THE SUPREME COURT

[Supreme Court Record No.: 2013/435]

[Record No.: 2012/7732 P]

Dunne J.
O'Malley J.
Irvine J.

BETWEEN/

DECLAN TAITE AND PATRICK BRENNAN

PLAINTIFFS/RESPONDENTS

AND

JERRY BEADES

DEFENDANT/APPELLANT

JUDGMENT of the Court delivered by Ms. Justice Mary Irvine this 12th day of December 2019

1. This is an appeal brought by Mr. Jerry Beades, the defendant to the within proceedings, against the judgment and order of the High Court, McDermott J. of 30th September, 2013. That order was made in the context of an application brought by the plaintiffs, Mr. Declan Taite and Mr. Patrick Brennan, for various interlocutory reliefs detailed in a notice of motion dated 24th July, 2013.

2. The order of the High Court provides as follows:

   (1) that Mr. Beades and/or his agents/persons acting in consort with him, be restrained pending the trial of the action from entering onto or otherwise interfering with the three properties schedules to the notice of motion;

   (2) that Mr. Beades and his agents/persons acting in consort with him be restrained from harassing or intimidating any occupant of the aforementioned premises;

   (3) that Mr. Beades's application for access to the digital audio recording of the injunction application stand refused;

   (4) that the costs of the application be reserved to the trial, and

   (5) that execution on foot of the order be stayed for a period of two weeks.

3. By notice of appeal dated 18th October, 2013, but received on 25th October, 2013, Mr. Beades challenges the lawfulness of the High Court order. In deference to Mr. Beades who did not have the benefit of legal representation on his appeal, and in order to identify the scope of the present appeal, the court will take the unusual step of setting out his grounds of appeal in full. These are as follows:

   (1) That the learned High Court Judge misdirected himself in law and/or in fact in granting the orders on 30th September, 2013.

(2) That the learned trial judge misdirected himself in law and/or fact in granting the orders when none of the original title deeds/documents were before the court.

(3) That the learned trial judge misdirected himself in law and/or in fact in allowing an additional procedure to be permitted when appointing receivers so that the bank can appoint individuals referred to as "our attorneys 'in place of directors as set out in s. 64 of the Land Law and Conveyancing Law Reform Act 2009 (herein after "the 2009 Act"). Mr. Beades flags as relevant Dunne's J. ruling delivered on 25th July, 2011, in "*Start Mortgages* Case No. 2009/1397 S.P.", where she stated in the last paragraph of that case "it is not for the court to supply that which is not contained in the 2009 Act".

(4) That the learned trial judge failed to recognise the fundamental rights and personal rights of Jerry Beades as set out in Articles 40.3.1° and 40.3.2° of the Constitution of Ireland. He did so when he refused to uphold the law as set out in the 2009 Act, s. 64(2)(b)(ii).

(5) That the learned trial judge erred in accepting hearsay evidence on behalf of the receivers. This type of evidence is supposed to have become the standard norm in receiver applications before the court nowadays. A similar pattern of evidence was also contained in High Court record number 2013/7806 P. This, he says, is contrary to the concept of fair procedure under the Constitution of Ireland and the European Convention of Human Rights.

(6) That the learned trial judge erred in his refusal of access to the digital audio recording, further infringing the rights of the citizen. This is contrary to the concept of fair procedure and creates a further injustice in breach of the Constitution of Ireland and the European Convention of Human Rights.

(7) That the learned trial judge, in refusing to extend the period of application for a stay beyond two weeks. This created a further injustice as the period allowed for appeals, 21 days plus 7 days to lodge the papers in the Supreme Court Office and only then can an application for a stay be made, which usually requires a further two weeks.

(8) He also requests that when the transcript of the digital audio recording of the hearings is obtained, alternations to the grounds of appeal may need to be made.

Background

4. The following background facts emerge from the affidavits and exhibits admitted in the hearing of the injunction application. These are the affidavits of Mr. Taite sworn on 24th July, 2013, and that of Mr. Beades sworn on 23rd September, 2013.

5. On 4th December, 2006, and 7th April, 2006, Mr. Beades took out three mortgages with Ulster Bank Ireland Limited (hereinafter "the bank") which were secured over the properties identified at paras. (a), (b) and (c) of the schedule to the notice of motion ("the premises") seeking interlocutory relief.

