THE HIGH COURT

[2025] IEHC 35

[Record No. 2017/377SP]

BETWEEN

WENDY DOYLE

PLAINTIFF

AND

EUGENIE HOUSTON

DEFENDANT

JUDGMENT of Mr Justice Liam Kennedy delivered on 30 January 2025.

1. This judgment deals with applications by Ms Houston that I should recuse myself from dealing with these and related proceedings. (To avoid confusion, I will refer by the parties by name rather than as plaintiff or defendant, since this litigation involves a host of different proceedings, and each party has been the plaintiff in some and the defendant in others).

Background to these and related proceedings

2. The complex and long running litigation originally arises from an order made (on consent) in Ms Houston's High Court defamation claim against Ms Doyle, in which no damages were awarded and costs were awarded against Ms Houston. The dispute has spawned multitudinous satellite proceedings, applications, pleadings, affidavits, hearings, orders and judgments over the years. I am only the latest of a succession of judges who have dealt with different aspects of the sorry saga. Its history (to that point) is summarised in the appendix to my 6 March 2024 judgment [2024] IEHC 104

("6 March judgment") which, for convenience I attach to this judgment as well ("the Appendix") at Schedule 1. For the reasons set out in that judgment and in a related judgment [2024] IEHC 273 dated 14 May 2024 ("14 May judgment"), I struck out proceedings bearing Record No. 2023/1876P concerning, inter alia, a challenge by Ms. Houston to Ms. Doyle's attempts to register judgment mortgages against Ms. Houston's home. I awarded costs to Ms Doyle. As the judgments explained, I did so on the basis that the proceedings were frivolous and vexatious and the pleadings disclosed no reasonable cause of action. I also concluded, inter alia, that the issues which Ms Houston was seeking to raise were res judicata, having already been determined by successive judgments and orders of the Courts and that the proceedings were a collateral attack on earlier judgments and orders in the wider litigation. Ms Houston had issued proceedings 2023/1876P following the High Court's dismissal of an earlier, similar, set of equally unmeritorious proceedings which Ms Houston had issued and I considered that it was an abuse of the processes of the Court to use new proceedings to mount a collateral attack on earlier judgments and orders or to obstruct the enforcement of such judgments and orders (including judgment mortgages registered pursuant thereto, which had already been the subject of well charging proceedings and orders for and of possession).

My Ex Tempore Ruling on a Recusal Motion on 11 October 2023

3. In the course of the two day hearing that led to my two written judgments, I gave ex tempore rulings in the course of the hearing of the dismissal application in those proceedings, including a ruling ("the Original Ruling") rejecting an application by Ms Houston that I recuse myself, which, if I had acceded to it, would have necessitated the abandonment of a two day specially fixed hearing to dismiss the proceedings, thus delaying the proceedings and exposing the parties to additional costs. Some points raised by Ms Houston in support of her original application and rejected in my Original Ruling have been directly or indirectly referenced in the context of the applications to which this judgment is addressed. However, I do not regard those points as having substance, for the reasons set out in my Original Ruling, which was not appealed.

4. Following my striking out proceedings 2023/1876P, Ms Doyle resumed her attempts to enforce the Order for Possession which Quinn J had granted back in 2022 based on debts arising from cost awards against Ms Houston in the litigation over the years including pursuant to the consent order in the defamation proceedings). Ms Houston was repeatedly warned that her home was liable to be repossessed but she continued to fail to discharge the debt due to Ms Doyle, which was secured by longstanding judgment mortgages over the property. Ms Houston maintains the judgment mortgages, the Well Charging and Possession orders and all related enforcement steps and judgments of the Courts are void (a proposition I rejected in the 6 March Judgment) and she continued to refuse to vacate her home in accordance with the 2022 order. Nor did she make any attempt to pay the monies awarded to Ms Doyle, which would have resolved the situation.

5. As a result of Ms Houston's protracted refusal to comply with outstanding orders despite being given ample opportunity to do so, Ms Doyle proceeded with execution processes. The usual enforcement procedures (which are intended, inter alia, to protect both parties' property rights, whether viewed from an Irish constitutional or European Union law perspective) were followed. The Kildare County Registrar/Sherriff took possession of Ms Houston's home. However, Ms Houston continues to dispute the validity of the judgment mortgages and associated judgments and orders of the Court. Rather than apply to the Court on the basis that her property rights were infringed, Ms Houston resorted to "self-help", breaking back into the house which had been seized by the Sheriff. She currently remains there. Ms Doyle maintains that it was unlawful for Ms Houston to re-enter the house following its lawful seizure. She sought attachment and committal orders against Ms Houston for contempt of the High Court 2022 Order for Possession.

The decision by Quinn J to recuse himself

6. The initial hearing of the application took place before Quinn J (coming to him as it was dealt with in the examinership list) in November 2024. Ms Houston gave oral evidence as she had not delivered a replying affidavit (despite having been afforded opportunities to do so). Ms Houston raised, inter alia, the fact that Quinn J was named as a Defendant in proceedings bearing Record No.

2023/1456 P *Houston v Denham & Ors* issued on 30 March 2023 against 23 judges. Ms Houston has apparently not progressed those proceedings. She has not served a Statement of Claim. Although Ms Houston did not bring a formal recusal application, Quinn J considered the issue of his own motion when she raised the issue. He determined that objective bias was not established merely because he had been named as a defendant in the 2023 proceedings. Although he concluded that he was not obliged to do so, Quinn J decided *"with great reluctance"* that he would recuse himself from further involvement in the proceedings. In stepping aside in the absence of objective bias, Quinn J cited Kelly J's judgment in *Ryanair Limited v Terravision London Finance Limited* [2011] IEHC 244 ("*Terravision"*), in which Kelly J. pragmatically concluded that, although there was no objective bias, he would assign the matter to another judge to avoid the delay or controversy that might arise if he were to hear the matter and his refusal to recuse himself was to be appealed.

The referral of the application(s) to me

7. Quinn J's recusal necessitated the rehearing of the attachment and committal application before a new judge, so he transferred the application to me on the basis that I had assumed responsibility for the examinership list. Ms Houston subsequently submitted that the application should be dealt with in the chancery list, which is in open Court, unlike the examinership list, and I acceded to her application but remained seized with it but in the chancery list. Sanfey J subsequently also nominated me to deal with Ms Doyle's application for an *Isaac Wunder* order against Ms Houston (which had been issued as long ago as 26 March 2024. In addition, since then, I have been case managing other related applications which the parties seek or propose to seek against each other in these and related proceedings since it makes sense to deal with such interrelated matters together so as to avoid undue delay or expense for the parties (and to avoid unnecessarily taxing the resources of the Court). Two further, recently issued, applications are particularly relevant - Ms Doyle's application to restrain Ms Houston from trespass in respect of the property (on the basis that Ms Doyle, rather than Ms Houston, is the party who is now lawfully entitled to possession of the property pending its sale). The trespass motion essentially replaces the attachment and committal application

(which Ms Doyle is no longer pursuing and in respect of which Ms Houston is seeking costs), and Ms Houston's application to injunct Ms Doyle from further enforcement steps. Both applications are pending before me.

The 26 November 2024 listing

8. When the attachment and committal application was first listed before me on 26 November, while stressing that she was not making an application, Ms Houston queried whether I should recuse myself. She expanded her submissions on an unsolicited basis to identify judges who she deemed unacceptable, apparently on the basis of past rulings, and volunteered the names of a few High Court judges who she deemed acceptable, adding that:

> *"I have to leave a few over for the Court of Appeal. I didn't appeal your judgment and orders because at the moment, I wouldn't be able to put together three judges in the Court of Appeal civil: maybe on the criminal side. There just aren't three judges available to - who would, who would be able to hear this case. So, I'll be saying in exercise of Article 19 enforcement that I'm naming judges who can hear- who will have to be moved up to the Court of Appeal or Supreme Court".*

Ms Houston also volunteered the names of two District Court judges, a Circuit Court judge and a High Court judge, who might form a panel to deal with any appeal from the High Court in these proceedings but none of those individuals are (yet) members of the Court of Appeal.

9. At the 26 November 2024 hearing before me (as in subsequent hearings) Ms Houston emphasised that she was invoking her rights under Article 47 of the Charter of Fundamental Rights of the European Union ("the Charter") and Article 19 of the Treaty on European Union ("TEU"), and that any national provisions that obstructed the enforcement of her guaranteed rights must be disapplied in accordance with the Law of the European Union. She said that any restriction on her sharing pleadings with the European Commission would be unlawful (but I subsequently clarified to her that there was no such restriction in her sending a complete set of the pleading, orders, judgments and related documents to the Commission nor, in fairness had any such suggestion been advanced on Ms Doyle's behalf in the proceedings before me).

10. Having reflected on Ms Houston's submissions, I informed the parties that I had not identified any basis on which I should recuse myself but that she was free to bring a formal application by notice of motion and grounding affidavit if she wished to pursue the issue and she should not be inhibited about doing so. I gave directions for the issuance of such an application and for the filing of affidavits with a view to facilitating any such application and progressing its expeditious resolution.

