Plaintiff addressed a number of matters which went beyond replying to the submissions from Mr. Gallagher BL and were outside the scope of this application.

39. I will therefore only refer to those matters which are relevant to the application before the court.

40. In relation to the position of Mrs. Kathleen Leahy, the point which Mr. Leahy seeks to make is by reference to paragraph 5 of the mediated settlement agreement dated 4th September 2018 which provides that Mr. Leahy t/a Ideal Kitchens "… *agrees that he enters into this settlement on his own behalf and on behalf of Kathleen Leahy and Ideal kitchens.*"

41. Mr. Leahy places reliance on paragraph 5 (as just quoted) and says that this lies at the heart of the matter. His argument in this respect is that in the contractual agreement dated the 21st June, 2018 (the joint venture between Michael Leahy and Patrick Martin of Tippo International Limited) which was the subject of the mediated agreement dated 4th September 2018 there are two references to the J-V company, which was proposed to be established, paying to Kathleen Leahy the sum of €1.5 million at a minimum rate of 25% of its annual profit and for it to be adjusted downwards in accordance with schedule 1 of that agreement. His complaint is that the Order of Judge O'Donoghue dated 6th November 2018 arose from an *ex parte* application on behalf of Mr. Michael Doyle in proceedings entitled *The Circuit Court, Michael Doyle (plaintiff) v Michael Leahy t/a Ideal Kitchens (Defendant)* which recited in paragraph 1 that "… *in respect of any monies which the Defendant will recover in an action entitled The High Court, Michael Leahy v Tippo International Limited Record No. 2014/1623S that Tippo International Limited pay the sum of €29,796.00 into court in respect of the Plaintiff's Judgment against the Defendant and a further sum of €20,000.00 into Court in respect of costs (to be taxed in default of agreement) pending the outcome of the Defendant's*

Appeal of the within proceedings", *i.e.,* Mr. Leahy submits that the basis of the mediated settlement agreement (and his receipt of monies) were the matters recited in paragraphs 1 and 2 of that agreement, namely the parties agreement to terminate the contractual agreement – which include matters relating to payments due to Mrs. Kathleen Leahy - and arising from those matters (which involve Mrs. Kathleen Leahy), Tippo International Limited agreed to pay Mr. Leahy €550,000 and not the agreement to discontinue the proceedings in *No. 2014/1623S.*

42. Paragraph 2 of the Order stated that "*[t]his Order to be served on Andersen Gallagher Solicitors for Tippo International Limited*."

43. Mr. Leahy confirms that the Order of Judge O'Donoghue dated 6th November 2018 was not appealed but submits, as just stated, that the sums in the mediation agreement dated 4th September 2018 referenced in paragraph 2 (€550,000) and paragraph 3 had nothing to do with the discontinuance of the (invoice) proceedings with *Record No. 2914/1623S* referenced in paragraph 4 of the mediated settlement (which he describes as a cleaning up exercise) and that his wife, Mrs. Kathleen Leahy as a beneficiary to that mediation agreement would not have consented to any sums being paid over, *i.e.*, he submits that an Order was obtained from the Circuit Court (His Honour Judge O'Donoghue) in November 2018 in circumstances notwithstanding that Kathleen Leahy, who he says was part of the mediated settlement agreement, had not agreed. Mr. Leahy submits that he did not appeal the Order because: (1) the Defendants had broken the agreement by making the payment; (2) that being the case, Mr. Leahy claims that the terms of mediated settlement agreement allowed him to proceed. The above is the alleged misrepresentation which Mr. Leahy now asserts in this application.

44. Mr. Leahy then refers to the averments, particularly at paragraphs 4 and 5 of the Affidavit of Mr. Noel Gallagher Solicitor, sworn on 12th June 2020 in the proceedings entitled *The Circuit Court (South Eastern Circuit, County of Kilkenny), Michael Leahy v Tippo International and Anderson & Gallagher Solicitor (Record No. 33/20)* as follows:

> "*(4) I say that the Plaintiff commenced proceedings against the First Named Defendant bearing the title Michael Leahy trading as Ideal Kitchens v Tippo International Ltd and bearing record number 2014/1623S. The proceedings arose out of a business agreement which had been in place between the Plaintiff and the First Named Defendant for the production and sale of worktops. I say that the Second Named Defendant was the solicitor representing the First Named Defendant in those proceedings.*
>
> *(5) I say that the parties agreed to enter mediation. A mediation agreement was entered into by the parties prior to the mediation taking place. The first paragraph of the agreement states that the parties wished "to attempt to resolve all commercial differences between the parties (which arise in High Court proceedings entitled TIPPO INTERNATIONAL LIMITED V MICHAEL LEAHY)." I say that while the parties have been named in the wrong order in the mediation agreement, it was clearly accepted by both parties that the mediation was an attempt to resolve the proceedings referred to in the preceding paragraph. I say that there were no other disputes between the Plaintiff*

