



THE COURT OF APPEAL

Unapproved

No Redactions Needed

Neutral Citation Number:[2022] IECA 139

Court of Appeal Record Number: 2021/154

High Court Record Number: 2018/8090P

McCarthy J.
Donnelly J.
Haughton J.

BETWEEN/

JOHN SHERIDAN

PLAINTIFF/APPELLANT

- AND -

ALLIED IRISH BANKS PLC

DEFENDANT/RESPONDENT

JUDGMENT of Mr. Justice Haughton delivered on the 23rd day of June 2022

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Introduction

1. This is an appeal by against the order of the High Court (Allen J.) dated 14 May 2021 striking out the appellant’s claim under O.19 r.28 of the Rules of the Superior Courts for failing to disclose a reasonable cause of action and/or for being frivolous and vexatious, and ordering that the respondent (AIB) do recover from the appellant the costs of the motion and the proceedings. The appellant John Sheridan appeared as a litigant in person.

The pleaded claim before the High Court

2. The claim was initiated by Plenary Summons issued on 11 September 2018. The “General Indorsement of Claim” pleads –

“The cause of action is negligence.

The applicant’s claim is as the sole executor of the estate of my late mother, Pauline Sheridan, who died on 27th of August 2016, who was the Administrator in Ireland as issued on 4th June, 1997 and as the Administrator of my late brother James Vincent Sheridan’s estate.

A further grant of De Bonis Non, Letters of Administration were issued by the Irish Probate Office of the High Court 9th of May 2018 and also Letters of Administration were issued to the applicant in the United States of America in the Surrogates Court of the State of New York, Dutchess County on the 16th May 2018 in respect of the estate of my late brother.

Allied Irish Bank PLC has neglected to recognise my standing as the executor of Pauline Sheridan and the administrator of the estate of James Vincent Sheridan.

As the Administrator of the unadministered estate of James Vincent Sheridan, I am asking this Honourable Court for an order directing Allied Irish Banks PLC to release documents/records to me as administrator of the James Vincent Sheridan estate.”

3. No regular Statement of Claim was delivered, but the appellant delivered a Notice of Claim on 2 October 2018 which the parties agreed could be regarded as a Statement of Claim. This repeats the pleas in the Plenary Summons and pleads that monies of James Vincent Sheridan were transferred to two Irish registered companies Emerald Contract Cleaners Ltd (CRO 22322) and Emerald Contract Cleaners (Ire) Limited (CRO 148369). It is pleaded that AIB had refused to provide records “*both business and personal*” relating to these companies, and that AIB were not recognising his standing “*as a director of both companies*” and as a legal personal representative of James Vincent Sheridan. Under the heading “*NEGLIGENCE*” he then pleads: -

- “1. Claimant is the personal representative and still holds himself out as director/shareholder or agent of both companies as ordered by Justice Mella Carroll.
2. The respondent, Allied Irish Bank PLC, which holds records belonging to both companies and James Vincent Sheridan’s personal account in AIB Manhattan and AIB Ireland. AIB is neglecting to recognise the claimant’s standing.
3. In 2016, the claimant received an affidavit from a relevant person, the original accountant/auditor of both companies. Mr. Fintan P. Flannelly stated that James Vincent Sheridan’s monies were transferred from AIB Manhattan to both companies.

The claimant is asking this court to order [AIB] to release documents/records to me as Administrator in relation to –

1. James Vincent Sheridan personal account in AIB Manhattan, New York and AIB Ireland.
2. Emerald Contract Cleaners Limited (CRO 22322) formally [*sic*] Emerald Contract Cleaners Ire Limited).
3. Emerald Contract Cleaners (Ire) Limited (CRO 148369).”

The Notice of Claim then lists, over eight bullet points, the bank documents which he seeks to have released by AIB, which include those relating to opening and closing the company accounts, all relevant bank statements, all transfers from “James Vincent Sheridan AIB account in Manhattan NY to AIB, Ireland and elsewhere” and all documents in the name of James Vincent Sheridan or James V. Sheridan connected to either of the companies.

4. The pleaded claim does not say why the appellant claimed release of the documents.

The affidavits

5. However, the purpose became apparent from the affidavit sworn by the appellant on 22 November 2018 to ground a Notice of Motion issued by the appellant on 26 November 2018 in these proceedings in which he sought discovery of the same documents the release of which is sought in the Notice of Claim. It should be noted that this discovery was sought before any defence was filed.

6. In that affidavit the appellant sets out his understanding, including allegations of fact that are contested, of the involved history prompting “*this application*”. He avers that James Vincent Sheridan was blind, and at the age of 19 was killed in a car crash in New York on 20 December 1971. He suggests that at the date of his death his late brother held one share in CRO 22322, which company

was incorporated in Ireland in 1965. He avers that he “*discovered*” in 1995 that his brother Vincent was still a director of this company. He avers that his uncle James Valentine Sheridan changed the name of this company from Emerald Contract Cleaners Ireland Limited to Emerald Contract Cleaners Limited, and that a new company Emerald Contract Cleaners Limited (CRO 148369) was incorporated in Ireland in 1989 by James Valentine Sheridan, and that he “*discovered*” in 2017 that sums of money were transferred from an AIB account in Manhattan into an AIB account in Dublin in his late brother Vincent’s name. He avers that his late mother Pauline obtained a grant to James Vincent Sheridan’s estate on 4 June 1997, and that as a personal representative she corresponded with AIB regarding his estate in 1999. He avers that AIB declined to furnish information or documents concerning the bank accounts of both companies because his mother was not a director and the information was confidential. As CRO 22322 was struck off the Register on 19 April 1999 (as it had ceased trading since 1989), his late mother Pauline presented a petition, on 4 December 2000, to restore CRO 22322 to the Register, holding herself out as a member based on James Vincent Sheridan having been a shareholder. Carroll J. initially made an order for restoration on 19 February 2001, but the appellant’s uncle James Valentine Sheridan applied (on 6 December 2001) to vacate that order and dismiss the petition. Carroll J. vacated her order on 5 November 2002 and struck out the petition¹. In 2004 in correspondence the appellant’s mother Pauline again tried to persuade AIB to release the accounts/documentation, and AIB refused for the same reasons given previously. Pauline Sheridan died on 27 August 2008, naming the appellant as her executor.