6. All of the deeds of mortgage are in identical terms. Of particular relevance to this appeal are Clauses 11.1 and 11.2 which provide as follows:-

> "11.1 At any time after the security hereby constituted has become enforceable or at any time after the borrower so requests, the bank may from time to time appoint under seal or under hand of a duly authorised officer or employee of the bank any person or persons to be receiver and manager or receivers and managers (herein called 'Receiver' which expression shall where the context so admits include the plural and any substituted receiver and manager or receivers and managers) of the secured assets or any part or part thereof and from time to time under seal or underhand of a duly authorised officer of the bank remove any receiver so appointed and may so appoint another or other in his stead. If the bank appoints more than one person as receiver of any of the Secured Assets, each such personal shall be entitled (unless the contrary shall be stated in the appointment) to exercise all the power and discretions hereby or by statute conferred on receivers individually and to the exclusion of other or others of them.
>
> 11.2 The foregoing powers of appointment of a receiver shall be in addition to and not be to the prejudice of all statutory and other powers of the Bank under the Conveyancing Act 1881 - 1911 (and so that any statutory power of sale shall be exercised although without the restrictions contained in s. 20 of the Conveyancing Act 1881) or otherwise and so that such powers shall be and remain exercisable by the Bank in respect of any part of the secured assets notwithstanding the appointment of a receiver there over or over any other part of the secured assets."

7. By loan facility dated 26th May, 2010, the loans earlier referred to were amalgamated into a new facility made available by the bank to Mr. Beades. This is the facility referred to by Mr. Taite at para. 8 of his affidavit and was for the sum of €3,270,000. That facility was repayable on demand. According to Mr. Taite, by letter dated 13th March, 2013, the bank made demand for repayment of all monies due on foot of the said facility. The letter exhibited in support of that averment was undated. Mr. Beades does not deny receiving this letter or his failure to respond to it. Rather, he claims the demand was invalid by reason of the fact that the letter was undated.

8. Due to the failure of Mr. Beades to meet the demand for repayment, on 19th March, 2013, the bank appointed Mr. Taite and Mr. Brennan joint receivers and managers over the aforementioned properties.

9. Following their appointment, the receivers appointed property managers and letting and sales agents and also engaged security personnel to secure the properties.

10. Due to Mr. Beades's alleged interference with the properties as described by Mr. Taite in his affidavit, the within proceedings were commenced by plenary summons dated 24th July, 2013. On the same date, the receivers filed a notice of motion seeking interlocutory relief in the terms ultimately granted by the court. Mr. Taite maintained that since their appointment as receivers, Mr. Beades had obstructed their efforts to take

control and deal with the properties and had, in particular, attempted to gain access to and change the locks on the premises of 3 Clancy Court, which had been vacant as of the date of their appointment. In further support of their complaint that Mr. Beades was frustrating their activities as receivers they relied upon an incident report prepared by Ktech, a security firm which had been retained to secure the premises as well as other documents which included a number of photographs of Mr. Beades and various vehicles bearing his name stated to have been taken at 3 Clancy Court.

11. Also exhibited by Mr. Taite in his grounding affidavit was an email sent by Mr. Beades on 4th April, 2013, challenging the validity of his appointment and that of Mr. Brennan. He asserted that there existed a substantial dispute between himself and the bank regarding what he described as the theft of a sum of money in excess of €1m in respect of which the bank was culpable. He further protested that the bank did not have a charge over the furniture or the fit out of the properties over which the bank had purported to appoint them receivers. Neither did the bank have a charge over what he described as "the operator of the rental business".

High Court judgment

12. It is clear from the written judgment of the High Court judge that he considered the receivers' application for interlocutory relief having regard to what is commonly described as the *Campus Oil* test (see *Campus Oil v. Minister for Energy* [1983] I.R. 88). As to the first limb of that test, in considering whether the receivers had established a fair issue to be tried i.e. as to their entitlement to peaceful possession of the properties and to administer them in accordance with the powers conferred upon them under the respective deeds of mortgage and charge, he first considered the submissions advanced by Mr. Beades as a basis for challenging the validity of their appointment. He considered the submission made to the effect that the deeds of appointment, being three in total and dated 19th March, 2013, were invalid because they had been executed by a Mr. Sean Cotter under a power of attorney dated 19th February, 2013, and also his submission that the deeds of appointment were invalid because they had not been sealed in accordance with the 2009 Act.

13. Having considered these and other submissions, the High Court judge concluded that the receivers had furnished a strong evidential basis to establish that they had been lawfully appointed as receivers over the properties. Furthermore, it did not follow that service of the letter of demand should not be considered a valid "enforcement event" for the purpose of Clause 10.1 of the deed of mortgage, by reason only of the fact that it, the demand letter, was unsigned.

14. In coming to his conclusion that the balance of convenience favoured granting the interlocutory injunction, the High Court judge concluded that it was likely that Mr. Beades would continue to interfere with the activities of the receivers and would frustrate their efforts to administer the properties if not restrained by court order until the hearing of the action. He was also satisfied that Mr. Beades's behaviour was calculated to undermine the lawful and peaceful exercise by the receivers of their duties and this fact favoured granting the injunctions sought as did the fact that by granting that relief there would be

clarity as to the rights of the receivers in relation to their dealings with the occupiers of the premises. Thus, the balance of convenience favoured granting the injunction.