The 6 December 2024 Recusal Application

11. Ms Houston failed to issue a notice of motion and grounding affidavit to explain the basis on which she considered that I should recuse myself. Her explanation when the matter was next before me on 6 December 2024 was that she apprehended that the Central Office might not let her file such documents so she did not attempt to issue the application. While I was not satisfied by this explanation, Ms Houston still wished to pursue the recusal application. Accordingly, and notwithstanding her failure to comply with my previous direction that any recusal application should be made formally, on affidavit, in order to avoid further delay and to give her ample opportunity to raise her concerns I allowed her to pursue the issue by oral application.

12. Having considered both parties' submissions on the oral recusal application, I informed the parties that I remained of the view that there was no proper basis on which I should recuse myself. I offered to provide written reasons for my decision if required but Ms Houston said there was no need at that stage. However, she also stipulated that she was "reserving her position" in that respect. Indeed, at a subsequent directions hearing on 18 December 2024 (one of the last days of term) at which, for various reasons, it proved impossible to proceed with yet another scheduled hearing of various motions, she did request such reasons and I agreed to provide the same in due course. I also gave further case management directions in respect of the pending applications (including proposed applications and proceedings) and adjourned all matters to Tuesday 21 January 2025 for mention[1].

[1] I inadvertently caused some confusion as to whether the motions were listed for hearing or for mention on 20 January. As the matter had been listed for hearing before Christmas when the hearing had to be adjourned, I incorrectly assumed at the start of the new term that the January listing was a resumption of the adjourned hearing. However, when reviewing the previous proceedings in preparation for the listing, I realised that, as the protracted submissions of 17 and 18 December had gone back and forth, various references indicated an

Issuing of Proceedings by Ms Houston on Friday 17 January 2025

13. On 17 January 2025, while Ms Doyle's *Isaac Wunder* application was pending before me, Ms Houston issued High Court proceedings ("the 17 January Proceedings") against 16 defendants, including:

- Ms Doyle and her solicitors and counsel
- Ireland
- the Attorney General
- the Minister for Justice
- the Courts Service
- the former Registrar/Sheriff of County Kildare
- Seven judges.

I was one of the seven judges named among the 16 defendants.

21 January 2025 Recusal Application

14. At the outset of the 21 January 2025 hearing Ms Houston referred to the issuing of the 17 January Proceedings and made a further application for me to recuse myself, since I was now a defendant (along with, inter alia, Ms Doyle and her legal team) in proceedings issued by Ms Houston. The gist of her new submissions appeared to be that, as a result of her having named me as a defendant, I now could not be seen as impartial and must necessarily recuse myself and that she would appeal my decision if I declined to recuse myself. Ms Doyle did not agree that I should recuse myself in the circumstances.

15. Having reflected on both sides' submissions I concluded that I should not recuse myself and informed the parties that I would set out my reasons in writing. I made clear that I intended to

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understanding that some or all of the matters would be listed for mention only on 20 January. I raised the issue at the outset of the listing on 20 January, asking the parties to confirm their understanding as to whether the listing was for hearing or mention (because I would not have taken either party short). Both parties confirmed their understanding that the matters were listed for mention only, for directions, and I confirmed that we would proceed on that basis. Although Ms Houston has suggested that the matter was deliberately listed for hearing so as to put pressure on her, there is no basis for that suggestion.

continue to deal with the matter and would give directions with a view to progressing the matter so the various applications could be brought to hearing as soon as possible. However, I noted Ms Doyle's entitlement to appeal my decision and her indication that she was likely to do so. I was not minded to stay the various applications pending any such appeal because the applications had already been repeatedly delayed and it was important that they should be brought to a hearing without further delay. Nor was it necessary to do so in order to facilitate Ms Houston's right to appeal because further affidavits and submissions needed to be exchanged before those motions would be ready for hearing. I confirmed that I would provide written reasons for declining to recuse myself (which I am now doing) and that Ms Houston could lodge her appeal while the parties progressed the exchange of affidavits and submissions on the various motions in the next few weeks. On that basis, Ms Houston could apply to the Court of Appeal to seek to have any appeal dealt with before the hearing of the substantive applications which are pending before me, failing which I would continue to deal with the applications. If the Court of Appeal was to determine that I should recuse myself (or at least to step aside until the appeal had been heard), the directions given would ensure that the matters could still progress to hearing before a new judge without any more additional delay than necessary. For completeness, Schedule 2 below sets out the agreed directions with regard to progressing the various motions and proposed motions. The directions gave leave for Ms Houston to file and serve certain additional possible motions which she indicated that she was minded to bring together with directions to progress any such proposed motions without prejudice to any of the parties' (and, indeed, the Court's) position in respect of such motions.

16. Accordingly, this judgment explains my reasons for rejecting the 6 December 2024 and 20 January 2025 recusal applications (and for declining to stay the various applications pending any appeal from this judgment) and I will deal with them in turn. However, I will first identify the relevant legal principles.

Applicable Legal Principles

17. The legal position with regard to judicial impartiality is clear and, as well as reflecting on the Bangalore principles, I have had regard to relevant authorities including, in particular, *R. v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256, *In Re Polites* (1991) 173 CLR 78 ("*Re Polites*"), *Ebner v Official Trustee* [2000] HCA 63, (2000) 176 ALR 644 ("*Ebner*"), *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] Q.B. 451, *Bula Limited v Tara Mines Limited* (No. 6) [2000] 4 IR 412 ("*Bula*"), *Rooney v Minister for Agriculture & Ors* [2001] 2 ILRM 37 ("*Rooney*"), R. *(Daly) v Secretary of State for the Home Department* [2001] UKHL 26, *Terravision, Goode Concrete v CRH plc* [2015] 3 IR 493 ("*Goode*"), *O'Reilly v Garda Commissioner* [2018] IECA 34 ("*O'Reilly*"), *Ulster Bank v McDonagh* [2022] IECA 180 ("*McDonagh*"), *Promontoria (Finn) Limited v Armstrong* [2024] IECA 73 ("*Armstrong*") and my own recent judgment in *In the matter of Seán Dunne* [2024] IEHC 685. Since the principles are well established, I will confine myself to some key references.

18. In the seminal Irish decision in *Bula,* the Supreme Court rejected an application to set aside a judgment when it emerged (after the hearing of the appeal) that there had been, it was suggested:

> "*Links, relationships and connections between the defendants in the suit and two of the three members of [the Supreme] Court who determined the appeal…and further that those links, relationships and connections were of such a character, strength, proximity and closeness, that the appeal hearing has not the appearance of detachment and impartiality but rather gives the impression, perception, reasonable suspicion/apprehension and appearance of unfairness and of possible bias, thereby constituting in law apparent or objective bias, contrary to constitutional justice*."

19. The Court found that the then Chief Justice's involvement and professional links with the respondent were limited to legal advice on a technical planning point. The respondents had also intended to instruct him to represent them for a planning hearing, prior to his becoming a judge. The other judge's involvement was more extensive, having acted for and against the respondent and having advised the respondent on the mining regime at the boundary of the parties' respective mining operations. These circumstances were not sufficient to show objective bias. The Court's formulation of the objective test, which has been consistently followed in subsequent decisions was as follows:

> "*whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues…".*

The Court held that the test was not met since it was well understood that barristers may appear on the prosecution/plaintiff side one week and on the defence side the next. The fact that a judge previously acted for or against a party as a legal advisor or advocate was not sufficient to disqualify them. Denham J observed that:

> *"The circumstances must be considered to see if they establish a cogent and rational link so as to give rise to the reasonable apprehension test. The link must be relevant."*

20. In *Rooney,* a farmer sued various parties including the Government and the Irish Farmers Association ("IFA") claiming compensation for tuberculosis infected cattle. He sought to set aside a Supreme Court dismissal of his appeal after it emerged that, while at the Bar, one of the judges who dealt with the appeal had advised and acted on behalf of the IFA, a party to the High Court litigation (although not, it appears, to the particular issue under appeal). In particular, he had advised as to farmers' constitutional rights (or lack of them) to compensation for infected cattle. The Court noted that the professional relationship and the advice could be considered from two standpoints. First, it was suggested that the advice given as a barrister constituted a pre-judgment of an issue arising in the appeals. Secondly, it was suggested that his relationship with the client (as 'standing counsel') amounted to more than an isolated professional commitment. The Court concluded that neither standpoint would lead a reasonable person to a justifiable fear that such factors would prevent a completely fair and independent hearing on the issues arising on the appeal. Keane CJ noted that it was fundamental to the administration of justice that judges should be (and be seen to be) independent and impartial, citing *Sussex Justices* and observing that:

> "*It has long been recognised that the appearance of bias is as damaging to the administration of justice as its operation".*

21. Keane CJ referenced the prudent practice that - ***if he had any reservations about the matter*** - the judge should disqualify himself if either party invites him to do so but added that:

> *"…a judge cannot permit a scrupulous approach by him to be used to permit the parties to engage in forum shopping under the guise of challenging the partiality of the court."*

Keane CJ also noted the appropriateness of judges disclosing the existence of any factor which either party might consider was capable of affecting the reality or the appearance of an impartial administration of justice but added that

> *"Every such disclosure, however, should not lead automatically to disqualification."*