*and the First Named Defendant. I beg to refer to a copy of the mediation agreement upon which marked with the letters "**NG1**" I have signed my name prior to the swearing hereof.*"

45. Mr. Leahy alleges in relation to paragraph 5 of Mr. Gallagher's affidavit that the reference to High Court proceedings at that time is incorrect. He says the only High Court proceedings were the summary summons proceedings in Record Number 2014/1623S (in relation to the invoice) and that there were no proceedings with regard to the fire.

46. Mr. Leahy also submits that mediated settlement agreement was in relation to the fire and machinery, machinery which he understands was valued at €3.2 million (Mr. Leahy in his submissions also referenced pounds) and not in relation to the 2014 summary summons proceedings or to what Mr. Leahy described as "*the historical invoice*" adding that the summary summons proceedings were issued for a debt and not a breach of contract. However, Mr. Leahy says that the mediated settlement agreement is not part of his claims in these proceedings, namely Record No. 2021/5874P, and he posits three grounds for saying this.

47. First, he says the Defendant missed a payment and attributes an alleged motivation to different parties. However, paragraph 6 of the mediated settlement agreement states: "*[i]n default of any one payment, the Respondent [Mr. Leahy t/a Ideal Kitchens] may pursue any or all claims against the Applicant giving credit for any sums discharged*." This is interpreted by Mr. Leahy as meaning that if the Defendants missed a payment, he is entitled and can issue proceedings for that payment as long as he credits the

payments which have been made to that point but does not have to re-imburse those amounts. Further, he says that he is entitled to bring proceedings because the mediated agreement is truly broken, and because of that, there is no mention of the mediated settlement agreement in proceedings in Record No. 2021/5874P.

48. Second, he says that the doctrine of estoppel applies, and he alleges that the Defendant succeeded before a court in making this representation, namely that there were no other disputes between the Plaintiff and the First Named Defendant, and he asserts that the Defendant cannot now say, in this application before me, that there were other proceedings. In other words, Mr. Leahy interprets Mr. Gallagher as stating that there were no other proceedings issued in the mediation other than the 2014 summary proceedings and therefore the first named Defendant cannot come to court now and say that there are other proceedings in the application before me. He says that the defendants are seeking to cover the fact that they made a payment which they were not entitled to make (as referred to above).

49. Third, Mr. Leahy submits that he understood that the insurance company would only pay for the value of the machinery as of its valuation date on the day of the fire. He says that he was informed that the alleged insurance claim was for at least €3.2 million. He says that when he visited the factory it was clear that while some machinery had been changed for new machinery, one piece of machinery (the BIMA 410V), however, was not changed because it had an 8 month delivery time, and it appears that they were only going back to worktop manufacturing. He alleges that the only right the Defendant had to claim from the insurance company for machinery was on his behalf and that if they claimed for a sum beyond €350,000 for him, they misrepresented what the value

was (the second alleged misrepresentation). He added that he issued the summary proceedings in Record No. 2014/1623S because he was concerned about the 2008 invoice becoming statute-barred.

50. Mr. Leahy submitted that his partnership with Mr. Martin had flourished until the fire occurred at the factory in October 2016. Mr. Leahy states that up to the time of the mediated settlement agreement dated 4th September 2018, he had received payments of approximately €1,000 per week from the Defendant.

51. Mr. Leahy referred to his and his wife's involvement in the 'Bank of Scotland' case (*Leahy v Bank of Scotland* [2021] IECA 194, where the Court of Appeal (Faherty J.), in upholding the decision of this court (Simons J.), found that Mr. and Mrs. Leahy had not persuaded the court that the trial judge erred in striking out the claim against the Bank pursuant to O. 19, r. 28 of the Rules of the Superior Courts, 1986.

52. Mr. Leahy maintains that the within proceedings – Record No. 2021/5874P – and the Statement of Claim delivered on 21st January 2022 make no reference to the summary proceedings in Record No. 2014/1623S regarding the 2008 invoice.