15. Important in the context of the evidence upon which the High Court judge relied for the purposes of considering where the balance of convenience was to be found, is an issue that arose as to the admissibility of certain hearsay evidence contained in Mr. Taite's affidavit.

16. In his judgment, the High Court judge referred to the fact that under O. 40, r. 4 of the Rules of the Superior Courts ("RSC"), hearsay evidence was admissible on an interlocutory application. However, mindful of the dangers of hearsay evidence, he concluded that lesser weight would have to be attached to the evidence contained in the report of Ktech Security, given that Mr. Taite did not have first-hand knowledge of the facts therein set forth. Likewise, he concluded that in respect of a note received by the receivers from a Ms. Sabrina Mangan concerning the conduct of Mr. Beades, the court would have to attach much less weight to her complaints than had direct evidence been available to the same effect.

17. As to the adequacy of damages, the High Court judge concluded that, in light of Mr. Beades's financial situation, if the injunctions were not granted and they were to succeed in their substantive claims, any award of damages that the receivers might obtain at the trial would likely not be recoverable. That situation was to be distinguished from the position that would pertain if Mr. Beades was to be successful in his defence. In such circumstances, the receivers would be a good mark for any award of damages made against them.

Submissions

18. For the purposes of the within appeal, the court received written submissions from both parties. In addition, at the conclusion of the appeal, Mr. Beades furnished to the court what he described as a commentary on the receiver's written submissions. All of these submissions have been considered by the court as have the various authorities relied upon by the parties including those judgments attached to Mr. Beades's commentary i.e. the judgment of Kelly J. in S*helbourne Hotel Holdings Limited v. Torriam Hotel Operating Company Limited* [2008] IEHC 376 and that of Clarke C.J. in *Luke Charlton and Michael Cotter v. Gerrard Scriven* [2019] IESC 28.

Plenary proceedings and the right to an interlocutory injunction

19. As this appeal arises out of an order for an interlocutory injunction, it is perhaps useful to explain (i) what an interlocutory injunction is, (ii) the circumstances that may give rise to an application of that nature and (iii) what an applicant needs to show before they can obtain such relief.

20. At para. 15, of his recent judgment in *Ulster Bank Ireland Limited v. Gerry Beades* IESC 83 (delivered 25th November, 2019), McKechnie J. helpfully summarised the different methods whereby a litigant may obtain access to justice for the purposes of resolving an issue with another party or parties. As he correctly observed, the most complete hearing a litigant can obtain is a plenary hearing. This occurs most commonly when an action is

commenced by plenary summons, as is the case here. The summons is followed by an exchange of pleadings and possibly followed by the discovery of certain relevant documentation after which the issues will go to trial and be resolved on oral evidence with each party having the opportunity to test the evidence of the other.

21. There are, however, circumstances in which a party may be in a position to establish that they will likely sustain irreparable damage unless the court intervenes to protect their interests in advance of the date upon which a plenary hearing can be availed of. In a hearing convened at relatively short notice, the court, having considered the evidence adduced by the parties on affidavit, will decided whether it should intervene despite the fact that the trial has yet to take place. Essentially, the court is asked to put arrangements in place, albeit only temporarily, to protect the interests of the applicant, even though at that point in time it cannot be certain as to how the substantive dispute will ultimately be resolved at the plenary hearing.

22. The principles to be applied by a court when determining whether it should accede to an application for an interlocutory injunction are well established. They were recently applied in *Charlton & Cotter v. Scriven*, a case relied on by Mr. Beades and which, as it happens, also concerned an application by receivers for an interlocutory injunction.

23. As is evident from the authorities, perhaps the most important consideration for the court on an application for an interlocutory injunction is the need for it to take an overall approach which will minimise the risk of injustice. This applies to the test employed by the court as well as any order the court may make. The court must look to the risks which would flow from putting in place a temporary regime pending the trial of the action which has the potential to cause damage to the respondent in circumstances where the court cannot know for certain what the result at the trial will be. Accordingly, there will always be some risk of perpetrating a significant injustice in granting or indeed not granting an interlocutory injunction. It is the task of the court to identify the level of risk in the circumstances and minimise it.

24. Apart from this overarching consideration, a more concrete point upon which an applicant must satisfy the court is the projected strength of their case at trial. It has, for a long time, been accepted that there are two different standards of proof required of an applicant depending upon whether the relief they seek may be described as prohibitory or mandatory. A prohibitory injunction prevents someone from carrying out a specific act whereas a mandatory injunction is an injunction directing a party to discontinue an omission or ordering them to undo the consequences of an act. As the latter not merely prohibits a party from doing something but actively compels them to act in a specific manner, the courts demand a higher threshold of a party seeking a mandatory injunction.