22. The Supreme Court noted that: (i) parties to the main appeal had not been advised by the judge; (ii) the matter on which he had advised the IFA was not material to the judgment; and (iii) the appeal from the dismissal of the claim against the IFA did not involve any issue upon which the judge had advised. Applying *Bula*, the Court concluded that no reasonable bystander would perceive

> *"any cogent and rational link between the involvement of Mr. Justice O'Flaherty with the Seventh Defendant and his judgment on either appeal".*

23. The Court also noted and approved Australian authorities which deal with the position of a judge who had advised as a lawyer on an issue which subsequently comes before that judge for judicial interpretation. In *Re Polites*, the Deputy President of the Australian Industrial Relations Commission disqualified himself from continuing as a member of the commission hearing a dispute, when it emerged that the solicitor/client relationship had existed between him and a party to the dispute, in the course of which he had advised his clients on procedures to deal with a particular labour problem (not the issue under consideration). The former client secured an order from the High Court of Australia requiring Mr Polites to resume his participation in the hearing (on the basis that he should not have recused himself). Murphy J. adopted the court's observation that:

> *"A prior relationship of legal adviser and client does not generally disqualify the former adviser on becoming a member of a tribunal (or of a court for that matter), from sitting in proceedings before that tribunal (or court) to which the former client is a party.*
>
> *In a subsequent case decided in the Federal Court of Australia (AI v. Betty King [1996] 436 FCA 1) the proceedings involved a challenge to the validity of certain notices purported to be issued pursuant to the National Crime Authority Act 1984. The judge (Merkel J) informed counsel for the parties that he had given advices to the National Crimes Authority some six or seven years previously with regard to the validity of notices under the National Crime Authority Act in an unrelated matter. On that basis counsel for the respondent pressed the judge to disqualify himself but he refused to do so. Having considered the authorities (and ex p. Hoyts in particular) he concluded as follows:*
>
> *Even if a question of law arising for determination is the same question as that which is the subject of the advice, in my view a reasonable observer would apprehend that the legal question considered in 1990 would be fairly and impartially considered by me afresh in the light of the submissions put and the evidence adduced by the parties in this proceeding. Put more accurately, it has not been established, let alone firmly established, that the parties or the public might entertain a reasonable apprehension that I might not bring an impartial and*

unprejudiced mind to the resolution of each of the issues to be resolved in the present case. The expression of a view of the law by counsel, without more, whether to a party later coming before that erstwhile counsel as a judicial officer or otherwise, does not afford a basis for concluding that he or she might not bring an impartial and unprejudiced mind to the same question of law arising in a different factual context.

Merkel J amplified his views on the question of bias in Aussie Airlines Pty Ltd v. Australian Airlines (1996) 135 ALR 753 where he stated:

In my view, as with the cases considering personal, family and financial interests the decision in the cases dealing with professional association between adjudicator and litigant demonstrate that the courts do not take a hypothetical or unrealistic view of an association relied upon in a disqualification application. In particular they appear to accept that the reasonable bystander would expect that members of the judiciary will have had extensive associations with clients but that something more than the mere fact of association is required before concluding that the adjudicator might be influenced in his or her resolution of the particular case by reason of association. Although the test is one of appearance it is an appearance that requires a cogent and rational link between the association and its capacity to influence the decision to be made in the particular case.

These Australian cases and the passages quoted from them were cited with approval in judgments delivered by this Court in the Bula case".

24. In *Goode* it emerged that the judge had a pecuniary interest in one of the parties to the litigation (he had disclosed that he might have a shareholding but it transpired it was a substantial interest due to investments made on the judge's behalf of which he had been unaware). Denham CJ:

a. applied *Bula,* stressing at para. 54 that:

   "As it is an objective test, it does not invoke the apprehension of a judge, or any party: it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts."

b. cited the leading Australian decision, *Ebner,* with approval:

   "… in a case of real doubt, it will often be prudent for a judge to decide not to sit in order to avoid the inconvenience that would result of an appellate court were to take a different view of the matter of disqualification. However, if the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear or decide a case, the system would soon reach a stage where, for practical purposes, individual parties could influence the composition of the bench. That would be intolerable."

c. added at paras. 47-48:

> *"[47] The tradition of recusal in the Irish Courts is reflected in the Bangalore Principles of Judicial Conduct 2002, at paragraph 2.5:—*
> *'A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:*
> *2.5.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;*
> *2.5.2 The judge previously served as a lawyer or was a material witness in the matter in controversy; or*
> *2.5.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;*
> *provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.'*
> *[48]In the Commentary on The Bangalore Principles of Judicial Conduct (United Nations Office on Drugs and Crime, September 2007), it was pointed out that a judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law*

25. In *O'Reilly,* Irvine J stated at para. 26 that:

> *"While individual judges, may choose to disclose any connections they may have with potential witnesses or parties they are not obliged to do so unless they consider that the reasonable, objective and informed person would, on being made aware of the relevant facts would reasonably apprehend that the judge would not be minded to adjudicate upon the case in a fair and impartial manner. That is the threshold at which a judge must recuse himself or herself from hearing from hearing the proceedings before them. However casual relationships, such as here suggested by Ms. O'Reilly even if there was evidence in support would not reach this threshold. For example, in Talbot v Hermitage Gold Club[2009] IESC 26, Denham J. held that the test of objective bias was not satisfied by the attendance at the same school of judges and lawyers in the case before her."*

26. In *McDonagh,* the Court of Appeal dismissed an attempt to set aside its earlier judgment after it emerged that a member of the Court had acted for the Plaintiffs while at the bar. Birmingham P. observed at p.16 that:

> *"The question that arises is really quite a narrow one. Would a reasonable*

> *observer, by which it must be meant a reasonable observer with a reasonable knowledge of the Irish legal system, apprehend that Mr. Justice Collins would have been unable to bring an open mind to bear, but rather would have been unconsciously biased towards the position of the plaintiffs because of acted -- having acted for either or both of them? In my view, the question only has to be posed in those terms to be -- for the answer to be apparent. It is the nature of the independent referral Bar that, in general, barristers do not have ongoing relationships with particular clients. Barristers practising on the civil side, and particularly in the commercial courts, as Mr. Maurice Collins did, with distinction for many years, will invariably find themselves acting for and against institutional clients."*

27. Most recently, in *Armstrong*, the Court of Appeal upheld the refusal by Ms Justice Roberts to recuse herself by virtue of her past roles in A&L Goodbody had historically acted in litigation against the Appellant. Ms Justice Roberts' extempore ruling had concluded that:

> *"Mr Armstrong has raised an issue of objective bias, seeking to impugn the interlocutory order that I made. Having heard his concerns, they relate to the fact that I was chair of A&L Goodbody and that another partner in my firm lists the plaintiff group as a corporate client. I'm fully satisfied in this case that my former firm, which has over one hundred partners, had no involvement whatsoever with this case at any time…Also, to be clear on the matter, at no time have I personally acted for the plaintiffs or either of them. I do not believe the concerns raised by Mr. Armstrong raise an issue of objective bias that would have required me to recuse myself from hearing the interlocutory hearing, or otherwise offend the Bangalore Principles".*

28. At p.15 of his judgment, Noonan J. agreed, observing that:

> *"... even were it the case that the High Court judge had acted in a professional capacity at some time in the past for the first respondent, that, without more, would be insufficient to raise a real apprehension of bias. However, as the Judge herself explained, the link here is even more tenuous. I am accordingly satisfied that there is no conceivable basis on which this could give rise to a real apprehension of bias and thus, the Appellant has demonstrated no arguable ground of appeal".*

Discussion

29. The first question is whether the *Bula* test for objective bias is satisfied. If so, I must recuse myself. Even if, like Quinn J, I conclude that it is not met, I may choose to recuse myself for reasons such as those outlined by Kelly J in *Terravision.* My decision on the first question at least is amenable to an appeal by either party. I will first deal with the *Bula* test.

Must I recuse myself – the Bula test

6 December 2024 Recusal Application

30. Most of Ms Houston's submissions were essentially points unsuccessfully raised in her original recusal application in 2024 in the 2023/1876P proceedings or at the costs hearing in those proceedings. I rejected those submissions for reasons respectively detailed in my Original Ruling and in my 14 May 2024 judgment. Ms Houston has neither appealed nor taken any step to challenge or set aside my Original Ruling or either of my written judgments although she has repeatedly indicated her intention to do so and has had ample time within which to take such action. Although Ms Houston has criticised my judgments and has suggested that they defamed her, she also stated that she had not read the judgments, which may partly explain her tendency, in the course of successive applications of repeating unsubstantiated assertions and submissions which were considered and rejected in my previous written judgments (or in my Original Ruling).