7. The appellant claims in his affidavit that an audit by the Revenue Commissioners of company CRO148369 disclosed that money in excess of £2,112,210 had been loaned to it by directors. He

¹ The appellant omits to mention that Carroll J. in the course of the hearing observed that the first order was obtained by perjury, because the late Pauline Sheridan was not a shareholder. As the appellant does mention, Carroll J. declined to grant an injunction restraining Pauline Sheridan and John Sheridan from holding themselves out as directors/shareholders of CRO22322 or the trading company CRO148369.

refers to evidence of Mr. Flannelly, who was auditor to both companies, confirming in 2017 that he had sight of transfers of £80,000, £90,000 and “at least £2,000,000 in the name of my deceased brother transferred by his father Patrick Francis Sheridan, from an account in AIB Manhattan to AIB Crumlin Cross and AIB Rathgar in to ...company number 22322 and 148369”. He exhibits and relies on two affidavits of Mr. Flannelly which were sworn on 26 July 2017 and 5 June 2018 in the context of a Petition brought in 2017 by the appellant to have CRO22322 restored to the Register of Companies, and I will make further reference later in this judgment to that Petition and its outcome before the High Court, and, recently, on appeal before this court. He also exhibits a copy affidavit sworn by his father Patrick Francis Sheridan on 15 January, 2015, shortly before he died, which asserts that his son James Vincent Sheridan held one share in CRO22322, and he held the other, and that through (allegedly) forged documents lodged in the Companies Registration Office in 1974/75 by James Valentine Sheridan who was “impersonating my son by forging his name as well as mine”, James Valentine Sheridan “stole” the company.

8. Of significance, although not mentioned in the appellant’s affidavit, is that during her lifetime Pauline Sheridan did not initiate proceedings against AIB, notwithstanding that she first sought documents in 1999.

9. A replying affidavit was sworn by Mr. Tom Durkan, Branch Manager in AIB’s Rathgar Branch, on 10 December 2018. He noted that no Statement of Claim had been filed and asserted that there were no exceptional circumstances justifying discovery “at this time”, and suggests that it can be inferred that the discovery is sought as the substantive or primary relief “in an as yet unformulated claim against an unspecified wrongdoer...”, and this this should more properly be brought as a motion for non-party discovery in the context of proceedings brought against actual wrongdoers. Mr. Durkan also relied on AIB’s duty of confidentiality in relation to customer’s accounts. He refers to CRO 22322 having been struck off in 1999, and that the appellant was not a director of either company.

He avers “for the sake of completeness” that a search was conducted by AIB in relation to any account of CRO22322 and “the Defendant has no records of accounts for that company”. He confirmed that the reasons originally given to Pauline Sheridan for refusing to disclose records remained the same. He refers to meeting the appellant and his brother Pat Sheridan on 27 September 2018 (further to a direction given by Barniville J.) and explaining why there was no valid basis for furnishing him with any information, in particular because CRO22322 was not restored to the register and remains struck off, and that the issue of James Vincent Sheridan’s estate’s entitlements in that company and “possibly” CRO148369 were argued in court “as long ago as 2001” before Carroll J.

10. Mr. Durkan avers that he also carried out searches for any accounts of James Vincent Sheridan (deceased in 1971), including hard copy and electronic searches, (but not microfiche/microfilm searches as this would be “akin to searching for a needle in a haystack”), and these did not disclose any records and he so informed the appellant. At para. 19, Mr. Durkan avers:

“19. I confirm that there was no AIB branch in Manhattan prior to the James Vincent Sheridan’s death in 1971. There was no branch of AIB in New York until 1977, some 6 years after his death. I am of the view that in all likelihood, given the passage of time since his death, any records in relation to the deceased’s accounts, if any, would have since been destroyed or deleted. I note that James Vincent Sheridan died nearly 50 years ago. I am also of the view that the same applies to any records or transactions from the late 1980ies and early 1990ies.”

11. Mr. Durkan refers to the exhibited affidavits of Mr. Flannery. He observes, correctly, that on his version of events the transfers referred to by Mr. Flannery were made at the earliest some 18 years after the death of James Vincent Sheridan in 1971, and no indication is given as where the money that was transferred from accounts (allegedly) in that name originated from. He observes that if there was an account in that name in AIB Manhattan it could only have been created long after the

appellant's brother James Vincent Sheridan died, and if there was any account in that name it could not have related to the deceased. Mr. Durkan also observes, in para.26 that "it is difficult to see how any claim the Plaintiff might wish to bring at this stage is not statute barred".

12. Before filing any further affidavit, on 23 January 2019 the appellant commenced proceedings in the High Court by Plenary Summons record number 2019 no. 541P against Emerald Contract Cleaners (Ireland) Limited CRO 148369 and its directors including Helen Sheridan, widow of the late James Valentine Sheridan, and three of their sons ("the 2019 Plenary Proceedings"). In these the appellant claimed a declaration that the defendants willingly and knowingly used the name of James Vincent Sheridan in matters relating to both companies, and incorrectly transferred monies from an account in his name to a company account in Ireland, and he sought associated declarations and 'Mareva' injunctions.

13. The appellant then swore a supplemental affidavit on 5 March 2019. In this he contends the effect of refusal of an injunction by Carroll J. meant that he was still entitled to hold himself out as a director of CRO22322 and CRO148369, and therefore entitled to seek documents from AIB. He contests that AIB can rely on confidentiality. He referred to the issue of the 2019 Plenary Proceedings which he uses to justify the claim for disclosure from AIB, stating, in para.18, "We need this order to identify who the specific wrongdoers are." The exhibits to this affidavit include papers related to the company restoration petition heard by Carroll J., including a copy of an Affidavit sworn by the later James Valentine Sheridan to which I will make reference later in this judgment.