25. Where an injunction is prohibitory in nature, the applicant need only establish that there is a fair case to be tried (the *Campus Oil* test). However, where what is sought is an order in mandatory terms, the higher standard described by Fennelly J. in *Maha Lingam v. Health Service Executive* [2005] IESC 89 applies. There, he stated:-

> "…[I]t is well established that the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of an interlocutory injunction where the injunction sought is in effect mandatory. In such a case it is necessary for the applicant to show at least that he has a strong case that he is likely to succeed at the hearing of the action."

26. In this context the reference to a "higher standard" is to the degree of assuredness the court should have that the applicant will succeed in his or her claim at the trial of the action. Adjusting that standard shows how courts adapt the test for awarding interlocutory relief where there would be a risk of injustice were such acute relief available too readily.

27. It is also true to say that whether the terms of the relief claimed by any plaintiff on an interlocutory application may be properly described as mandatory, is a matter of substance rather than of form. The effect of an order sought in language which is prohibitory may in truth be mandatory in effect, as was stated by Clarke J. in the course of his judgment in *Bergin v. Galway Clinic Doughiska Limited* [2007] IEHC 386.

28. The strength required of an applicant's case will similarly be adjusted where an injunction goes "a long way towards deciding the case". As an interlocutory injunction is intended and justified on the basis that it only ever puts in place a temporary arrangement, the court also requires a greater degree of assurance before intervening in cases where an injunction would in effect not be temporary, see Clarke J. at para. 9.9 in *Okunade v. Minister for Justice, Equality & Law Reform* [2012] IESC.

29. Accordingly, it is for the court on the hearing of any application for an interlocutory injunction to decide, having regard to the relief sought, the standard of proof to be met by the applicant concerning the strength of the claim. Assuming that the standard is met, the court will then go on to consider whether, if the injunction were to be refused and the plaintiff were to succeed at trial, damages payable by the defendant for damage incurred up until the trial would likely afford the plaintiff an adequate remedy and likewise whether, if the injunction was granted and the plaintiff failed at trial, whether the defendant might be adequately compensated by an award of damages in his or her favour.

30. Furthermore, if damages after a trial are considered likely to be inadequate, the court should also consider whether the balance of convenience favours granting or refusing the injunction.

31. Lastly, it is helpful to repeat what Clarke C.J. said about the use of interlocutory injunctions in *Charlton & Cotter v. Scriven*. As an interlocutory injunction is merely a stepping stone towards a trial, a court must ensure that such relief is not, in practice, treated as a means of obtaining summary judgment against the defendant. He observed that "there is an obligation on any party which has obtained an interlocutory injunction not to rest on their laurels, but to bring the matter on for full hearing."

Approach of the High Court

32. In the course of his judgment, McDermott J. referred on a number of occasions to the test in *Campus Oil Limited v. Minister for Industry and Energy (No. 2)*, and in so doing identified the first element of that test which he noted required the receivers to establish a fair issue to be tried. He clearly stated that he was satisfied that the receivers had met that threshold concerning the validity of their appointment and also in respect of proof of an enforcement event i.e. a lawful demand made which had not been met by Mr. Beades, such that the security can be enforced by the appointment of receivers.

33. Of some importance in this context is what was stated by the High Court judge at para. 19 of his judgment. There he described the strength of the receivers' case, having considered the provisions of the 2009 Act, and Powers of Attorney Act 1996, in much stronger terms. The relevant paragraph reads as follows:-

> "I am satisfied for the purposes of this application that the plaintiffs have furnished a strong evidential basis to establish that they were lawfully appointed as receivers of the properties in issue in this case pursuant to the respective deeds of appointment."

34. It might be said, based upon an overall analysis of the judgment, that the High Court judge was in fact satisfied that Mr. Taite had established a strong case or one which would meet the higher standard required on an application for a mandatory injunction per the decision in *Maha Lingam*. Nonetheless, in the absence of clear statement in his judgment to this effect it would be unsafe for this court to so conclude.

35. In his engagement with this court on the hearing of the appeal, counsel for the receivers did not accept that the relief claimed by the receivers was such that the judge was required to decide the application on the higher *Maha Lingam* standard. The position adopted was that even if that was the standard of proof the evidential threshold had been met by the receivers. That being so there was no basis upon which this court should set aside the order made.

The nature of the interlocutory relief sought

36. Whilst the receivers did not pursue an order for possession, relief which is claimed in the plenary summons, the purpose of the injunction was clearly to wrest control of the premises from Mr. Beades in order that they might exercise all of the powers provided for in Clause 11.4 of the deed of mortgage, including their right, not only to receive any rents payable in respect of the said premises, but also to sell or dispose of the assets. Thus, the relief sought, whilst couched in prohibitory terms, went a long way to giving the receivers the substantive relief claimed in the plenary summons, i.e. possession. For these reasons the interests of justice would demand that this court would review the evidence advanced by the receivers in the High Court under the higher threshold.