31. Since Ms Houston did not advance any factual or legal basis for me to alter my conclusions at the 6 December hearing, I still did not consider that there is any basis for me to recuse myself in response to submissions which she unsuccessfully raised in the 2023/1876P proceedings and which I have found to be without merit. Such points include, purely by way of example:

a. her contention that I had no jurisdiction to deal with the strike out application because her appeal was pending to the Court of Appeal against a costs ruling against her in those

proceedings following the dismissal of an earlier unsuccessful application by her. (See para. 7 of my 14 May judgment, [2024] IEHC 273 (my "14 May Judgment"))

b. My refusal to allow her to cross examine Ms Doyle on the dismissal application. (See para. 8 of my 6 March judgment, [2024] IEHC 104 (my "6 March Judgment)

c. Whether my 6 March 2024 Judgment defamed Ms Houston, by characterising her as a criminal. (See para. 10 of my 14 May Judgment)

d. My rejection of her gratuitous attacks on the Plaintiff and her legal representatives. (See para. 11 of my 14 May Judgment)

e. the fact that a former partner of mine at A&L Goodbody last year became the Chair of Kane Tuohy & Co, a firm in which the Plaintiff was previously a partner or employee and against which Ms Houston apparently accordingly asserts a damages claim. (See paras. 13-23 of my 14 May Judgment)

f. her erroneous claim that I refused to permit her to issue an application for injunctive relief. (See para. 25 of my 14 May Judgment)

32. I have dealt with these and other issues Ms Houston has raised in previous judgments (including, in particular paras. 7 to 26 of my 14 May 2024 Judgment) and my Original Ruling. Ms Houston has not satisfied me that there is any basis to alter my view. I do not propose to repeat my findings, save to note that my previous rulings stand and will continue to do so unless and until set aside by an appellate tribunal. However, whereas in the previous applications Ms Houston asserted that her constitutional rights had been infringed (a proposition I rejected since she has consistently been afforded all relevant protections extended to all litigants in proceedings before the Irish courts), at recent hearings her focus shifted, to argue, on essentially the same grounds, that her rights under the law of the European Union had been infringed. She relied on, in particular;

a. Article 2 TEU which declares that the Union is founded on values of, inter alia, *"equality, the rule of law and respect for human rights"*.

b. More specifically, Article 19 of the TEU requires Member States to

"provide remedies sufficient to ensure effective legal protection in the fields covered by Union law".

c. The Charter, on which Ms Houston placed particular reliance, provides:

i. that everyone has a right to respect for their private and family life, home and communications (Article 7)

ii. the right to an effective remedy and to a fair trial stipulating, inter alia, that *"everyone whose rights and freedoms guaranteed by the Law of the union are violated has a right to an effective remedy before a tribunal provided in compliance with the conditions laid down in this article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law."* (Article 47)

33. The undoubted primacy of the law of the European Union is uncontroversial as is, in my view, the meaning and effect of these provisions. Those provisions mirror the rights extended to all litigants pursuant to the Constitution of Ireland and the primary and secondary legislation thereunder. These include the right to have disputes adjudicated by a fair and impartial tribunal. It is not obvious to me that, for present purposes, there is any conflict between the requirements imposed by the Constitution of Ireland and those imposed by virtue of Ireland's membership of the European Union. Furthermore, although Ms Houston has repeatedly cited the provisions which I have referenced, she has not articulated a coherent basis for her contention that her rights - whether under the Constitution or pursuant to the Law of the European Union or pursuant to those provisions in particular - have been breached in the proceedings. It seems to me that the long and complicated history of the litigation shows the reverse, that Ms Houston has been afforded ample opportunity to vindicate her rights and bring forward her claims. I have seen no evidence that the outcome of the various hearings is tainted by any procedural deficit or by disregard for her constitutional or EU law rights. The Schedule details the numerous hearings afforded to Ms Houston in the various legal proceedings in which she has engaged. I have no reason to doubt that the various Courts' approach to those proceedings, and the primary and secondary legislation pursuant to which the proceedings were conducted, were designed to (and did in fact) vindicate both parties' rights to a fair and impartial hearing (whether under the

Constitution of Ireland, the Law of the European Union or otherwise). However, to the extent that Ms Houston contends otherwise, she has not availed of the opportunity to appeal the various rulings.

34. I recognise Ms Houston's distress at the adverse outcome of such proceedings. However, as an experienced barrister she should appreciate that it does not follow from an unsuccessful litigant's disappointment at the outcome of litigation that their rights (under Irish law or the law of the European Union) have been infringed. Nor does an unsuccessful party's dissatisfaction provide a basis for judges to recuse themselves.

35. I will not make further observations on Ms Houston's EU law arguments at this stage because she may wish to adduce further evidence or make further arguments (and my preliminary comments in this judgment are confined to the position currently before the Court). Indeed, she has intimated that she may invite me to make a preliminary reference to the European Court of Justice, presumably pursuant to Article 267 of the TEU (although, despite my repeated invitation and the directions I have made to facilitate her, she has still not explained the precise basis for or nature of any such reference). For present purposes I will simply observe that the Defendant's generalised references to an alleged breach of her EU law rights do not go anywhere near far enough to meet the *Bula* test.

36. The thrust of the 6 December submissions was that I would not be, or be seen to be, impartial because:

a. I supposedly defamed Ms Houston and called her a criminal in my 6 March judgment. Ms Houston also contends that my 6 March judgment was not privileged (because, she says, I had no jurisdiction to deal with the dismissal application). I do not accept those propositions and, as I explained at paras. 17 to 29 of my 6 March 2024 and para. 7 of my 14 May 2024 judgments, nor do I accept that a reasonable person could consider my judgments either defamed Ms Houston or called her a criminal.

b. Likewise, I do not consider that the appointment last year of a former partner of mine at A&L Goodbody as the Chair of Kane Tuohy & Co is relevant. I dealt with this at paras. 13 to 23 of my 14 May 2024 judgment. Kane Tuohy & Co is not a party to these proceedings and I do not understand the basis for Ms Houston's contention that it would be affected by their outcome. However, even if Ms Houston did have a residual claim

against Kane Tuohy & Co, the authorities show that the fact that one of my many former colleagues had recently joined that firm would not lead a reasonable bystander to doubt my ability to deal with this case impartially.

37. Apart from resurrecting earlier submissions, it seemed to me that the only additional point of any substance advanced in support of the 6 December recusal application, was her submission to the effect that Ms Houston's EU law rights had been infringed in the earlier proceedings and that, because she was entitled to an impartial tribunal, it was not appropriate that I should deal with the current matters. I agree that Ms Houston is entitled, both under Irish and EU law, to an independent and impartial tribunal. However, as outlined above, I do not agree with the premise that her rights have been infringed. The *Bula* test is designed to vindicate those rights and there is no cogent or rational reason advanced in the 6 December application which would lead a reasonable person in the circumstances to have a reasonable apprehension that Ms Houston would not have a fair hearing from an impartial judge as a result of my presiding over this and related applications.

21 January 2025 Application

38. Having determined on 6 December 2024 that there was no basis for me to recuse myself, I needed to reassess that decision because Ms Houston issued a plenary summons on Friday, 17 January 2025, in advance of the listing scheduled for Tuesday 21 January 2025. In this regard, I should make clear that Ms Houston has a constitutional right of access to the Courts (and corresponding rights under the law of the European Union). Like any other litigant, she is entitled to issue proceedings against judges if she has grounds to do so. It will be for another court to determine whether she does in fact have any such grounds. It is not appropriate for me to determine the strength of the case or to reach the sort of preliminary assessment of the merits (as to whether there was a fair question to be tried) as might be appropriate on an injunction, summary judgement or strike out application. The only assessment required for present purposes is whether my being named as a defendant in the 17 January Proceedings affects the outcome of the application of the *Bula* test in these proceedings, whether the development would lead a reasonable observer in these proceedings to doubt my ability to deal with them impartially.

39. As far as I know, Ms Houston sent no letter before action prior to launch of the proceedings (although she has criticised Ms Doyle for such an omission in other contexts). Nor has she served a Statement of Claim. She had corresponded with the Chief State Solicitor's Office on Friday 17 January 2025 and Monday 20 January 2025 but I was not informed of that correspondence prior to Ms Houston informing the Court on Tuesday 21 January that she had served the proceedings. It transpired that she sent a copy of the summons to the Chief State Solicitor's Office by registered post on Friday 17 January which the Chief State Solicitor's Office received on Monday 20 January. She also sent an email to that office on the afternoon of Monday 20 January objecting to my dealing with the matter at the hearing the following morning. However, the individual dealing with the matter in the Chief State Solicitor's office did not appreciate that Ms Houston's 17 December letter was intended by way of service on the individual judges as well as on Ireland and the Attorney General, because this was not stipulated in the text or the heading of the covering letter and the Chief State solicitor had, by definition, not been instructed on behalf of the individual judges at that point. Accordingly at the time of the 21 January hearing, I was not aware of Ms Houston's communications with the Chief State Solicitor's Office by way of the two communications, received by that office in the morning and afternoon respectively of 20 January 2025. It was entirely reasonable for Ms Houston to serve the documents via the Chief State Solicitor's office rather than on individual judges directly and I have no difficulty with that office accepting service on my behalf. However, confusion and delay may have been avoided if the covering letter to the Chief State Solicitor's Office had explained that the letter was intended by way of service on the individual judges as well as on Ireland and the Attorney General. It is also unfortunate that the email to the Chief State Solicitor's Office on the afternoon of Monday 20 January email was not drawn to my attention in advance of the following morning's hearing as requested by Ms Houston. This was apparently due to the timeframe and because the recipient had no role in these proceedings and had not been instructed to represent me at that point. In any event, the correspondence was forwarded to me after Ms Houston referenced it on 21 January. I do not propose to comment in detail on Ms Houston's 20 January 2025 email save to note that I do not accept Ms Houston's various complaints about the way in which I have dealt with the proceedings. To take just one example, she wrongly asserts that I refused to hear a motion concerning

her home in January 2023, an issue that I addressed at paras. 24 and 25 of my 14 May judgment. Apart from resurrecting an incorrect assertion that I had some form of connection, association or relationship with the defendant – who, as far as I know, I have never met – on extraordinary and unjustified grounds which were as spurious as they were bizarre, which I also dealt with in my 14 May judgment at paras 12 and 13, the email essentially rehashed Ms Houston's position in the litigation in respect of issues such as the validity of Ms Doyle's judgment mortgages, Ms Doyle's "standing" in the litigation and Judge Allen's ruling against Ms Houston, all being points which were addressed in my previous judgments. The email complained that my conduct of the proceedings to her had been abusive and frightening, but I do not consider that there is any objective basis for such suggestions. The email concluded with the statement, which Ms Houston reiterated in her submissions the following morning, that I should not hear these matters because I, along with Ms Doyle's legal representatives, am now a co-defendant in the 17 January 2025 Proceedings.