14. In response to this an affidavit was sworn by Derek Daly, a solicitor in AIB's litigation department, on 17 July 2019. This sets out a timeline in respect of these proceedings - the appellant's motion for discovery, AIB's motion to dismiss, and various adjournments and directions including that the company CRO148369 be put on notice. It records that a Statement of Claim was delivered but is undated. The Statement of Claim is shorter and departs slightly from what was previously

sought in the Notice of Claim but asserts an entitlement “to all the accounts and documents of both companies” and seeks a declaration that AIB refuses to accept his standing as administrator of the estate of James Vincent Sheridan and executor of the estate of Pauline Sheridan, and a declaration that AIB has no duty of confidentiality.

15. Mr. Daly then refers to matters heard and determined by Allen J. in the High Court on 30 May 2019. The first of these was the appellant’s notice of motion seeking discovery in these proceedings; that motion was struck out with costs awarded to AIB. The second and third matters arose in the 2019 Plenary Proceedings – these were the appellant’s motion seeking Mareva Injunctions and AIB’s motion seeking a dismiss of those proceedings. Allen J. ordered that the 2019 Plenary Proceedings be struck out, and it followed that the application for Mareva injunctions fell away. Allen J. also made an Isaac Wunder order against the plaintiff John Sheridan in those proceedings.

16. Mr. Daly at para.7 sets out his note of the *ex tempore* judgment delivered by Allen J. as follows:

“This is an application by John Sheridan brought by notice of motion dated November 2018 in an action commenced in September 2018 for an Order directing the release to him as administrator of the Estate James Vincent Sheridan all documents relating to James Vincent Sheridan in New York and Ireland, and all documents relating to CRO 22322 and CRO148369 along with two other accounts relating to those companies. James Vincent Sheridan died in 1971 aged 19 years and the evidence of the Bank is there was no AIB in Manhattan until several years after his death and the claim for the companies’ documents is founded mostly on Ms Justice Carroll’s Order of 5 November 2022. That was an Order made on the application of James Valentine Sheridan by Notice of Motion to vacate the restoration Order of February 2001 restoring company no.22322 to the Register of Companies and dismissing the petition of Pauline Sheridan and striking out the returns made. An Order was sought restraining the Plaintiff from holding himself out as a director of the Company or trading

company. The Court refused the relief sought at paragraph 4. That was an order restraining Mr. Sheridan from holding himself out as a director. Mr. Sheridan claims to be entitled to documents founded on a belief that the refusal of an Order restraining him from holding himself out as a director means that he is entitled to hold himself out as a director. That is fundamentally mistaken. Mr. John Sheridan is not and James Vincent Sheridan was not a director of the companies and, even if James Vincent Sheridan was a director of the companies, the grant of Letters of Administration by itself would not constitute him as a director or shareholder. The alternative basis advanced by Mr. Sheridan is he and his brother (Patrick) filed B10s in the CRO appointing themselves as directors and they are simply not entitled to do that and fact that they filled in a form to register themselves as directors does not constitute the person named as a director or shareholder. The Affidavit of Tom Durkan shows that prompted by comments of my colleague the Bank tried to deal with Mr. Sheridan's request in an expeditious way which yielded no records but this was to no avail. All efforts to resolve Mr. Sheridan's query amicably having failed the application comes before me to decide on the law. In law Mr Sheridan's application is misconceived and I refused his application for relief."

17. Mr. Daly states at para.8 that following this the appellant would not consent to an order striking out the present proceedings and indicated to the court that the case was originally for negligence and discovery but now it was just a discovery case because he needed discovery to move his case along. Mr. Daly suggests that, given that the 2019 Plenary Proceedings were struck out by Allen J. as being frivolous and vexatious, even if the present proceedings led to discovery at trial this would now be futile because the proceedings it was desired to assist have been struck out.

18. The appellant swore a further affidavit on 27 November 2019 in response to Mr. Daly. Much of this is a repetition of earlier averments, but he also broadens his claims. He again appears to allege

negligence on the part of AIB in relation to non-disclosure of document relating to the two companies, and he also alleges obstruction of justice and a failure to carry out “customer due diligence in the identity of the client” and failure to disclose “money laundering”, and he suggests AIB breached legal duties arising under the Criminal Justice Act 1994 and s.33(1)D of the Criminal Justice Act, 2010.

19. From the affidavit evidence it is clear that the disclosure claimed by the appellant from AIB in these proceedings, and further sought his Notice of Motion, which was struck out on 30 May 2019, were intended to aid the appellant’s claim in the 2019 Plenary Proceedings. It is fair to characterise those as the “main proceedings” because in them the appellant claimed to recover IR£2,112,210 on behalf of the estate of James Vincent Sheridan. That claim echoed an earlier claim brought by the late Pauline Sheridan in 1994 (but in which neither of the companies were parties), in which she claimed that James Valentine Sheridan and the two companies were used to hide that sum of money. That claim was fully heard on oral evidence and rejected in the Circuit Court in 1995, and on appeal by McGuinness J. in 1996, and I will refer further to it later in this judgment.

Judgment in the High Court

20. In his judgment dated 6 March 2020 in the matter under appeal Allen J. dismissed the present proceedings under O.19 r.28 as being frivolous and vexatious. He refers to the hearing before him on 30 May 2019, stating –

“37. I heard the plaintiff’s discovery motion first and for the reasons given in an *ex tempore* judgment refused it. I found that the motion was misconceived. The action was an action for discovery, which is not permitted by law, and that the motion sought on an interlocutory basis what was the substantive relief claimed by the action. In any event, James Vincent Sheridan, late of 230 Honey Lane, Poughkeepsie, New York, who died on 20th December 1971 aged 19 years, could not possibly have been – and on the plaintiff’s case was not – the subject of the Companies Office filings from 1975 on which his case was based.