Response on behalf of the Defendant

53. In summary, Mr. Gallagher BL responded to the three main arguments put forward by the Plaintiff as follows: first, in relation to the breach of payment, he says that while it was unfortunate that this was not paid before His Honour Judge O'Donoghue made his order, this was addressed before the Circuit Court, High Court and Court of Appeal;

second, in relation to the Plaintiff's estoppel argument, Mr. Gallagher BL submits that it is clear that there was one dispute between the Plaintiff and the Defendant, and the reference in the mediated settlement agreement to "*Between Tippo International Limited (Applicant) v Michael Leahy (trading as Ideal Kitchens (Respondent)*" was a typographical error and that the title should have been the other way around, and referenced again that the dispute went to mediation and it had been addressed extensively by the courts, including the Court of Appeal; third, Mr. Gallagher BL submitted that Mr. Leahy had failed to explain why the insurance issue raised by him now had not been raised by him prior to the mediated settlement agreement, or why it is of importance now, or why it was not raised in the discovery request previously.

54. Mr. Gallagher BL submitted that the Plaintiff had failed to address the third paragraph of the settlement agreement dated 4th September 2018 which stated – "*[t]he said sums to be in full and final settlement of all claims howsoever arising between the Parties including but not limited to claims for machinery, fees due and notice period*"– and states that the settlement agreement was about all of the issues between the parties, including machinery.

55. In response to the argument of Mr. Gallagher BL that Mr. Leahy has failed to address this, Mr. Leahy states that the machinery referred to in paragraph 3 of the mediated settlement was that described in the Agreement between Tippo International Limited and Michael Leahy dated 21st June 2008, *i.e.*, "*[t]he Machinery Shall include BIMA 410V, Contour work processing machine and the Biesse Model Stream,B1/.9 Single Sided Edgebander with PUC Gluing SystemMachinery [sic.] shall be jointly owned* …".

56. Mr. Leahy says this is completely different to the machinery particularised in his claim for €242,000 in the Summary Summons (bearing Record No. 2014/1623S) and dated the 23rd June 2014, which is the amount Mr. Leahy alleges is due to 'Michael Leahy trading as Ideal Kitchens' on foot of Invoice No. 08240 dated 28th June 2008 for the sale of kitchen component manufacturing machinery and referred to a bearn saw with loading table, compressed air system compressor, air dryer tank, hot pressure press, dust extraction system, vacuum lift, twin surface glue spreader.

57. Mr. Gallagher BL submitted that the Plaintiff had failed to make out a case or a factor that could be deemed to be an exception to *the rule in Henderson v Henderson*, such as fraud. He submitted that many of the matters raised by Mr. Leahy had already been raised before the Circuit Court, High Court and the Court of Appeal. In relation to the position of Mrs. Kathleen Leahy, Mr. Gallagher BL observes that Mr Leahy has at all times, including at the mediation, represented himself as the person negotiating the settlement agreement on his own behalf and on behalf of Mrs. Kathleen Leahy and that these matters related to the payment order made by His Honour Judge O'Donoghue, which was not appealed, and the time for addressing that matter was back then. He also submitted that all of these matters had been before the Circuit Court, the High Court and the Court of Appeal. He submitted that allegations of bias raised by the Plaintiff were previously addressed in the judgment of the Court of Appeal in *Leahy v A Circuit Court Judge* [2023] IECA 6 per Allen J. at paragraph 56. Mr. Gallagher BL points out that at the time of the 2014 proceedings and the mediation the Defendant had a different firm of solicitors acting for it and clarifies that there may not have been a formal notice of change of solicitors.

58. Mr. Gallagher BL submits that the requirements are met which would allow the court to dismiss the Plaintiff's proceedings and for the Court to make an *Isaac Wunder* order, in that the Plaintiff is engaged in repeated litigation, arguing the same points and raising arguments and cases which have nothing to do with the application before the court and making it clear that he intends to issue further proceedings. Further, it was submitted that insofar as Mr. Leahy had stated that he intended to issue further proceedings, the Plaintiff had already issued proceedings against legal representatives. Mr. Gallagher BL submits that the court can consider in the context of considering the dismissal of the case and *the rule in Henderson v Henderson*, issues such as harassment in what will be the Defendant's third year of dealing with such claims.