40. While it will be for another Court to determine the merits of the 17 January 2025 proceedings, I would have expected a barrister of Ms Houston's experience to articulate her claim clearly in her Indorsement and to deliver a properly particularised Statement of Claim (although the time provided for the latter has yet to expire). In the absence of a Statement of Claim, any consideration of the proceedings must focus on the Indorsement of Claim which is in the following terms:

INDORSEMENT OF CLAIM

This is an action to be heard in the ***Civil Jury List.*** *The Plaintiff invokes her guaranteed EU law rights including Article 47 of the Charter of Fundamental Rights of the European Union, her human rights and her rights guaranteed by international Treaties, including the Belfast/ Good Friday Agreement. The Plaintiff expressly invokes her right to effective judicial protection. Article 19(1) TEU is engaged.* ***NB:*** *David Holland is being sued in his capacity related to GDPR.*

The Plaintiff claims:-

1. *Injunctive and other equitable relief as the Plaintiff may require.*
2. *A preliminary reference to the Court of Justice of the European Union*
3. *Declaratory Relief*

David Holland

4. *Orders for the audio of the Digital Audio Recordings of proceedings, including the proceeding under High Court record number 2014.3904P (an action now struck out), entitled Eugenie Houston v Wendy Doyle and including ambient recordings particularly but not only in the action under High Court Record Number 2014.3904P and particularly the ambient recording in that action on 14 February 2017.*
5. *Other Orders including orders in respect of the Plaintiff's guaranteed EU law rights.*

Other relevant defendants

6. *An order setting aside the limited liability of the partnership of defendants 14 and 15 -- Ronan Brennan and Stephen Brennan.*
7. *Damages to be assessed by a* ***jury in a civil trial*** *for trespass to the person (including for emotional distress) and which is ongoing.*
8. ***Damages for defamation to be assessed by a jury in a civil trial.***
9. *In respect of the relevant Defendants, damages for breaches of the Plaintiff's guaranteed EU law rights (including her right to effective judicial protection), infringements of the Plaintiff's constitutional rights, damages for intimidation and harassment, damages for misfeasance.*
10. *Declarations and other Orders.*
11. *The Plaintiff reserves her right to plead further reliefs in the Statement of Claim.*
12. *An order for costs".* (emphasis as per original)

41. Without expressing any view on the substance of the claim certain points emerge from the face of the pleading. In particular, the Indorsement does not clearly identify the basis for the claim asserted against me or explain the basis for my joinder as a defendant. It:

a. does not identify any reliefs specifically sought against me (although certain reliefs are sought against defendants en masse). Nor has Ms Houston delivered any pleading or affidavit setting out any specific facts on which she asserts a claim against me.

b. invokes Ms Houston's EU law rights in its opening lines, including the provisions referenced above and also her rights guaranteed by international treaties including the

Belfast/Good Friday Agreement. The significance of the Good Friday Agreement and the other international treaties in this context eludes me.

c. seeks a preliminary reference to the Court of Justice of the European Union. However, Ms Houston has already submitted in recent hearings before me that such a reference should be made, and I have invited her to make a formal application with a grounding affidavit so that I can consider the basis for her submission. I have repeatedly given directions to facilitate Ms Houston but the promised application has not yet materialised.

d. The claims in relation to access to digital audio recordings including ambient recordings appear to be directed towards Holland J, although I have noted in previous rulings that litigants have no automatic entitlement to a copy of the DAR and that when transcripts are provided, this is done at the Applicant's expense. I have also previously suggested to Ms Houston on several occasions that, since she is unrepresented and it is difficult to make submissions and take notes at the same time, she might avail of her entitlement to be assisted by a *"McKenzie Friend"* who could take notes on her behalf and assist her, but she has declined to avail of this suggestion. She is under no obligation to do so.

e. reflects Ms Houston's dissatisfaction with the litigation but, the nearest it comes to seeking reliefs against me (if applicable), are the

f. . 8 claim for damages for defamation and the generalised EU law points. For example, para. 9 seeks damages:

> *"In respect of the relevant Defendants, damages for breaches of the Plaintiff's guaranteed EU law rights (including her right to effective judicial protection), infringements of the Plaintiff's constitutional rights… damages for misfeasance".*

g. also seeks damages (to be assessed by a jury) for ongoing trespass to the person (including for emotional distress). It is not obvious to me that this prayer for relief is directed to me (or, if so, the basis on which it could be). I am not aware of any basis for suggesting that I have committed any *"trespass to the Plaintiff's person".*

h. Includes some reliefs framed in such vague terms as to be utterly meaningless (both in terms of who the reliefs are sought against and the nature of the reliefs). These include:

i. a claim for *"injunctive and other equitable relief as the plaintiff may require"* with no indication as to what relief is claimed or on what basis.

ii. a claim for *"declarations and other orders"* with no indication as to what declarations and other orders are sought or on what basis.

iii. the purported reservation of the right to plead further reliefs in the statement of claim.

iv. the claim for *"other orders including orders in respect of the plaintiff's guaranteed EU law rights"* is equally vague.

42. The mere fact of issuing proceedings in such terms and in the circumstances would not lead an impartial observer to conclude that I could not deal with the matter impartially (any more than service of a notice of appeal in such terms would have such an effect). A reasonable person could have regard to:

a. the circumstances in which the 17 January 2017 Proceedings were issued and their timing, coupled with the absence of a letter before action, statement of claim or detailed pleading.

b. the fact that Ms Houston has twice issued proceedings against Ms Doyle which have been struck out.

c. the fact that, although she has assured the Court that she is keen for the motions to be resolved quickly, her actions have not always been consistent with that objective. For example, she has repeatedly failed to deliver replying affidavits and her refusal to cooperate with service of documents (contrary to normal professional practice) has repeatedly necessitated applications for substituted service, delaying the litigation and increasing its cost.

43. I would generally recuse myself if I was a party to litigation involving the parties to a case before me. Most judges would do the same. Quinn J did just that, *"with great reluctance",* when Ms Houston reminded him that he was a Defendant in the 2023 proceedings. I understand that Barniville P likewise recused himself previously on the same basis (although his position appears to have been

different because not only was he one of many defendants in the proceedings, but she had made specific allegations challenging the validity of his appointment). However, while a judge will normally recuse themselves from dealing with a matter where the parties to the case before them are parties to pending litigation in which the judge is also a party, there is no absolute rule that they must do so. Quinn J was of that view, concluding that he was not obliged to recuse himself (finding that objective bias was not established purely because he was named as a defendant in the 2023 Proceedings). The fundamental principle remains in such circumstances - as in every case - that the judge must be satisfied that they are impartial and independent and that they are seen to be so by reasonable observers. The *Bula "reasonable apprehension"* test still determines whether objective bias is established.

44. The mere issuing of proceedings would not lead a reasonable person to have a reasonable apprehension that Ms Houston would not have a fair hearing from an impartial judge if I dealt with the issue. If Ms Houston was to lodge an appeal or to apply to set aside my earlier rulings on the grounds she has outlined, then that would not normally suffice. I do not consider that the situation is changed because she has resorted to the simple expedient of adding my name to a plenary summons (without availing of other avenues to challenge the decisions which she seeks to impugn).

45. I do not consider that judges must automatically recuse themselves in all cases in which proceedings have been issued against them, but they must do so if, in the circumstances, a reasonable observer would doubt their ability to be impartial (and the same would go for a judge whose rulings were under appeal). The reasonable observer's assessment might well be affected by the timing or other circumstances, the nature of the allegations underlying the proceedings against the judge.