Strength of the receivers' case and the role of the appellate court

37. To assess the strength of the receivers' case, this court must do two things: assess the strength of the case itself and also evaluate the strength of Mr. Beades's defence. This is so because the court needs to determine whether Mr. Beades will have any defences to

the receivers' claim at trial which in turn would diminish any prospect of success for the receivers at that stage, see Clarke C.J. in *Charlton & Cotter v. Scriven*. To structure this assessment the court will first address each of the grounds of appeal advanced by Mr. Beades in his notice of appeal and will thereafter consider a number of additional proposed grounds of appeal flagged to the court and the respondents in his written submissions.

38. Before doing this, however, it is perhaps important to emphasise that the role of the appellate court when dealing with an appeal for an order made on an application for an interlocutory injunction is not to rehear that application on the merits. An appellate court will only set aside or overturn a decision made on an injunction application in exceptional circumstances such as where the judge at first instance made a fundamental legal error or where the decision was based upon incorrect facts. The reason for the relatively restricted jurisdiction of the appellate court is because in determining whether or not to grant an injunction, the general equitable principles apply and confer on the trial judge a wide discretion as to whether he or she will grant the injunctive relief. That is a discretion with which the appellate court will not likely interfere (see for example, the dictum of Murphy J. in *Riordan v. Minister for the Environment* [2002] 4 I.R. 404). Concerned that the High Court judge may have made a legal error in respect of the test he applied, the court will now consider whether that error would warrant this court setting aside the orders which he made.

Grounds of appeal

Ground (2) Failed to exhibit original title deeds

39. The grounding affidavit of Mr. Taite exhibited a copy of each and every document referred to by him in his affidavit including the three deeds of mortgage and charge upon which the receivers rely. In his replying affidavit, Mr. Beades did not deny that he executed the deeds in question or seek to contend that they were not true copies of the originals. The fact that the receivers exhibited only copies formed no part of the argument in the court below and for that reason cannot constitute a valid ground of appeal. Furthermore, Mr. Beades never sought to have the originals produced in the High Court as he might have done if concerned as to the accuracy or authenticity of the copies exhibited.

Ground (3) & (4) That the trial judge erred in law in concluding that the deeds of appointment of the receivers, which were executed on the bank's behalf by Mr. Sean Cotter pursuant to a deed of power of attorney, were valid and the alleged breach of Mr. Beades's constitutional rights by reason of the bank's non-compliance with s. 64(2)(b) of the 2009 Act.

40. Section 64 of the 2009 Act is the statutory provision which sets out the requirements for the valid execution of a deed if made by an individual or a company registered in the State. Mr. Beades maintains that the deeds of appointment had to be executed under the seal of the bank in accordance with its articles of association in accordance with s. 64(2)(b)(ii) of the 2009 Act. For their part, the receivers contend that the deeds of appointment were not made by the bank but rather by Mr. Cotter acting as attorney for the bank. In those circumstances execution in accordance with s. 64(2)(b)(i) was what was required. This section provides that a deed is validly executed if it is signed by the individual by whom it was made in the presence of a witness who attests their signature.

In this case, the deed was witnessed by a D. O'Donnell, as can be seen from copies of the deeds of appointment which were exhibited as part of Mr. Taite's affidavit.

41. In support of the validity of their appointment in respect of each property the receivers rely upon the fact that Mr. Cotter was the donee of a power of attorney within the meaning of s. 17 of the Powers of Attorney Act 1996 ("the 1996 Act"), and as such was empowered to act on behalf of the bank to execute any instrument or do any other thing in his name on behalf of the bank. Accordingly, insofar as the deeds of appointment postdate the commencement of the 2009 Act, execution by Mr. Cotter was in accordance with the provisions of s. 64(2)(b)(i)(I) thereof.

42. Whilst Mr. Beades complains that the bank's reliance on s.17 of the 1996 Act, has allowed it to circumvent the requirements which would, in other circumstances, have been mandated by reason of section 64(2)(b)(ii) of the 2009 Act, he does not advance any argument to demonstrate that there is anything legally irregular in the approach taken. Whilst there might be scope for debate as to the precise relationship between these two sections nothing has been advanced by Mr. Beades to demonstrate that s.17 of the 1966 Act cannot, in light of the 2009 Act be used by corporate bodies, in the manner in which it was used in this instance.