ASSESSMENT & DECISION

Dismissal based on Inherent Jurisdiction

59. The approach which the court must adopt to this application by the Defendant Company was outlined by the Supreme Court (McCarthy J.) in *Sun Fat Chan v Osseous Ltd.* [1992] 1 I.R. 425, where he observed at page 428 that generally the High Court should be slow to entertain an application of this kind (see also *Kenny v Trinity College Dublin* [2008] IESC 18, (Unreported, Supreme Court, 10th April, 2008) at para. 35 and in *Ewing v Ireland* [2013] IESC 44, (Unreported, Supreme Court, 11th October, 2013)). Further, the Supreme Court (McCarthy J.) observed in *Sun Fat Chan v Osseous Ltd.* [1992] 1 I.R. 425 at 428, that a statement of claim should not be dismissed in the

exercise of the courts' inherent jurisdiction if it "… *admits of an amendment which might so to speak, save it and the action founded on it*".

60. Further, in *Ewing v Ireland & The Attorney General* [2013] IESC 44, the Supreme Court (MacMenamin J.) (at paragraphs 26 to 28) referred to the Court's inherent power to strike out entire proceedings in a range of cases including *Barry v Buckley* [1981] I.R. 306, *Sun Fat Chan v Osseous Ltd* [1992] 1 I.R. 425, in order to ensure that an abuse of court process does not take place, adding at paragraph 27: "*[t]his more radical power should be used sparingly. A court must take the plaintiff's case at its highest, and assume that all the relevant matters which are pleaded by a plaintiff will be established by him. A court must also take into account that a situation may exist where a simple amendment of the pleadings could "save" the case*."

61. MacMenamin J. in *Ewing v Ireland & The Attorney General* [2013] IESC 44 (at paragraph 28) referred to the decision of the High Court (O'Caoimh J.) in *Riordan v Ireland (No. 5)* [2001] 4 I.R. 463, where O'Caoimh J. considered *Dykun v Odishaw* [2000] ABQB 548 (Unreported, Alberta Court of Queen's Bench, Judicial District of Edmonton, 3rd August, 2000), which in return referred to the decision of the Ontario High Court in *Re Land Michener and Fabian* (1987) 37 D.L.R. (4th) 685 where that Court held that the following matters tended to show that a proceeding was vexatious:

> *(a)* "*… the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*

(b) where it is obvious that an action that cannot succeed, or if the action would lead to no possible good, or if no reasonable person could reasonably expect to obtain relief;

(c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) 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 or against the litigant in earlier proceedings;

(e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;

(f) where the respondent persistently takes unsuccessful appeals from judicial decisions."

The rule in Henderson v Henderson

62. The second limb of Mr. Gallagher BL's argument on this issue is based on the application of the decision in *Henderson v. Henderson* (1843) Hare 100.

63. In *Kearney v Bank of Scotland Plc & Horkan* [2020] IECA 92, the Court of Appeal (Whelan J.) at paragraphs 109 to 112 observed that the '*rule in Henderson v Henderson*' was analogous to the rule established by Palles C.B. in *Cox v Dublin City Distillery (No. 2)* [1915] 1 I.R. 345 which was based on *the doctrine of estoppel*.

64. Whelan J. referred to the decision of the Supreme Court in *AA v The Medical Council* [2003] IESC 70, [2003] 4 I.R. 302, which summarised and cited with approval the principle in *Henderson v Henderson*, where Wigram V.C. stated at p.115: "… *where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward the whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter 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*."

65. Whelan J. in *Kearney v Bank of Scotland Plc & Horkan* [2020] IECA 92 at paragraph 111 of her judgment observed that Wigram V.C.'s dictum in *Henderson v Henderson* ought not to be over-rigidly applied, nor should it operate in an absolutist fashion so as to diminish or unreasonably encroach upon the constitutional right of access to the courts by litigants.

66. Whelan J. referred to the following observations of Hardiman J. in *AA v The Medical Council*, who cited Bingham LJ in *Johnson v Gore Wood & Co*. [2002] 2 A.C. 1 with approval where the latter had stated at p. 31:

"*Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not twice be 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 interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all*."