38. I next heard the application by CRO 148369 and its officers to strike out that action, and for the reasons given in an *ex tempore* judgment I acceded to it and made an Isaac Wunder order restraining any further proceedings without the prior leave of the High Court. I found that the action was frivolous on the ground that it had no reasonable prospect of success and vexatious in that there was an inherent hardship on those defendants in having to defend a claim that could not succeed. The plaintiff's motion for a *Mareva* injunction fell away with the action.

39. There was no appeal against the judgments and orders of 30th May, 2019 but on 26th July, 2019 the plaintiff applied for leave to bring against CRO 148369 and its officers the same action as had been struck out. For the reasons given in a written judgment delivered on 28th August, 2019 *Sheridan v Emerald Contract Cleaners (Ireland) Limited* [2019] IEHC 628 I refused that application.”

21. Allen J. then proceeded to determine the respondent's application to strike out the present proceedings for failing to disclose a cause of action. He stated: -

“40. I accept the submission of Ms. Julia Lawlor for the defendant that the jurisdiction of the High Court to order discovery in an action the sole object of which is to obtain discovery is limited and is to be exercised sparingly. See *Megaleasing U.K. Limited v Barrett* [1993] I.L.R.M. 497, *Doyle v Commissioner of An Garda Siochána* (Unreported, High Court, 27th August, 1997, Laffoy J.) (Unreported, Supreme Court, 22nd July, 1998) and *Blyth v Commissioner of An Garda Siochána* [2019] IEHC 854. The discovery sought by the plaintiff against Allied Irish Banks plc is not laid upon the clear and unambiguous establishment of wrongdoing or limited or directed to establishing the identity of a wrongdoer. It is true that the summons and Statement of Claim assert that the cause of action against the defendant is negligence, but the only relief sought is discovery.

41. In *Ewing v Ireland* [2013] IESC 44 the Supreme Court endorsed the approval by the High Court in *Riordan v Ireland (No. 5)* [2001] 4 IR 463 of the six indicia of vexatious proceedings identified in the Canadian cases of *Dykun v Odishaw* (Unreported, Alberta Court of Queens Bench, Judicial District of Edmonton, 3rd August 2000) and *Re Lang Michener & Fablan* [1987] D.L.R. (4th) 685, amongst which are the bringing of one or more actions to determine an issue which had already been determined by a court of competent jurisdiction; cases where it is obvious that the action cannot succeed, or that no reasonable person could reasonably expect to obtain relief; cases where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights; and where issues are rolled forward into subsequent actions and repeated and supplemented. I accept Ms. Lawlor’s submission that this action against Allied Irish Banks plc bears those indicia.”

22. The trial judge proceeded to make findings supportive of this conclusion:

“42. James Vincent Sheridan, late of 230 Honey Lane, Poughkeepsie, New York, who had a short and sheltered life and who died in a road accident on 20th December, 1971 aged 19 years, was never a director or shareholder of Emerald Contract Cleaners Limited, which was incorporated in Dublin when he was 13 years old and was dormant until after he died. He could not possibly have been – and on the plaintiff’s case was not – the subject of the Companies Office filings from 1975 on which the plaintiff’s case is based. On the plaintiff’s case, the man who was introduced to Mr. Fintan Flannery in 1973 was the plaintiff’s uncle, James Valentine Sheridan.

43. There was never any IR£2,112,210. In the words of McGuinness J, the entire edifice of the case which she heard in 1996 was built on the fiction that a computer code, 2112210, used by the Revenue in 1993 for checking its programmes represented money”.

23. Allen J. then noted that the action against CRO 148369 and its officers (the 2019 Plenary Proceedings) had been struck out as an abuse of the process, and that there could therefore be no purpose in pursuing the action for disclosure against AIB. He then stated in para. 45 –

“45. It is well established that the jurisdiction evoked by the defendant will be exercised sparingly and only in clear cases. See for example *Barry v Buckley* [1981] I.R. 306. It is well established, also, that if there is a deficiency in the case pleaded that is capable of remedy by amendment, the action should not be dismissed. See for example *Sun Fat Chan v Osseous Limited* [1992] 1 IR 425. For the reasons given, I am satisfied that the case is hopeless and that the Statement of Claim is irremediable.”

He therefore dismissed the proceedings.

24. It does not appear that the appellant in fact made an application in the High Court for an amendment of his pleadings “*to save the claim*”. Perhaps prompted by para. 45 of the judgment, the appellant did present this Court with a “*Statement of Claim*” in which he sought to include extensive new particulars, and he asked this Court for an amendment in order to save his claim. I will address that presently.

The Appeal and application to admit new evidence

25. In his Notice of Appeal, the appellant in Ground 1 asserts that the facts presented in the judgment of the trial judge are “*factually incorrect*”, and he purports to identify these in Grounds 4 and 5. In Ground 2 he asserts that he has new evidence supporting his version of the facts. In Ground 3 he objects to the use of a phrase by the trial judge describing his case as being “*founded on a quixotic quest*”. In Ground 6 he alleges that “*fraud and misrepresentation have occurred*”, and that AIB “*... had a fiduciary and professional duty to carry out due diligence and fell short in their duty.*”

26. The Notice of Appeal refers to matters which were not before the High Court, including new evidence. In his written submissions the appellant sought to rely on an affidavit of Mr. Fintan Flannelly, sworn after judgment was given in the High Court. The appellant brought an application by notice of motion for the admission of new evidence on the appeal. That application was refused by order of Costello J. on 30 July 2021, and the Supreme Court declined to hear an appeal of that decision.

27. In any event it is apparent that the appellant does not contend that Mr. Flannelly ever dealt with his deceased brother James Vincent Sheridan, but rather contends that his uncle James Valentine Sheridan deliberately mis-represented his identity. The reason for Mr. Flannelly's misapprehension of name i.e. that James Valentine Sheridan who signed the CRO returns 'James V. Sheridan', was called James Vincent, is in my view not relevant to the determination of the High Court or this Court. Whatever name the director of CRO 22322 used in filings with the Companies Office, or when introducing himself to Mr. Flannelly, on the appellant's own case that man was not and could not have been Mr. James Vincent Sheridan, the appellant's deceased brother, who had passed away in 1971. Even if it is assumed that James Valentine Sheridan wrongly used his nephew's middle name, that does not mean that his shareholding or directorships in CRO 22322 thereby became directorships and shareholdings of James Vincent Sheridan or his estate or personal representatives. Nor could these matters provide a basis for the appellant's claim for sole discovery in these proceedings. The appellant's repeated claims to the contrary are entirely misconceived.