43. It is likewise difficult to see how Mr. Beades might successfully defend the proceedings, as he indicated was his intention in the course of this appeal, based upon different wording in the deeds of mortgage and deeds of appointment. Clause 11.1 one of the mortgage deeds provides for the appointment "of a person or persons as receiver and manager or receivers and managers" whereas in the deeds of appointment Mr. Taite and Mr. Brennan were appointed as "joint receivers and managers". Mr. Beades maintains that the inclusion of the word "joint" in the deeds of appointment render the appointment of the receivers invalid.

44. From a legal perspective it is difficult to see how the inclusion of the word "joint" in the deeds of appointment could render invalid the appointment of Mr. Tate and Mr. Brennan as receivers. The deeds of mortgage clearly contemplate more than one receiver and manager. In this regard Mr. Beades reliance on the court's judgement in *Charlton v. Scriven*, appears misplaced. In that case, under the terms of the deed of mortgage the lender was entitled to appoint a person or persons as "receiver and manager or receivers and managers" and in pursuance of that provision, Mr. Charlton and Mr. Cotter had been appointed "receivers" rather than "receivers and managers". On the facts in the present case, there is no such irregularity.

45. For the aforementioned reasons this court is satisfied that the receiver's case that the deeds of appointment were validly executed is a strong one.

46. It is important in this regard that Mr. Beades recognise that it is not necessary for any plaintiff on an application for an interlocutory injunction to fully establish their claim. Depending upon the nature of the injunction sought, all the applicant is required to establish is that there is either a fair issue to be tried or that they have made out a strong

case in support of their claim. In this regard, the court is satisfied that the receivers' claim, insofar as it is based upon the requirement that they prove the validity of their appointment, meets the higher threshold.

47. It is not necessary to engage with the alleged breach of Mr. Beades's constitutional rights insofar as a breach of those rights only falls to be considered if the receivers were not validly appointed, a matter to be finally determined at the hearing of the action.

Ground (5) Hearsay evidence

48. Mr. Beades's assertion that the High Court judge should have excluded the hearsay evidence advanced on behalf of the receivers is based upon a misunderstanding as to the legal position. Order 40, rule 4 RSC provides that on interlocutory motions, statements as to a witness's belief, with the grounds thereof, may be admitted. It is not, however, permissible to rely upon hearsay evidence unless the source of the evidence is provided, as was stated by Clarke J. in *Collen Construction Limited v. Batu* (Unreported, High Court, Clarke J., 15th May, 2006). Here, the receivers sought to and successfully introduced evidence through Mr. Taite's affidavit of a Mr. Sean Malloy of Ktech and a Ms. Mangan. In accordance with long established principles, the High Court Judge made clear that he would attach lesser weight to the evidence which was hearsay than he would have done had direct evidence been available.

49. Given that much of the hearsay evidence concerning the conduct of Mr. Beades was destined to establish that the balance of convenience favoured granting the relief sought, it is relevant to note that much of what was contended for by Mr. Taite concerning Mr. Beades's activities at the relevant premises was not disputed. He accepted that he had changed the locks and there were photographs of him attending at the premises as there were various vehicles bearing his name parked there.

50. In light of this, the treatment of the above evidence by the High Court judge was within the established principles for interlocutory injunctions.

Ground (6) Digital audio recording of the interlocutory injunction

51. In circumstances where Mr. Beades's request for access to the digital audio recording was only made after the conclusion of the injunction proceedings and after the High Court judge had made his order, the refusal of that request cannot provide any basis upon which he might challenge the orders made. Furthermore, it is difficult to comprehend how Mr. Beades could have been prejudiced by the refusal of the trial judge to grant his request given that the injunction application was heard on affidavit and the trial judge gave a written judgment.

Ground (7) Failure to grant a 21-day stay

52. Once again, any order made or refused by the High Court judge after he made the interlocutory orders cannot provide a basis upon which they might be challenged.

Intention to amend notice of appeal

53. The fact that Mr. Beades reserved to himself, in his notice of appeal, the right to apply to amend his notice of appeal should he obtain a transcript of the digital audio recording

does not arise in circumstances where he did not obtain the digital audio recording and made no application to amend his grounds of appeal.

Other grounds of appeal

54. Whilst, Mr. Beades did not seek to amend his notice of appeal, in both his written and oral submissions he sought to advance a number of further grounds of appeal to which the court will now direct its attention, even though strictly speaking he should have been confined to his original grounds of appeal. However, given that these were flagged to the receivers in advance of the hearing and having regard to consequences for Mr. Beades of the outcome of this appeal, the court will, in the particular circumstances of this case, address them.

(1) "That the learned trial judge misdirected himself in law and/or fact regarding the undated letter of demand and the failure of the plaintiff to offer any evidence regarding the method of service or method of delivery of the said letter issued by the bank"

55. The thrust of Mr. Beades's submission is that the High Court judge should not have granted the receivers the injunction sought because he should not have been satisfied that an enforcement event entitling the lender to rely upon its security had been established. In this regard, Mr. Beades relies upon the fact that Mr. Taite, in his grounding affidavit exhibited a letter of demand which was undated but which demanded repayment of the loan facility of 26th May, 2010. Mr. Beades does not deny that he received that letter but seeks to rely upon the fact that it could not be relied upon because it was undated.