67. In *Carroll v Ryan* [2003] IESC 1; [2003] 1 I.R. 309 at page 319 Hardiman J. made a similar observation stating that he agreed "… *with what was said by Lord Bingham in Johnson v. Gore Wood & Co. [2002] 2 A.C. 1 at p. 32 when, speaking of the rule in Henderson v. Henderson (1843) Hare 100, he said "an important purpose of the rule is to protect a defendant against the harassment necessarily involved in repeated actions concerning the same subject matter".*"

68. In *Kearney v Bank of Scotland Plc & Horkan* [2020] IECA 92, the Court of Appeal (Whelan J.) also addressed the application of the rule in *Henderson v Henderson* and at paragraph 113 of her judgment, Whelan J. observed that in operating the principle, *a weighing exercise* must be engaged upon to ensure that the respective rights of all

parties to litigation are respected and that the public interest is not undermined. Whelan J. referred to the following observations of Murray CJ in *Re Vantive Holdings* [2009] IESC 69, [2010] 2 I.R. 118 at paragraph 20:

> "*[c]itizens have the right of access to the courts so that their entitlement, 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'.*"

69. As mentioned earlier, the Court has an inherent power to dismiss an action to prevent an abuse of process if it is established that there is no credible basis for suggesting that the facts are as asserted (by the Plaintiff in this case) and that the proceedings are bound to fail on their merits.

70. Mr. Leahy states that the mediation agreement (described in seven paragraphs) between Tippo International Limited and Michael Leahy t/a Ideal Kitchens and dated the 4th September 2018 did not arise out of litigation *per se* and was solely in relation to the matter described in paragraph 1 of the typed draft agreement which stated: "*[t]he Parties acknowledge the termination of their agreement entered into on the 21st day of*

June, 2008 and the termination of all/or any variations of the said agreement entered into thereafter."

71. The second paragraph provided that Tippo International Limited would pay Michael Leahy t/a Ideal Kitchens the sum of €550,000 by way of periodic payments in the manner described. Paragraph 3 provided that "… *the said sums to be in full and final settlement of all claims however arising between the Parties including but not limited to claims for machinery, fees due and notice period*". The fourth paragraph stated that "*[t]he Respondent agrees to discontinue the proceedings between the Parties Record No. 2014/1623S …*".

72. Mr. Leahy contends that the sole purpose of the mediation agreement dated 4th September was to terminate the agreement (and variations of it) between the parties dated 21st June 2008. This, he says, was the effective ending of the parties' previous partnership on terms which included the payment of €550,000 to Mr. Leahy in stage payments. While, as just pointed out, the mediation agreement provides for the discontinuance by Mr. Leahy of the proceedings between the parties issued by way of Summary Summons bearing Record No. 2014/1623S and dated the 23rd June 2014, these proceedings related to the Plaintiff's claim for €242,000 which was alleged to be the amount due to the Plaintiff by the Defendant pursuant to an invoice (Invoice No. 08 240) dated 28th June 2008 for the sale of kitchen component manufacturing machinery by the Plaintiff to the Defendant comprising the following machine types: bearn saw with loading table, compressed air system compressor, air dryer tank, hot pressure press, dust extraction system, vacuum lift, twin surface glue spreader.

73. I also note the observation of McCarthy J. in *Sun Fat Chan v Osseous Ltd*. [1992] I.R. 425 at page 428 and endorsed by the Supreme Court (Clarke J.) in *Lopes v Minister for Justice* [2014] 2 I.R. 301 that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance.

The Mediated Settlement Agreement dated 4th September 2018

74. Put briefly, therefore, the court's jurisdiction should be exercised sparingly and only in clear-cut cases where the court is certain that the proceedings are bound to fail rather than, for example, being weak or where it is sought to have an early determination of a legal point.

75. In my view, the mediated settlement agreement dated 4th September 2018 is an important document which this court is entitled to consider in line with the observations of the Supreme Court (Clarke J.) in *Keohane v Hynes* [2014] IESC 66 and adopted by the Court of Appeal (Whelan J.) *Kearney v. Bank of Scotland Plc and Horkan* [2020] IECA 92. Those cases establish that the court can only engage in a limited form of factual analysis and have regard to the following factors: (a) where the documentary record governs the parties legal rights and obligations and, in this case, the court is entitled to ask whether or not there is any other evidence outside of that documentary record which could realistically have a bearing on the rights and obligations concerned; (b) where the only evidence which could be put forward concerning essential factual allegations made on behalf of the plaintiff is documentary evidence, then the court can examine that evidence to see if there is any basis on which it could provide support for a plaintiff's allegations; (c) a court may examine an allegation to determine whether it

is a mere assertion and, if so, to consider whether any credible basis has been put forward for suggesting that evidence might be available at trial to substantiate it.