Discussion

Action solely for discovery

28. The appellant does not in his appeal contest that an action the sole object of which is to seek discovery generally cannot be made. In *Megaleasing UK Limited v Barrett* [1993] ILRM 497, the Supreme Court overturned an order for discovery made in the High Court in an action for sole

discovery. Finlay CJ held that the jurisdiction to order discovery in an action of sole discovery is a power which must be sparingly used. The Court held, at p. 504: -

“I am, accordingly, driven to the conclusion that the existing authorities upon which the judgment of the High Court are largely based, which are authorities of the English Courts, do in fact confine the remedy to cases where a very clear proof of a wrongdoing exists, and possibly, so far as applies to an action for discovery alone prior to the institution of other proceedings, to cases where what is really sought is the names and identity of the wrongdoer, rather than factual information concerning the commission of the wrong.”

McCarthy J. in his judgment stated at p. 505: -

“A procedure of this kind is plainly open to abuse which the courts must be alert to prevent. The procedure requires a balancing of the requirements of justice and the requirements of privacy.”

O’Flaherty J. went further and stated of the power to order discovery in a sole action for discovery, at p. 507: -

“I would, for the present, confine it to a requirement to disclose names where wrongdoing is established.”

29. *Megaleasing* was followed and applied by Laffoy J. in *Doyle v The Commissioner of An Garda Siochána* [1999] 1 IR 249. In the High Court, Laffoy J. declined to grant discovery of garda documentation relating to an investigation and the commission of a wrong, and not merely the identities of wrongdoers; and also held that the plaintiff had not produced very clear proof of wrongdoing. The principles in *Megaleasing* were also applied by the High Court in *Blythe v*

Commissioner of An Garda Siochána [2019] IEHC 854 and more recently in *Grace v Hendrick & anor* [2021] IEHC 320.

30. The trial judge correctly identified and applied this jurisprudence to the claim for disclosure as pleaded by the appellant in his Notice of Claim/Statement of Claim. The appellant's claim did not seek the identity of a wrongdoer, but rather information in relation to alleged wrongdoing. I agree with the respondent's submission that as a matter of law the appellant is not and could not at trial be entitled to such information in an action for sole discovery against AIB. It is also the case that such discovery could, if there were appropriate plenary proceedings in being and pleadings were closed, be sought by way of non-party discovery if the usual requirements of relevance, necessity and proportionality were satisfied.

31. Furthermore, it is beyond dispute at this stage that the disclosure which the appellant sought in his Notice of Claim was clearly sought for the purpose of bolstering his main claim in the 2019 Plenary Proceedings. That is not an exception to the rule that the power to order discovery in a sole action for discovery is generally impermissible (the only established exception being to provide the identities of potential defendants).

32. In any event, as the trial judge correctly points out in para. 44, the 2019 Plenary Proceedings against CRO 148369 and its directors and officers were struck out on 30 May, 2019, and the appellant did not appeal that strike out, and accordingly even if the law permitted an action against AIB for disclosure/discovery for the purpose of prosecuting the 2019 Plenary Proceedings, there is no longer any such purpose.

33. Furthermore, CRO 22322 was struck off the Register of Companies on 9 April 1999. The attempt by the late Pauline Sheridan to have that company restored to the Register foundered in 2004, and, as will be referred to later, a more recent petition brought by the appellant to have that company

restored to the Register was rejected by the judgment and order of McDonald J. made in the High Court on 16 January 2019, which was affirmed in the judgment of Whelan J. delivered on behalf of this Court on 29 April 2022.

34. While I believe this is sufficient to dispose of this appeal, I propose nevertheless to deal with the appellant's proposed amended Statement of Claim, by virtue of which he seeks to "*save the claim*" in the present proceedings.

Proposed amendment to Statement of Claim to 'save the claim'

35. In *Sun Fat Chan v Osseous Limited* [1992] 1 IR 425, McCarthy J. stated at p.428–

“By way of qualification of the jurisdiction to dismiss an action at the Statement of Claim stage, I incline to the view that if the Statement of Claim admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed.”

While subsequent decisions have accepted that this jurisdiction exists, cases in which it has been exercised in favour of a plaintiff are few and far between. In *Kelly v AIB PLC* [2019] IESC 72, Irvine J., in the judgment of the Court stated at para. 34: -

“Third, whilst this court may, in exceptional circumstances, permit an argument to be made which was not advanced in the court below (see for example O'Donnell J. in *Lough Swilly Shellfish Growers Co-Operative Society Ltd and another v. Bradley & Ivers* [2013] IESC 16), or may allow a claim to be amended to save it from being dismissed as one which is bound to fail (see for example *Sun Fat Chan v. Osseous Ltd* [1992] 1 I.R. 425), there is no basis to warrant any such intervention on the facts of this case. To permit the amendment of the Statement of Claim to include a claim based on the infringement of Mr Kelly's data protection

rights would be to allow him pursue an entirely fresh cause of action not contemplated at any earlier stage of the proceedings which were commenced almost 10 years ago.”

36. It is not unreasonable to expect that a plaintiff who is going to make an application to amend to “*save the claim*” will do so on the first opportunity, i.e. in the High Court, and that the defendant/respondent will then have an opportunity to oppose such an application. There was no such application in the present case, and the amendments in the Statement of Claim are now put forward by the appellant for the first time. It follows that AIB has been deprived of the opportunity to oppose such application at first instance. As it requires exceptional circumstances to justify the Court admitting of an amendment of the Statement of Claim to admit the claim in the first instance, it would seem to follow that most exceptional circumstances would be required to justify an amendment to save the claim at the appellate stage.