56. Obviously, this submission is based upon the contention that at the substantive hearing of the within proceedings Mr. Beades will be in a position to advance a defence on this basis. If he is not in a position to advance that defence, then he cannot seek to have the injunction discharged in reliance upon this argument.

57. Relevant to whether Mr. Beades can advance the aforementioned argument is the fact that that same defence has been dismissed in a related case. In proceedings commenced by summary summons on 18th April, 2013, Record No. 2013 1242 S ("the Summary Proceedings"), the bank sought summary judgment for the sum of €3,270,000 on foot of the loan facility of 26th May, 2010. McGovern J. granted judgment for that sum on 10th October, 2013, having refused to remit the claim for a plenary hearing.

58. In the course of his appeal to this court against the summary judgment, Mr. Beades challenged the entitlement of the High Court judge to rely on the undated letter of demand earlier referred to in order to contend that the loan had not validly been called in prior to the issue of the proceedings. In that appeal, he also sought to challenge the judgment of McGovern J. on the basis that he had failed to resolve what he claimed was an apparent conflict between the undated letter of demand and another letter dated 13th March, 2013, which had demanded repayment of the loan facility. It should be stated that both of these letters were exhibited in the grounding affidavit sworn by Mr. Fergal White in the Summary Proceedings.

59. At para. 13 of his judgment of 25th November, 2019, delivered in respect of Mr. Beades's appeal in the Summary Proceedings, McKechnie J. noted that Mr. Beades had sought "an order that the plaintiff's case be dismissed following the failure to serve a proper demand notice and/or failing this that the case be sent back to the High Court for plenary hearing". In the course of his judgment, he considered the submissions advanced by Mr. Beades based upon the undated letter of demand and the letter of 13th March, 2013, both of which had furnished different figures in relation to his account. Having done so, he concluded that the bank was entitled to rely upon the letter dated 13th March, 2013, which had been exhibited by Mr. White, to satisfy the contractual requirement that demand be made for the outstanding monies prior to the issue of the proceedings. It follows, that the validity of the demand made by the bank for the outstanding monies has been finally determined. That being so, it is not open to Mr. Beades in the within proceedings to seek to have the injunction discharged based upon any irregularity arising from any letter of demand. Neither is he entitled to attempt to defend the substantive proceedings on this basis, the issue is *res judicata*.

(2) "That the learned trial judge misdirected himself in law and/or in fact regard the irregularities and matters surrounding the affidavit of Fergal White"

60. The affidavit of Fergal White referred to by Mr. Beades in his submission was an affidavit sworn in the Summary Proceedings already referred to. Thus, this submission cannot provide Mr. Beades with any basis upon which he might seek to discharge the injunctions.

(3) "The learned trial judge failed to uphold the law of evidence with respect to the Bankers' Books Evidence Act, section 4 and section 5 in permitting Fergal White's evidence to be included when he is neither a partner or officer of the bank"

61. For the reasons stated in the last preceding paragraph, this ground of appeal is misconceived.

(4)` "The learned trial judge failed to recognise the fundamental rights and personal rights of Gerry Beades as set out in Articles 40.3.1 and 3.2 of the Constitution of Ireland when he failed to uphold the law of evidence with regard to hearsay and failed to send the proceedings forward for plenary hearing"

62. The court has already addressed the circumstances in which the court may admit hearsay evidence on the hearing of an interlocutory injunction. There was nothing irregular in the approach of the High Court judge to the manner in which he admitted that evidence and the weight which he attached thereto.

63. As to his complaint that the trial judge did not send the proceedings forward for a plenary hearing, the court considers that Mr. Beades may be operating under a misunderstanding as to the procedures which apply to proceedings commenced by plenary summons and those commenced by summary summons. The present proceedings are plenary proceedings. A defendant is entitled to a full oral hearing in all plenary proceedings provided that they comply with the rules of court. As Mr. Beades knows, this is not the position in relation to proceedings commenced by summary summons where a defendant must establish that they can advance a bona fide defence in order to have the claim remitted to a plenary hearing. Mr. Beades, regardless of the orders made by McDermott J., is entitled to a full plenary hearing in the course of which the onus will be on the receivers to establish their right to the relief claimed. Because it is not for the court on an

interlocutory injunction to make any final decision in relation to any issue before it, it will be open to Mr. Beades to challenge the claim of the receivers and for this purpose to advance such grounds of defence as he considers appropriate, subject only to the caveat that he may not raise by way of defence any matter of law or fact which has already been finally determined.