76. It is also important to note that this mediated settlement agreement dated 4th September 2018 was referred to by the Court of Appeal (Allen J.) in *Leahy v A Circuit Court* [2023] IECA 6 at paragraph 4 describing "*the background facts*", where Allen J. *inter alia* referred "*… to the settlement agreement between Tippo and Mr. Leahy was made in full and final settlement of all claims howsoever arising but referred in particular to High Court proceedings Record No. 2014/1623S which Mr. Leahy had brought against Tippo, which, by the terms of the settlement agreement, Mr. Leahy agreed to discontinue*." The context for the Court of Appeal's consideration of matters in that case was its rejection of Mr. Leahy's appeal against the decision of this court (Hyland J.) refusing Mr. Leahy leave to apply for an order of *certiorari* by way of judicial review against the decision of His Honour Judge Quinn dated 14th July 2020 where he *inter alia* acceded to the Defendant's motions to dismiss Mr. Leahy's application and refused Mr. Leahy's motion for judgment.

Decision on the first issue

77. To recap, under sub-heading "1st Relief South in the Notice of Motion– Proceedings Bound to Fail", Mr. Martin states these proceedings – Record No. 2021/5874P – relate to the same matters as in the (Invoice) Summary Summons proceedings in Record No. 2014/1623S; that the Plaintiff engaged in mediation in relation to <u>*this dispute*</u> *i.e.*, in relation to the (Invoice) Summary Summons proceedings in Record No. 2014/1623S and agreed a settlement with the Defendant covering <u>*this dispute and all other disputes*</u>

between the parties, noting that the Defendant had complied with all terms of the settlement agreement. Mr. Martin states that in these proceedings – Record No. 2021/5874P – the Plaintiff make no reference to the previous proceedings or to the settlement agreement. Mr. Martin states that the settlement agreement clearly covers the issues referred to in these proceedings – Record No. 2021/5874P – and therefore, the Plaintiff can have no prospect of success in *these proceedings* and he is advised in those circumstance that these proceedings are bound to fail.

78. When a comparison is made with the alleged claim and pleas contained in this case (*i.e.*, Record No. 2021/5874P and as set out in the earlier part of this judgment) with the alleged claim commenced by way of Summary Summons *The High Court, Between Michael Leahy (trading as Ideal Kitchens) (plaintiff) v Tippo International Ltd (Defendant)* (*Record No. 2014/1623S*) dated 23rd June 2014 – where the Plaintiff claimed the sum of €242,000 which was alleged to be the amount due to the Plaintiff by the Defendant pursuant to an invoice (Invoice No. 08 240) dated 28th June 2008 for the sale of kitchen component manufacturing machinery by the Plaintiff to the Defendant (comprising the following machine types: bearn saw with loading table, compressed air system compressor, air dryer tank, hot pressure press, dust extraction system, vacuum lift, twin surface glue spreader) - I do not consider that the Defendant has shown that the alleged claim in *Record No. 2021/5874P* should have been raised in the earlier proceedings in *Record No. 2014/1623S*, if it was to be raised at all, or that it satisfies the test in *Henderson v Henderson* (as set out above).

79. The mediated settlement agreement dated 4th September 2018 between the Plaintiff and the Defendant at paragraph 3 states that *the sums referred to in paragraph 2* (amounting

to €550,000) were ***in full and final settlement of all claims howsoever arising*** between the parties – Michael Leahy (trading as Ideal Kitchens) and Tippo International Limited – including but not limited to claims for ***machinery,*** fees due and notice period. On an application to dismiss for being bound to fail, while this court can review the mediated settlement agreement dated 4th September 2018 in the manner outlined in the decisions in *Keohane v Hynes* [2014] IESC 66 and *Kearney v Bank of Scotland Plc and Horkan* [2020] IECA 92, it cannot, however, resolve disputes as to fact and disputes as to law. Rather, such disputes should be addressed at a full trial and at the hearing of the action: *Moylist Construction Ltd. v Doheny* [2016] 2 I.R. 283. In this case, there is a dispute as to facts and to law and it is not the function of this court to express any view on the weaknesses or strengths of that issue but rather, it is a matter which will be required to be addressed by the trial judge in due course.