46. A reasonable observer might, for example, take account of the fact that this is the third occasion on which Ms Houston has sought the recusal of judges on the basis that she has issued proceedings against them (and the third or fourth occasion on which she has invited me to recuse myself). They might query the motivation for issuing of the 17 January 2025 proceedings at this time, particularly in view of the *Isaac Wunder* application pending before me. They might also have regard to the way Ms Houston has conducted this and related litigation and to the fact that Reynolds J previously made an

Isaac Wunder order in respect of her as long ago as 3 December 2019. Although that order was set aside on appeal on the basis that Ms Houston had not been given an opportunity to be heard before it was made (a practical example of the Irish Courts' vigilance in upholding Ms Houston's rights), it is also pertinent to have regard to the observation of Collins J at para. 71 of the Court of Appeal judgment [2020] IECA 289 that, although the particular *Isaac Wunder* order needed to be set aside:

> *"I would add that, as she is a barrister, Ms Houston is or ought to be well aware that she is not entitled to relitigate the issues which have been determined in the Well-charging proceedings and which she has sought to agitate again in these proceedings. Any attempt to do so – whether by way of further proceedings against Ms Doyle and/or action against Tully Rinckey – would be an abuse of process and would clearly expose Ms Houston to a serious risk of an Isaac Wunder order being made against her in the future".*

47. In the circumstances of the litigation as a whole, but particularly in view of the immediate context, I doubt that any reasonable person would see any basis to doubt my ability to deal with these matters impartially merely because Ms Houston has nominated me as one of 16 defendants in the 17 January 2025 proceedings. In view of the circumstances surrounding the 17 January Proceedings, I doubt that the issuing of those proceedings (with me as a defendant) would alter the view of an objective observer or lead such a person to doubt my ability to deal with these proceedings impartially. None of the matters raised by the Defendant are cogent and rational circumstances which would lead a reasonable person to consider that Ms Houston might not have a fair hearing from me or that I would not be an impartial judge when dealing with the proceedings, nor can the mere issuing of a plenary summons change the position in that regard (any more than would the lodging of an appeal).

The Second Question – Should I recuse myself even if the Bula test is not met?

48. As noted above, Quinn J, like me, concluded that his being named as a defendant in proceedings was not determinative of the issue as to whether he should recuse himself in these proceedings. I agree. I also understand why he decided that, although not obliged to do so, he would "*with great reluctance*" step aside (although he stipulated that he was not setting a precedent). Such a course may often be sensible and appropriate (*Terravision*). However, in some cases it may be inappropriate and contrary to the public interest for a judge to recuse themselves without good reason. Keane CJ in *Rooney* cited

Ebner and noted the undesirability of inappropriately acceding to recusal requests particularly if it would encourage forum shopping or delay the litigation or encourage further litigation. I am concerned that that would be the case in this instance.

49. If Ms Houston had appealed my earlier judgements and rulings (as she was entitled to do) that would not in the normal course of events have prevented or rendered it inappropriate for me to continue to deal with the proceedings. I do not consider that Ms Houston could be in a better position or that the situation is any different because, rather than exercising her rights of appeal she has simply issued fresh proceedings naming me as a defendant, essentially reflecting her disagreement with my decision and asserting that her constitutional and EU law rights were thereby infringed. Nor do I consider that the bare assertion of defamation in the endorsement of claim changes the situation. If judges were to automatically recuse themselves in such circumstances, then any disgruntled litigant could delay or obstruct proceedings at will by the simple expedient of issuing a plenary summons.

50. Although not obliged to recuse myself in the absence of (actual or objective) bias, I have considered whether I should step aside for pragmatic reasons such as those articulated by Kelly J in *Terravision*, the decision Quinn J cited in transferring the case to me even in the absence of objective bias. Such a course may be expedient if it will lead to the more efficient and expeditious resolution of the proceedings by removing a contentious issue as to which judge should hear it. Indeed, although I am certainly not suggesting that this was the motivation of Quinn J when he recused themselves at Ms Houston's request, it could be tempting for any judge facing a recusal request is to accede to it, so as to avoid any unnecessary controversy, complication or delay. A cynic would observe that such a line of least resistance reduces the judge's workload, avoiding the need for them to deal with potentially difficult issues (although it may correspondingly impact on other judges' workload and the courts' resources, especially if a rehearing is required and if another judge will need to immerse themselves in issues which a previous judge was already familiar with). However, as Keane CJ emphasised in *Rooney*, a judge cannot permit recusal to be used to permit parties to engage in forum shopping under the guise of doubts as to the court's impartiality. An unjustified recusal may be unfair to the other party and contrary to the public interest (if it would delay litigation, increase costs, be an inefficient use of judicial time, incentivise forum shopping and tactical litigation against the judiciary).

51. I am also concerned that if judges were to automatically recuse themselves when named in proceedings, this could be a charter for vexatious and abusive litigation against judges, incentivising the issuing of such proceedings for tactical purposes. Any party wishing to avoid a particular judge or to delay the day of reckoning could issue a rudimentary plenary summons, without even pleading a stateable claim. This would be an abuse of process and would be contrary to the public interest, undermining the orderly operation of the Courts. As noted above, in *Goode,* Denham CJ specifically endorsed the observation in *Ebner* that it would be intolerable to accede to such unjustified recusal applications on the basis of *"unsubstantial objections".* I do regard the objections in this place, including the apparent attempt to change the dynamic by issuing proceedings, as "unsubstantial" and likewise consider that it would be intolerable to reward such tactics, particularly since this is at least the third occasion on which Ms Houston has sought the recusal of a designated judge on the basis of proceedings she has issued. The position becomes even more intolerable in view of the timing of those proceedings and the apparent failure to progress the 2023 proceedings. While Quinn J. understandably considered that it was appropriate that he should exercise his discretion to refer the application to another judge, he stipulated that he was not thereby creating a precedent and in any event I consider that the situation which I am dealing with is different because of the ongoing delays and I am conscious that one of the motions outstanding before me (and which were not before Quinn .) is the *Isaac Wunder* application which Ms Doyle issued as long ago as 26 March 2024 and which should, as a matter of justice, be dealt with without further delay.

52. Accordingly, in exercising my discretion to step aside even in the absence of objective bias being established, I am entitled to have regard to the need to discourage potential attempts by litigants to influence the selection of the judge to hear the particular proceedings. Ms Houston's submissions on 26 November (referenced at para. 8 above) are pertinent in this context, as are her subsequent actions and submissions. The principles are clearly established in the authorities I have cited. Having taken the judicial oath in accordance with the Irish Constitution, I have a duty to exercise my judicial functions when my jurisdiction is regularly invoked and I am assigned to cases in accordance with the practice which prevails in the court to which I belong. I do not select the cases I will hear, and I am not at liberty

to decline to hear cases without good cause. As well as paraphrasing my obligations, I would note the observation in *Ebner,* that:

> *"Judges do not choose their cases; and litigants do not choose their judges. If one party to a case objects to a particular judge sitting, or continuing to sit, then that objection should not prevail unless it is based upon a substantial ground for contending that the judge is disqualified from hearing and deciding the case".*

53. Accordingly, in all the circumstances of this convoluted litigation (including the proceedings issued on 17 January), it would be wrong for me as a third judge to recuse themselves at this stage unless there was a reasonable ground to assert that the *Bula* test was met. That is not the case in this instance and therefore I do not propose to recuse myself.

54. Finally, although it has not affected my determination in respect of this application, I should note that in the course of her oral applications on 18 and 19 December (as on previous occasions – see, for example, paras. 10 -11 of my 14 May 2025 judgment) Ms Houston made extravagant allegations against Ms Doyle and her legal representatives and, indeed, other persons. I informed her that this was inappropriate and that any such claims should be formally made on affidavit (if necessary and relevant to the matters then before the court). Regrettably, at the hearing on 21 January 2025 Ms Houston again ventilated such assertions, once again making claims from the bar which were not supported by a grounding affidavit before the court and which were not in any event relevant or necessary for the purposes of the recusal application. Even leaving aside the irony of Ms Houston's repeated expression of her distress about the damage to her reputation which she claims to have sustained due to the litigation and, in particular, my judgments, it was striking that, when making such gratuitous attacks on various individuals, Ms Houston's remarks were consistently directed to a journalist at the back of the courtroom rather than to me. When I remonstrated with Ms Houston as to the appropriateness of such conduct, she suggested that it was merely her habit as an advocate to address the entire audience. I have difficulty crediting that explanation. When making the particular "submissions", Ms Houston repeatedly turned away from the court in a manner which I would regard as contrary to normal practice in any court in which I have appeared over the decades, whether as a practitioner or, more recently, a judge. She repeatedly physically turned approximately 135 degrees to face the left-hand corner (from my perspective) of the rear of the courtroom, Court 18. She did so repeatedly and theatrically and each

such manoeuvre coincided with a vitriolic, personalised attack on Ms Doyle or her lawyers or other individuals. It is difficult to avoid the conclusion that such comments were primarily intended for media consumption rather than for the purposes of the application actually before the court. This was utterly inappropriate and an abuse of the procedures of the Court.

55. In exercising my discretion as to whether to step aside in the absence of objective bias, I might have had regard to such behaviour and to the fact that this is the second action which Ms Houston has issued against various members of the judiciary. Her failure to progress the first proceeding is also relevant. In terms of Ms Houston's repeatedly attacks on the integrity of Ms Doyle's solicitors and counsel, authorities such as *Ewing v Ireland* [2013] IESC 44 and *Riordan v Ireland* [2001] 4 IR 463, confirm that gratuitous attacks on the other party's lawyers may be an abuse of process. Attacks on, or lawsuits against, judges who have dealt with the proceedings may fall into the same bracket, particularly when the party making such attacks has litigated when they could have appealed such rulings. However, I have reached my decision independently of this factor, because it is not appropriate that I should express any opinion as to whether the 17 January 2025 Proceedings were an abuse of process.