37. The appellant in fact issued a Notice of Motion on 20 December 2021 to further his application to this Court for leave to amend. What he says in a short grounding affidavit which he swore on 16th December 2020, in which he exhibits the proposed new Statement of Claim, is difficult to understand, but he does say that as a lay litigant he realises there are errors in his Notice of Claim which he asks to be allowed to “*edit*”.

38. However, the amended claim which the appellant now seeks to plead is radically different to that pleaded in his Plenary Summons and Notice of Claim (or his shorter undated Statement of Claim). He edits out parts of the Notice of Claim but significantly now introduces detailed “*Particulars*” setting out how he asserts that the late James Vincent Sheridan was a shareholder and director of CRO 22322, and he seeks rectification of a transfer of monies “... *from an account in his brother’s [James Vincent Sheridan’s] name in New York into an account in Dublin, also in his late brother’s name, subsequent to his death*”. He alleges fraud on the part of the late James Valentine Sheridan “*to gain access these funds, not by mistaken identity by rather a deliberate attempt to impersonate*

the plaintiff's brother." (sic). He alleges "AIB were negligent in establishing the identity of the parties involved. They were able to confirm that the Plaintiff's late brother had an account in AIB Rathgar yet fell down in their fiduciary and statutory duty of care when they failed or refused to validate the identity of the Plaintiff's Uncle and come to the correct conclusion that he was in fact James Vincent Sheridan deceased but rather his very alive Uncle, James Valentine."

39. The appellant then pleads s. 13 of the Administration of Estates Act, 1959 – a provision which was in fact repealed and replaced by a similar provision, coincidentally to be found in s. 13 of the Succession Act, 1965 – to suggest that the estate of James Vincent Sheridan vested in the President of the High Court until the Grant of Administration was given, from which he queries how James Valentine Sheridan *"managed to transfer assets of the Company his late nephew was a director and shareholder of"*. In the Prayer he asks the question *"how can the plaintiff carry out his legal duty and administer the estate of his late brother if he does not have access to his estate"* and he alleges that the transfers arose due to negligence and breach of fiduciary duty of AIB and he seeks that *"these transfers are rectified"*.

40. These claims are fundamentally different to his previously pleaded claim, in which he simply pleaded that AIB was negligent not to have released documents, and in the reliefs simply sought specified records/documents. For this reason alone, it is not appropriate to accede to his application.

41. I am also of the view, for reasons elaborated below, that persisting with the claim as presently pleaded, or in the amended form, is an abuse of process and that all the claims that he wishes to plead are vexatious and frivolous and so clearly statute barred that he should not be permitted to pursue them.

Frivolous and vexatious/abuse of the process

42. On an application to dismiss under the inherent jurisdiction the Court can engage in limited consideration of the evidence, and where an asserted claim is entirely implausible or clearly statute barred, the Court can strike out the claim. See *Barry v Buckley* [1981] IR 306, and *Lopes v Minister for Justice, Equality and Law Reform* [2014] IR 301. In para. 41 of his judgment the trial judge appropriately referred to the decision of the Supreme Court in *Ewing v Ireland* [2013] IESC 44 approving the six indicia of vexatious proceedings, amongst which are –

- the bringing of one or more actions to determine an issue which had already been determined by a court of competent jurisdiction;
- cases where it is obvious that the action cannot succeed, or;
- cases where no reasonable person could reasonably expect to obtain relief;
- where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights; and
- where issues are rolled forward into subsequent actions and repeated and supplemented.

43. The appellant's claim that funds were wrongfully transferred arises from evidence in two affidavits of Mr. Flannelly, Auditor/Accountant to the companies, sworn to support the application brought by the appellant under s. 738 of the Companies Act, 2014 to restore CRO 22322 to the Register of Companies. In the first of those affidavits Mr. Flannelly refers to a recall of sums in the amounts of IR£2,112,210 and IR£80,000 and IR£90,000 in the name of James Vincent Sheridan being transferred in the late 1980's and early 1990's from AIB Manhattan accounts to the AIB accounts of one or other of the companies in Dublin at Rathgar and Crumlin Cross, and in his supplemental

affidavit he expands on those sums and mentions “*hundreds of thousands of pounds in addition*” and indicates that these were provided by way of directors loans to the companies.

44. It is important to record here that Mr. Flannelly avers in para. 4 of his first affidavit that “*in 1973 I was introduced by Mr. Anthony Sheridan of Sheridan Motors to his ‘brother’ as Mr. James Valentine Sheridan*”, the purpose being to ask and to act as auditor to CRO 22322. He then avers that –

“7. I acted for this company and its associates for the best part of 20 years and was privy to a considerable amount of the financial transactions in my capacity as statutory auditor and accountant until 1993 and lodged all CRO statutory company returns as were presented to me (totally unaware that James V. Sheridan, known to be (*sic*) as James Vincent Sheridan, was in fact James Valentine Sheridan).”

45. The appellant in his supplemental affidavit which he swore on 3 March 2019 exhibits evidence which in fact corroborates Mr. Flannery’s evidence of his misapprehension of the correct name of James Valentine Sheridan. Thus exhibit “JS 3” is a copy of the affidavit sworn by James Valentine Sheridan on 6 December 2001, to support his (successful) application to vacate the order of Carroll J. restoring CRO 22322 to the Registrar of Companies. At para. 7, James Valentine Sheridan averred :-

“I traded under the name of the defunct company for 14 years from 1975 until 1989. The petitioner apparently is basing her title to the ownership of the defunct company on the ascertain² that her son, one James Vincent Sheridan, deceased was the owner, and that she has succeeded him by way of intestate succession. Her case is that the annual returns for the

² It would seem that this is a typographical error and should read “assumption”.

defunct company for the year ended 31st December 1977 show me erroneously described as James Vincent Sheridan, as opposed to James V. Sheridan in earlier years, not James Valentine Sheridan, in the particulars of Directors and Secretary. The particulars have also described me, by the name of James Vincent, as a director of Sheridan Motors Limited, and gave my home address correctly. I signed the annual returns as James V. Sheridan as I normally did. The second Christian name ‘Vincent’ was incorrect and had been inserted by the accountants, a minor mistake which was continued on in the particulars of Directors and Secretary and most of the returns thereafter. The error is not repeated in the particulars of shareholders which show me as James V. Sheridan of 229 Seapark Road, Malahide, County Dublin. The defunct company changed its name to Emerald Contract Cleaners Limited in 1979, and ceased to trade in or about 1989. The final annual return was made up to the 31st December 1994 with accounts made up to the 30th September 1994 and was duly filed on the 5th January 1995.”