80. Further, the default position is that proceedings should be permitted to proceed and the onus in this regard was on the Defendant in this case. In resisting such an application, a plaintiff, in the position of Mr. Leahy, does not necessarily have to prove by evidence all of the facts asserted. A plaintiff, like any other party, has available the range of procedures provided for in the Rules of the Superior Courts, 1986 to assist in establishing the facts at trial, including, for example, discovery. All that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted, and which are necessary for success in the proceedings, bearing in mind that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance. In the earlier part of this judgment the Plaintiff's Statement of Claim in these proceedings, Record No. 2021/5874P, was referenced. This includes *inter alia* claims for negligence where the

Plaintiff alleges that the Defendant was negligent in, *inter alia,* the provision of fire wall and fire door protections from other areas of the Defendant's factory to contain the fire away from the Plaintiff's machinery and the production facility for failing to insure the Plaintiff's losses.

Decision on the second issue

81. In seeking an *Isaac Wunder* Order, Mr. Martin in his Affidavit, sworn on 24th March 2022, refers to "*2nd Relief Sought in Notice of Motion – Prohibiting the Plaintiff from issuing further proceedings against the Defendant or the Defendant's solicitors without leave of the President of the High Court*" and by way of summary of paragraphs 29, 30 and 31 of his Affidavit, he states that the Plaintiff has habitually and persistently instituted vexatious or frivolous civil proceedings against this Defendant and the Defendant's solicitors pointing to what he ways is a similar pattern of conduct by the Plaintiff in the *Michael Doyle v Michael Leahy trading as Ideal Kitchens* proceedings. Again, as with the application to dismiss, Mr. Martin states a full and final settlement agreement was entered into between the parties in 2018 and that the Defendant has complied with the terms of same.

82. The jurisdiction to make an *Isaac Wunder* order derives from the decision in *Wunder v. Irish Hospitals Trust (1940) Limited* (unreported, Supreme Court, 24th January 1967). The Superior Courts have a clear jurisdiction to make an *Isaac Wunder* order in an appropriate case: *Riordan v Ireland (No 4*) [2001] 3 IR 365, 370*; Irish Aviation Authority v Monks* [2019] IECA 309. In *Kearney v Bank of Scotland Plc & Horkan* [2020] IECA 92, the Court of Appeal (Whelan J.) at paragraphs 131 and 132 also

observed that *Isaac Wunder* type orders can be made by the High Court pursuant to its inherent jurisdiction to restrain the further prosecution by a party to proceedings without leave of the court. Whelan J. observed that the power of the superior courts to attach such restraint to the institution or continued prosecution of civil litigation extends to existing proceedings and to new proceedings, and also to proceedings before any of the lower courts. Whelan J. observed that in the case of new proceedings, such restraint may, in an appropriate case, include an order restraining the institution of proceedings against present, former or anticipated legal representatives of parties to the litigation. This is essentially the order sought by the Defendant in paragraph 2 of its Notice of Motion.

83. Whelan J. also observed that *Isaac Wunder* orders now form part of the panoply of the courts' inherent powers to regulate their own process. In setting out the applicable principles, Whelan J. observed that "… *in light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:*

(1) Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.

(2) Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or their legal

representatives or other professionals connected with the other party to the litigation.

(3) The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.

(4) Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.

(5) The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.

(6) It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.

(7) Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.

(8) Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by article 6, to which the courts have regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.

(9) The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined

(10) Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.

(11) An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, "vexatious" and this may present a

risk of inherent bias in the event that afresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.

(12) Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it …".

84. The judgments of Haughton J. and Collins J. in *The Irish Aviation Authority v Monks* [2019] IECA 309 emphasise the point that such an order should not be seen as some form of ancillary order that follows routinely or by default from the dismissal of a party's claim, whether on its merits or on a preliminary strike-out motion and that "… *is so even if considerations of res judicata and/or Henderson v Henderson arise. The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed. It is also important that the order made be framed as narrowly as practicable (consistent with achieving the order's objective) …*".

85. While the following comments were made in the context of the rule in *Henderson v Henderson*, Lord Bingham in *Johnson v Gore Wood & Co.* [2002] 2 A.C. 1 at p. 32

(quoted by Hardiman J. *AA v The Medical Council* [2003] IESC 70, [2003] 4 I.R. 302), observed that "*an important purpose of the rule is to protect a defendant against the harassment necessarily involved in repeated actions concerning the same subject matter*". Mr. Gallagher BL emphasised the point that Mr. Leahy's proceedings amount to harassment against the Defendant.

86. Having considered the arguments made by Mr. Gallagher BL and in carrying out the balancing exercise which the court must do when considering an application for an *Isaac Wunder* order or an order made in terms of paragraph 2 of the Notice of Motion dated stamped 31st March 2022, I am not persuaded, for the following reasons that such an order should be made in this case.