64. Mr. Beades, in the course of his oral submission, protested that the receivers have never delivered a statement of claim, a claim strenuously denied by counsel acting on their behalf who maintained that a statement of claim was delivered shortly after the injunction was granted. Regardless of whichever account of events is correct, one thing is clear, the receivers have taken no further steps to bring this action to a conclusion. An interlocutory injunction is intended to be an order of short duration in order that the status quo may be maintained or where it is necessary to prevent irreparable damage until the substantive proceedings can be heard. As the court has already emphasised, interlocutory injunctions should not be used as a method to obtain the summary disposal of plenary proceedings. And, as a matter of fact, it does appear that this is what has happened in this case given that the court understands that some of the properties have since been sold by the receivers. Notwithstanding what the court sees as the default of the receivers in bringing these proceedings to a conclusion, anything that has or has not happened since the making of the interlocutory orders cannot provide a basis upon which this court could set aside the interlocutory orders.

(5) "That the learned High Court Judge erred in not ensuring that the defendant as a lay litigant was provided with a full set of papers paginated similar to those provided by counsel for the plaintiff for the trial judge"

65. Whilst it is clearly in the interests of justice that a party moving for an interlocutory injunction would provide the respondent with a book of papers similarly paginated to that which they and the presiding judge and intended to rely upon, this is not required by the rules of court. The rules require no more than the service upon the respondent of all documents upon which the applicant intends to rely. In this case, Mr. Beades does not contend that he was not properly served with the proceedings or the motion papers and neither has he demonstrated that he was prejudiced in any way by the fact that he did not have, if that be the case, the same paginated book as the High Court judge.

(6) "The learned trial judge failed to take into consideration the failure of Ulster Bank to deny any wrongdoing by their employee, Mr. Sean Martin, in the fraudulent removal of €1.3m over six years"

66. By way of background to this proposed ground of appeal, in his replying affidavit sworn on 23rd September, 2013, Mr. Beades referred to the fact that one of his businesses lost a sum of IR£1.3m due to the mismanagement of its bank account. Allegedly, the mandate governing the account in question required two signatures whereas the bank paid out monies based on one signature only. According to Mr Beades, the bank's negligence in this regard is the subject matter of a €6m counterclaim for damages.

67. However, any such wrongdoing on the part of the bank, is a matter extraneous to the within proceedings. It is clear from the judgment of McKechnie J. in the Summary Proceedings that Mr. Beades proposed making a counterclaim in respect of this

wrongdoing in those proceedings. McKechnie J. made two findings in respect of that proposed counterclaim. First, he determined that it lacked credibility in circumstances where, thirteen years after discovering the alleged irregularity, Mr. Beades had taken no steps to pursue the bank in respect of this wrongdoing. More importantly, however, he concluded that the negligence alleged did not relate to any personal bank account of Mr. Beades but rather concerned the bank account of one his companies. That being so, any wrongdoing on the part of the bank could not afford Mr. Beades a counterclaim which could be set off against his own personal liabilities.

68. In these proceedings, the receivers were appointed as a result of default on the part of Mr. Beades in relation to his personal liabilities rather than those of his company. As a consequence, any wrongdoing on behalf of the bank in relation to a bank account of any company owned or controlled by Mr. Beades is incapable of providing him with a defence to the receivers' substantive claims.

69. Finally, in reply to the submissions made by counsel on behalf of the receivers, Mr. Beades sought to contend that the proofs before the court were insufficient to warrant the making of the interlocutory orders. However, contrary to what was submitted by Mr Beades, the receivers were not obliged to exhibit the minutes of any meetings referable to either their own appointment or that of Mr. Cotter as attorney on behalf of the bank. Furthermore, insofar as Mr. Beades belatedly claimed that the order of the High Court judge should be set aside because he was biased, not only was this issue not raised in his notice of appeal or written submissions but was advanced as a bald assertion unsupported by reference to any conduct to demonstrate the validity of his contention.

70. For all of the reasons earlier set forth in this judgement, the court is satisfied that the evidence put before the High Court judge was sufficient to establish that the receivers have a strong case to make at the trial of the action.

(7) Inadequacy of damages and balance of convenience

71. It can be seen from Mr. Beades's submissions as set out above, that there appears to have been no dispute as to the High Court judge's treatment of the inadequacy of damages or the balance of convenience apart from the evidential issues already addressed.

Conclusion

72. In circumstances where the court is fully satisfied that on the evidence before the High Court judge the receivers had established a strong case to support the relief sought at trial and that damages would not be an adequate remedy in the absence of granting the introductory relief, the High Court judge cannot be faulted for the manner in which he exercised his discretion in granting the orders which he did.

73. For the aforementioned reasons the court will dismiss the appeal.