46. It is not in dispute that James Vincent Sheridan died in 1971. Accordingly, the best evidence that the appellant can rely on to suggest that the impugned transfers were made some 18 years after the death of James Vincent Sheridan, from an account in the name of “*James Vincent Sheridan in AIB Manhattan*” is the affidavit of Mr. Flannelly. However, it is notable that Mr. Flannelly does not indicate where the alleged monies originated from. As we have seen, Mr. Tom Durkan, Manager of the AIB Rathgar branch in the affidavit sworn by him on 10 December 2018 in response to the appellant’s Discovery Motion in these proceedings confirms that there was no AIB branch in Manhattan until 1977. Mr. Durkan’s evidence is not disputed, although the appellant had ample opportunity to do so in affidavits that he swore subsequently. The High Court and this Court is entitled to accept it as correct. It follows that the late James Vincent Sheridan could never have held

an account in AIB's Manhattan branch and this fundamentally undermines the appellant's claims and renders them implausible.

47. There is also not one shred of evidence to suggest that the late James Vincent Sheridan who died in 1971 could have had any legal or beneficial entitlement to any monies held in AIB's Manhattan branch, whether held by his uncle James Valentine Sheridan, or any other person or entity. Further, as the trial judge correctly points out, James Vincent Sheridan was born in New York and lived in the USA, and he was thirteen years of age when CRO 22322 was incorporated in Dublin and it was dormant until after he died, and he was never a director or shareholder.

48. Further, in the judgment of McGuinness J. in 1996 in the High Court appeal brought by Pauline Sheridan, she found that the first reference to "James Vincent Sheridan" in the filings (filed retrospectively in 1975) is in the return for 1972. The return for 1967 refers to "*James Sheridan of 229 Seapark Road, Malahide*" as a director, and this can only be James Valentine Sheridan who bought that property in 1972 – a year after the death of James Vincent Sheridan. Again, these are facts that speak for themselves and have never been disputed by the appellant. The 1967 return then refers to "*James V. Sheridan*" as secretary and is signed that way – and McGuinness J. noted that "*James V. Sheridan is also listed as a director of Sheridan Motors Limited*". She found that the 1968, 1969, 1970 and 1971 returns were the same, and made up retrospectively. Accordingly, nothing on the CRO record during the lifetime of James Vincent Sheridan supports the claims made initially by the late Pauline Sheridan and later pursued by the appellant in the 2019 Plenary Proceedings (which now stand struck out) to the effect that James Vincent Sheridan was a shareholder, director or secretary of CRO 22322. The appellant is unable to dispute any of this evidence which is a matter of public record.

49. Also, as the trial judge correctly points out in para. 42 of his judgment, on the appellant's own case based on Mr. Flannelly's affidavits, the man who was introduced to Mr. Flannelly in 1973 was

the plaintiff's uncle, James Valentine Sheridan, who Mr. Flannelly mistakenly thought was named James Vincent Sheridan – a mistake that he perpetuated in successive annual filings, made possible by the fact that James Valentine Sheridan signed his name “James V. Sheridan”.

50. It is also not disputed by the appellant that James Valentine Sheridan on his return to Ireland in 1972 bought and resided in 229, Seapark Estate, Malahide, County Dublin. This was the address given by James Valentine Sheridan after signing off on CRO 22322 accounts/filings using the signature “James V. Sheridan”. The absurdity of the appellant's assertions is highlighted in the following averment in the affidavit of James Valentine Sheridan which he swore on 6 December 2001 at para 15: -

“It would appear from a copy of the said Supplemental Affidavit of Pauline Elizabeth Sheridan, that she alleged that her son James Vincent Sheridan Junior deceased who died in 1971 was a director and shareholder of the defunct company. This is completely untrue and has no foundation in fact. The said James Vincent Sheridan Junior died in 1971 at the age of 19. He was tragically killed in a road traffic accident. He had been blind from birth. He was a lovely person and I was very fond of him. The defunct company did not commence business until 1975, four years after his unfortunate death. The error in the annual returns of the company on which the petitioner relies would have this unfortunate young man starting to be a director of the company four years after his death and continuing as such and as a director of several other companies for many years thereafter, during all of which time he lived at my address. The said James Vincent Sheridan deceased was never a director or shareholder of the defunct company. He never made any contribution to the defunct company or to its business. The affairs of the defunct company were entirely managed and conducted by my family and myself.”

It is clear that this was evidence that was acted on by Carroll J. in vacating her initial order restoring CRO22322 to the Register.

51. There is also no evidential basis for the appellant's new pleas that monies were transferred "*from an account in his brother's name in New York*", or that they were transferred "*into an account in Dublin, also in his late brother's name, subsequent to his death*". These are mere assertions, which could never form a legitimate basis for discovery, or an action for discovery.

52. The trial judge found at para. 43 that "*there was never any IR£2,112,210.*" He relies for this on the words of McGuinness J. in the appeal which she heard in 1996, where she accepted the evidence of a witness from the Revenue Commissioners that the figure 2112210 related to a computer code for checking its programs and did not represent money. Again, that is evidence that the appellant has never refuted, and it renders the appellant's primary claim unstateable.