56. It is sufficient for present purposes to note that the issuing of the 17 January 2025 Proceedings would not lead a reasonable observer to doubt my ability to deal with these proceedings impartially. Nor do I consider that I should recuse myself in the circumstances.

SCHEDULE 1

Appendix to Judgment of Kennedy J dated 6 March 2024

The Related Litigation and Enforcement Steps between the Parties

Because the roles of plaintiff and defendant were reversed in some of the litigation, this appendix will refer to the parties by name, to avoid confusion. Many details of the earlier proceedings have limited relevance to this application and need not be canvassed in this judgment. Furthermore, the broader litigation has resulted in a series of lengthy High Court and Court of Appeal judgments in addition to the Supreme Court determinations refusing leave to appeal. Many of these judgments overlap and I have accordingly sought to confine my summary to the essential points and to minimise repetition. However, the following key points are clearly established in relation to the related litigation:

1. Cost Awards Against Ms Houston

a. On 16 April 2014, Ms Houston issued High Court proceedings against Ms Doyle (record number 2014/3904P) claiming damages for defamation ("the Original Proceedings").

b. On 23 June 2015, Ms Houston issued separate District Court proceedings against Ms Doyle and another party. On 21 April 2017, the District Court dismissed Ms Houston's claim, awarding scale costs of €4,700 to Ms Doyle. Ms Houston did not appeal the order.

c. In the meantime, the Original Proceedings had been listed for hearing on 14 February 2017. MacEochaidh J made an order on consent on that date. The order confirmed that the action had been called on for hearing and that, "*on hearing what was offered by [Ms Houston] in Person and Counsel for [Ms Doyle] And It Appearing that a settlement has been reached herein*", the Court made declarations and struck out the 25 proceedings, directing Ms Houston to pay Ms Doyle the costs of the Original Proceedings, staying the costs order until 14 March 2017.

d. The costs payable on foot of the 14 February 2017 order, and under two earlier orders in the same proceedings, were taxed by the Taxing Master in an aggregate sum of €58,888.69. The other two orders were dated 27 February and 12 October 2015, respectively, and none of the three orders were appealed. Ms Houston did not lodge objections to the Taxing Master's determinations.

2. Registration of Judgment Mortgages

a. Ms Doyle applied to the PRA to register judgment mortgages against a property owned by Ms Houston. Four judgment mortgages were registered against the relevant land folio between June and August 2017. Although other judgment mortgages were registered subsequently, these proceedings are primarily directed at the registration of these four judgment mortgages (the "Original Judgment Mortgages").

b. Ms Houston unsuccessfully applied to the PRA on foot of an (unsworn) affidavit, seeking the cancellation of their registration. The PRA advised her by letter dated 9 August 2017 that: "the judgment mortgage was registered correctly on the above folio in accordance with the documentation lodged with the Authority and in accordance with the Rules for Registration. The application for registration of the judgment mortgage was certified by the officer of the Court."

c. The PRA noted that it could only cancel a judgment mortgage: "*on receipt of a release by the judgment creditor or on foot of a direction by Court Order."*

d. Ms Houston issued proceedings against the PRA (record number 2021/3487P) on 27 April 2021, alleging that the judgment mortgage in respect of the District Court order was procured by fraud. However, no steps have apparently been taken to progress those proceedings. It is not clear whether those proceedings have been served.

3. Well-Charging Proceedings (2017/377SP)

a. Ms Doyle issued the Well-Charging Proceedings against Ms Houston, grounded upon the Original Judgment Mortgages. Ms Houston applied to strike out the Well Charging Proceedings. On 19 February 2018, O'Regan J dismissed the application to strike out the proceedings, awarding costs to Ms Doyle.

b. On 25 June 2018, the Court of Appeal declined to extend the time for Ms Houston to appeal the decision of O'Regan J, awarding costs to Ms Doyle.

4. <u>Judgment of Allen J. in the Well-Charging Proceedings</u>

a. At a hearing on 27 March 2019, Allen J. found that the proofs were in order and granted the reliefs sought by Ms Doyle. He rejected Ms Houston's submission that her separate proceedings (record number 2017/6661P) ousted the Court's jurisdiction, concluding that those proceedings were a: "*collateral attack on orders for costs previously made by the High Court and the District Court which were not appealed and which are final and conclusive*".

b. Allen J. concluded that Ms Doyle had made out her entitlement to recover the four sets of costs as measured or taxed and that: "*in accordance with the Conveyancing and Law of Property Act, those costs orders were registered as judgment mortgages on [Ms Doyle's] interest in the folio and it is not contested that [Ms Houston] has paid nothing on foot of those orders for costs or judgment mortgages."*

c. The order of Allen J. recorded that:

i. The special summons had come for hearing and Allen J. had reviewed (inter alia) a copy of the "*Judgment Mortgage Affidavit certified by the District Court Office Dublin Metropolitan District and registered in the Property Registration Authority on the 15th day of June 2017*" and three further "Judgment Mortgage Affidavits certified by the High Court and each registered in the Property Registration Authority on the 9th day of August 2017", reflecting Ms Doyle's interest in the Property, and the PRA certified copy of Folio KE25772F County Kildare, dated 29 March 2019.

ii. The principal moneys secured by the four Original Judgment Mortgages: "*entered at Entries 4, 5, 6 and 7 on part 3 of the Folio set out in the Second Schedule hereto created by the registration as aforesaid of a copy of each of four Judgment Mortgage Affidavits the interest thereon and the costs herein*

after awarded stand well charged on [Ms Houston's] interest in the said lands and premises

And It Appearing that there is due to [Ms Doyle] on foot of the said Judgment Mortgages:

(i) The sum of €58,888.89 [sic] for principal and interest from 14th day of July 2017 in respect of the said judgment mortgages registered at Entries 5, 6 and 7 on part 3 of the said Folio

(ii) (ii) The sum of €4,700.00 for principal and interest from 21st day of April 2017 in respect of the said judgment mortgage registered at Entry 4 on part 3 of the said Folio"

d. The order also directed that the said land and premises be sold unless the debts, principal and ongoing interest, were paid within three months.

e. Allen J. awarded the costs of the proceedings to Ms Doyle.

5. <u>Appeal to the Court of Appeal from the decision of Allen J.</u>

a. On 7 April 2020, the Court of Appeal dismissed the appeal from the decision of Allen J.. It awarded the costs of the appeal to Ms Doyle.

b. The Court of Appeal summary of the background observed (at para. 5) that:

"*Ms. Doyle swore judgment mortgage affidavits to register the costs orders in her favour as judgment mortgages against the interest of Ms. Houston in the premises. They were each in the form prescribed by Form 112 of the Property Registration Authority Rules*".

c. The judgment continued:

"6. Each of the affidavits were accepted by the Property Registration Authority ("the PRA") and four judgments mortgages in favour of Ms. Doyle have been registered on the folio at entries 4, 5, 6 and 7 of Part 3 of the folio. The judgment mortgage in respect of the order obtained in the District Court was registered on 15 June 2017, and the three judgment mortgages in respect of the High Court costs orders were registered on 9 August 2017. 7. Ms. Houston objected to the registration of the judgment mortgages and applied to the PRA to vacate them. The PRA declined to do so and indicated that

this could only be effected on foot of a court order. No such order has been obtained by Ms. Houston to date".

d. The Court of Appeal judgment observed that:

"55. The judgment mortgages, the subject of these proceedings, were registered by the PRA on the folio. Section 31 of the Registration of Title Act 1964 provides that: - "31.(1) The register shall be conclusive evidence of the title of the owner to the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon; and such title shall not, in the absence of actual fraud, be in any way affected in consequence of such owner having notice of any deed, document, or matter relating to the land; but nothing in this Act shall interfere with the jurisdiction of any court of competent jurisdiction based on the ground of actual fraud or mistake, and the court may upon such ground make an order directing the register to be rectified in such manner and on such terms as it thinks just…"

56. It follows that unless and until the entries of the judgment mortgages are cancelled this court cannot look behind the folio. Ms. Houston said that she applied to the PRA to vacate the entries but was informed that she must obtain an order of court. That was in 2017. To date, she has not obtained such an order. It follows that neither the High Court, nor this court could, or may, engage with her argument regarding the validity of the costs orders, or the validity of the judgment mortgages, and the appropriateness of the registration of same on the folio. To do so would be to seek to go behind the register, which is not possible in the circumstances of this case. 57. Ms. Houston's case is, in truth, a collateral attack on the costs orders. But, she has raised no basis to question the validity of the costs orders. I reiterate that none of them have been appealed. They are therefore valid final orders binding on all courts. She has advanced no basis upon which it would be open to this court to set aside or vacate any of the costs orders... 67. Section 31 of the Registration of Title Act 1964 provides that the folio is conclusive as to title and the registrable interests in the land. The judgment mortgages, the subject of these proceedings, were duly registered on the folio. Ms

Houston cannot go behind the folio by challenging either the judgment mortgages or the underlying orders of the High Court and the District Court."

6. Application to the Supreme Court for leave to appeal

a. On 14 September 2021, the Supreme Court refused the application by Ms Houston in the Well Charging Proceedings for leave to appeal.