87. First, I have, for example, already held that the reference in paragraph 3 of the mediated settlement agreement dated 4th September 2018 that the sums referred to in paragraph 2 (amounting to €550,000) were in full and final settlement of all claims howsoever arising between the parties – Michael Leahy (trading as Ideal Kitchens) and Tippo International Limited – including but not limited to claims for machinery, fees due and notice period will be a matter for determination at the trial of the action.

88. Second, in balancing the claim of alleged harassment of the Defendant arising from this and previous litigation, I must also consider the competing rights of access to the courts of the Plaintiff and the nature of the claim alleged in Record No. 2021/5874P.

89. Third, in having regard to the importance of ensuring limited court resources are available to those who require same the most, I must also consider that it is not the

function of the courts to protect a litigant from what has been described as an "*insatiable appetite for litigation*."

90. Fourth, I do not believe that the above factors identified by the Court of Appeal (Whelan J.) in *Kearney v Bank of Scotland Plc & Horkan* [2020] IECA 92, the Court of Appeal (Whelan J.) in the context of the claim alleged in Record No. 2021/5874P meet the requirements for the making of an *Isaac Wunder* order in this case.

91. Finally, in considering the reliefs sought by the Defendants in this case, I have also had regard to the history of litigation involving the Plaintiff to date including the Circuit Court proceedings (referred to earlier in this judgment), the judgment of the Court of Appeal (Costello, Binchy and Allen JJ.) upholding the decision of the High Court (Hyland J.) in *Leahy v Circuit Court Judge* [2023] IECA 6. In that case the Court of Appeal (Allen J.) set out in detail Mr. Leahy's litigation history in the Circuit Court and the High Court. In their determination in that case, the Court of Appeal (Allen J.) confirmed the decision of this court (Hyland J.) refusing Mr. Leahy leave to apply for judicial review seeking an order of *certiorari* against the decision of Judge Quinn dated 14th July 2020. The Court of Appeal found that Mr. Leahy had failed to identify any error in the judgment of the High Court.

92. In *Leahy v Bank of Scotland* [2021] IECA 194 the Court of Appeal (Faherty J.), in upholding the decision of this court (Simons J.), found that Mr. and Mrs. Leahy had not persuaded the court that the trial judge erred in striking out the claim against the Bank pursuant to O. 19, r. 28 of the Rules of the Superior Courts, 1986. The Court of Appeal held that even if the matters pleaded by the plaintiffs would prevail at the trial, the

plaintiffs' case against the Bank was bound to fail. Paraphrasing Clarke J in *Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 2, the Court of Appeal held that their claim against the Bank "*must be vexatious*" and, accordingly, must be dismissed under the Rules of the Superior Courts, 1986. Faherty J. affirmed the order of the trial judge and the trial judge's order striking out the plaintiff's motion dated 4th February 2019. Recently, this court (Mulcahy J.) in *Leahy & Leahy v Bank of Scotland PLC, Pentire Property Finance Limited, Pepper Finance Corporation & Tom Kavanagh* [2023] IEHC 246 refused the Plaintiff and Mrs. Leahy an injunction *inter alia* compelling the removal of a receiver over certain property; the judgment of the High Court (Circuit Court Appeal) (Murphy J.) in *Doyle v Michael Leahy t/a Ideal Kitchens and Bedrooms* [2019] IEHC 192 was referred to extensively by Mr. Leahy during the hearing of this application.

93. In the circumstances, therefore, I refuse the Defendant's application seeking (i) an Order invoking the inherent jurisdiction of the court dismissing the Plaintiff's proceedings in Record Number 2021/5874P as being bound to fail. I also refuse the Defendant's application seeking (ii) an Order prohibiting the Plaintiff from issuing further proceedings against the Defendant or the Defendant's solicitors without leave of the President of the High Court.

PROPOSED ORDER

94. Accordingly, I will make an order refusing the Defendant's application seeking (i) an Order invoking the inherent jurisdiction of the court dismissing the Plaintiff's proceedings in Record Number 2021/5874P as being bound to fail. I will also make an

order refusing the Defendant's application seeking (ii) an Order prohibiting the Plaintiff from issuing further proceedings against the Defendant or the Defendant's solicitors without leave of the President of the High Court.

95. As Mr. Leahy is a litigant in person, subject to the views of the parties, no further order arises. I shall put the matter in for mention before me on Wednesday 21st February 2024 at 11:00am.