7. 2017 Proceedings (2017/6661P)

a. On 20 July 2017, Ms Houston issued proceedings bearing record number 2017/6661P against Ms Doyle ("the 2017 Proceedings"), apparently in response or parallel to the Well-Charging Proceedings. The Statement of Claim sought to set aside the various orders on the basis that the orders used by Ms Doyle to obtain the judgment mortgages were void or voidable, that void orders do not exist as a matter of law and therefore cannot be appealed or judicially reviewed.

b. Ms Doyle applied to strike out the 2017 Proceedings as res judicata and a collateral attack on the judgment mortgages and the underlying cost orders and the orders in the Well-Charging and previous proceedings.

c. In response to Ms Doyle's motion, Ms Houston claimed to have "won" the defamation proceedings and that she should have been awarded her costs (submissions inconsistent with the terms of the 14 February 2017 order or the fact that that order was made on consent). She said that she had not appealed or sought to set aside the 14 February 2017 order because the Court of Appeal was "closed" to her. She also attacked the validity of the District Court costs order.

8. <u>Judgment of Reynolds J</u>

a. On 3 December 2019, Reynolds J dismissed Ms Houston's application, noting that the costs order in the defamation proceedings had been made two and a half years before and there had been no application to set it aside. Reynolds J concluded that the position in respect of the District Court costs was similar - Ms Houston could have appealed the District Court order but she had failed to do so. Accordingly, Reynolds J was satisfied that Ms Houston did not have a stateable case in the 2017 Proceedings. Reynolds J concluded that: (a) the 2017 proceedings

were a collateral attack on the various cost orders; (b) the matters alleged did not give rise to any new cause of action and sought to relitigate issues already dealt with by other courts; and (c) the 2017 Proceedings were an abuse of process, disclosed no reasonable cause of action, were bound to fail and ought to be dismissed. Reynolds J. awarded Ms Doyle the costs of the motion and of the action.

9. <u>Appeal from the decision of Reynolds J striking out the 2017 Proceedings</u>

a. Ms Houston appealed the decision of Reynolds J striking out the 2017 Proceedings. Collins J observed, at para. 46 of the Court of Appeal judgment, that: "[*a]s a matter of fundamental principle, Ms Houston cannot seek to relitigate matters which have been determined in the Well-charging proceedings*".

b. Collins J noted that the applicant had again sought to attack the same costs orders, for the purpose of attacking the same judgment mortgages as were in issue in the Well-Charging Proceedings, with the ultimate purpose of attacking orders made by the High Court, and affirmed by the Court of Appeal, in those proceedings. He pointed out that, in seeking to maintain those proceedings, in circumstances where the Well Charging Proceedings had been finally determined, Ms Houston was seeking to negate the outcome of those proceedings and to undo the orders made in them.

c. Collins J observed that Ms Houston's unsuccessful defence of the Well Charging Proceedings before Allen J. had been characterised by Costello J. (in the appeal in the Well Charging Proceedings) as "*a collateral attack on the costs orders*", where the applicant had not raised any basis to question the validity of those orders, which were valid, final, orders, binding on all courts.

d. Collins J noted (at para. 47) that:

"*In these proceedings, Ms Houston seeks to attack the self-same costs orders, for the purpose of attacking the self-same judgment mortgages as were at issue in the Well-charging proceedings, with the ultimate purpose of attacking the orders which were made by the High Court, and affirmed by this Court on appeal, in those proceedings.*

In seeking to maintain these proceedings in circumstances where the Well- charging proceedings have been finally determined - subject only to the possibility of a further appeal to the Supreme Court - it is quite evident that Ms Houston is seeking to negate the outcome of those proceedings and to undo the orders made on them. As a matter of fundamental principle, that is impermissible."

e. Collins J concluded (at para. 54) that:

"The Judge concluded that these proceedings amounted to a collateral attack on the costs orders. That conclusion was inevitable, in my view. They are also a collateral attack on the judgment mortgages registered against Ms Houston's property in Co. Kildare and on the orders made in the Well-charging proceedings. Insofar as the pleadings disclose any grounds for Ms Houston's challenge to the orders and the judgment mortgages, those grounds appear to be the same as those on which she unsuccessfully defended the Well-charging proceedings against her. While "duress" does not appear to have been argued in the Well-charging proceedings, at least in explicit or identifiable terms, it does not at all follow that Ms Houston could properly rely on a duress claim in these proceedings, having regard to the principle in Henderson v Henderson (1843) 3 Har 100 [sic]. That principle would appear to apply with more than usual force in the circumstances here. In any event, no claim of duress is in fact made in these proceedings nor is there a scintilla of evidence to support any such claim before the Court."

f. Accordingly, on 22 October 2020, the Court of Appeal dismissed Ms Houston's appeal from the decision of Reynolds J on all but one issue. While the decision to strike out the proceedings was upheld, Ms Houston was successful in her challenge to the High Court's decision to make an *Isaac Wunder* order. The Court of Appeal judgment observed (at para. 71) that:

"*…as she is a barrister, Ms Houston is or ought to be well aware that she is not entitled to relitigate the issues which have been determined in the Well-charging proceedings*

and which she has sought to agitate again in these proceedings. Any attempt to do so - whether by way of further proceedings against Ms Doyle - would be an abuse of process and would clearly expose Ms Houston to a serious risk of an Isaac Wunder order being made against her in future."

g. Ms Houston was ordered to pay 75% of the costs of the appeal.

10. <u>Application for leave to appeal to the Supreme Court</u>

The Supreme Court refused Ms Houston leave to appeal the Court of Appeal decision. The determination dated 25 May 2021 noted Ms Houston's claim that she had settled the original defamation case under duress but that no evidence of duress had been adduced or referred to. The determination noted that the Court of Appeal had held that the High Court judge had been correct to hold that the proceedings were an abuse of process, and that Ms Houston was seeking to engage in a collateral attack on the judgment in the Well Charging Proceedings.

11. <u>Application for order for Vacant Possession</u>

a. Ms Doyle issued a motion returnable for 10 October 2022 seeking orders for vacant possession on foot of the Well Charging order. Ms Houston's replying affidavit alleged that the well-charging order was void, because the judgment mortgages were registered by fraud or mistake. She also alleged that the District Court order was a forgery and that she would be applying for an injunction. However, no such application materialised at that time.

b. On 7 November 2022, Quinn J made an order for vacant possession, subject to a 6-month stay (which has since expired). He awarded costs to Ms Doyle.

c. Ms Houston appealed the order of Quinn J. In the course of that appeal, she alleged fraud in respect of the Well Charging Proceedings (apparently, once again, by reference to the judgment mortgages).

d. On 4 May 2023, the Court of Appeal dismissed Ms Houston's appeal against the decision of Quinn J, awarding costs to Ms Doyle.

SCHEDULE 2

Directions made by Kennedy J on 21 January 2025

Record No	Motion	Directions	
2023/1876P - First Application ***Houston v Wendy Doyle Practising Under the Style and Title of Doyle Solicitors***	**Ms Doyle's *Isaac Wunder* Application**		• Ms. Houston to file a replying affidavit by 12 February, 2025. • Application adjourned to 12 February (for mention).
2023/1876P **Second (Proposed) Application** ***Houston v Wendy Doyle Practising Under the Style and Title of Doyle Solicitors***	**Ms Houston's proposed application to set aside judgments and orders of Kennedy and Allen JJ**		• Ms Houston has leave to issue motion(s) by 12 February. • Any such application(s) will be listed for mention on 12 February.
2017/377SP - First Application ***Doyle v Houston***	**Ms Houston's application for an injunction restraining the sale of her home**		• Ms Houston to deliver and file her replying affidavit by 29 January 2025 • Ms Houston to deliver her submissions by 31 January 2025 • Submissions to be delivered on behalf of Ms Doyle by 11 February 2025. • Application adjourned to 12 February 2025 for hearing, subject to Ms. Houston's final affidavit.
2017/ 377 SP - Second (Proposed) Application ***Doyle v Houston***	**Ms Houston's Application to add Kane Tuohy & Co to the proceedings**		• Ms Houston granted leave to issue the application by 12 February 2025. • Any such application will be listed for mention on 12 February 2025.
2017/ 377 SP – Third Application ***Doyle v Houston***	**Ms Houston's application for a preliminary reference to the Court of Justice of the European Union**		• Ms Houston to furnish Ms Doyle with exhibit(s) grounding her affidavit by 23 January 2025. • Leave granted for Ms Houston to issue further motion by 12 February 2025 (if required). • Motion(s) to be adjourned to 12 February 2025 for mention.
2024/7334 P ***Doyle v Houston***	**Ms Doyle's trespass injunction**		• Ms Houston to enter an appearance by 20 January 2025 and to deliver replying affidavit by 12 February 2025. • Motion adjourned to 12 February 2025 for mention.
2017/377SP ***Doyle v Houston***	**Ms Doyle's Attachment and**		• Ms Houston to deliver costs submissions by 5 February 2025.

Fourth Application	**Committal Application**	• Application adjourned to 12 February 2025 for mention.
All Proceedings	**Any other motions**	• any other motions to be issued by 12 February 2025