53. As mentioned earlier, the appellant in his capacity as executor of Pauline Sheridan's estate and as administrator *de bonis non* of the estate of his late brother James Vincent Sheridan, brought a Petition under s. 738 of the Companies Act, 2014 to have CRO 22322 restored to the Register. That Petition was dismissed by McDonald J. on 16 January 2019, and the appellant appealed to this Court (Whelan, Haughton, Collins JJ.). In a comprehensive judgment delivered on 29 April 2022, with which I concurred, Whelan J. addressed the same claims which the appellant now seeks to introduce into his Statement of Claim and had occasion to analyse substantially the same evidence as is relied on by the appellant in the present proceedings.

54. Whelan J. found that the evidence of Mr. Flannelly was not "*new*", and that the appellant had been aware of it, or it could have been obtained by him with reasonable diligence, in 1994 (at the time of the Circuit Court hearing) or at the hearing in the High Court before McGuinness J. in 1996, or indeed subsequently in the Petition brought by Pauline Elizabeth Sheridan in proceedings

2000/302COS to restore CRO 22322 to the Register. This Court affirmed the decision of McDonald J. to dismiss the Petition on the basis that it was an abuse of process based on the principle in *Henderson v Henderson*. Deprecating the appellant's repeated use of litigation, at para. 79 Whelan J. states: -

“... The right to litigate is not unlimited and is subject to certain constraints based on public policy. Litigants such as the appellant must at a certain point in time accept the finality of a court's determination where an issue has been fully considered and determined upon and been the subject of an appeal. The appellant's stance of, first vicariously through the agency of Pauline Sheridan, and later directly, repeatedly and obsessively re litigating the core points that his uncle the late James Valentine Sheridan appropriated the identity of his deceased brother and thereby misappropriated vast assets alleged to have been held within the defunct company which in turn were acquired by the respondent company has now descended into a full scale deployment of devices such as purporting to bring this suit as a creditor, whereas the earlier application was brought by Pauline Sheridan as personal representative, which is calculated to facilitate the continued pursuance of a collateral attack aimed at undermining the earlier decisions - particularly the orders of the High Court made in October and November 2002.

80. The appellant offers no credible explanation as to why he refrained from raising any of these issues with Mr. Flannelly when he was a witness in the Circuit Court in connection with all of these matters in circumstances where the defunct company, its beneficial ownership and its assets were central issues and it was being actively contended that the defunct company and the trading company were effectively beneficially owned by either the estate of the deceased James Vincent Sheridan or by his father Patrick Francis Sheridan.”

Importantly, that judgment confirms that CRO 22322 remains struck off the Register of Companies since 1999.

Statute of Limitations

55. There was some limited argument at trial that any claim that the appellant might seek to pursue against AIB would be statute barred. While I do not decide this appeal on that basis, it seems to me that the respondent's submissions in that regard are correct.

56. The appellant in his Notice of Claim and in the proposed amended Statement of Claim upon which he wishes to rely asserts claims against AIB in negligence/breach of duty arising out of (a) the transfers of monies and (b) the refusal to release documents/records.

57. Taking the claim in negligence/breach of duty, the evidence of Mr. Flannelly upon which the appellant relies indicates payments in the late 1980s/early 1990s. If those payments had the effect of depriving the estate of James Vincent Sheridan of his rightful property the cause of action was complete when the monies left the account and damage was suffered, and time accrued from then. Any such claim/proceedings were *prima facie* statute barred six years later – s. 11 of the Statute of Limitations 1957, as amended, which provides for a limitation period of six years in tort, including negligence, and by analogy six years for breach of fiduciary duties. The late Pauline Sheridan took out a Grant of Administration to the estate of James Vincent Sheridan in 1997 but failed to institute any proceedings against AIB within six years of the impugned alleged transactions.

58. Pauline Sheridan as personal representative also engaged in correspondence with AIB in 1999, seeking account documentation, and resumed that correspondence in 2004, but notwithstanding AIB's clear refusal to furnish documents/records she did not institute proceedings against them in her lifetime. Any claim that AIB was negligent or in breach of duty or breach of fiduciary duty was long since statute barred before she died on 27 August 2016. The appellant is her executor, and he also

took out a *de bonis non* Grant of Administration to the estate of James Vincent Sheridan, but these grants cannot revive the running of time or put him in any better a position than Pauline Sheridan. He initiated these proceedings on 11 September 2018, and they were in my view statute barred at that time.

59. The argument that time did not run because the cause of action was concealed by fraud (s. 71 of the Statute of Limitations 1957) does not assist the appellant. The case that he seeks to make, namely that monies were improperly transferred in the late 1980's/early 1990's to one or other of the companies in question, was a claim that Pauline Sheridan pursued in the proceedings in the Circuit Court in 1994 and in her appeal in 1996. In those proceedings both Pauline Sheridan and the appellant gave evidence, and in the Circuit Court Mr. Flannelly also gave evidence. Although not a party to those proceedings, the appellant was clearly very involved. McGuinness J. was singularly unimpressed with the appellant's evidence. No reason was ever given why Mr. Flannelly was not called on the High Court appeal. Importantly it cannot be said that the late Pauline Sheridan, or the appellant, were not, in 1994 – 1996, live to the claim that the appellant now wishes to pursue – and this was the unequivocal finding of Whelan J. in the judgment which she delivered on 29 April 2022. It is not therefore open to the appellant to rely on an extension of the point in time at which the cause of action accrues by virtue of s. 71 of the Statute of Limitations 1957.

Conclusion

60. Accordingly, even if this Court were to permit an amendment to the claims in accordance with the amended Statement of Claim exhibited by the appellant, the claims which the appellant seeks to pursue against AIB are still frivolous and vexatious and bound to fail, and are an abuse of the process, and accordingly I would dismiss this appeal.

61. As this judgment is being delivered electronically, I will indicate what I would propose as the appropriate costs order in relation to the appeal. As the respondent has been entirely successful, it follows that AIB should be entitled to its costs from the appellant. If the appellant wishes to contend for an alternative form of order, he will have a period of 14 days from the date of this judgment in which to notify the Office of the Court of Appeal of his intention, and a short supplemental hearing on the issue of costs will be arranged. If such request is made and does not ultimately result in an order different from that proposed above, the appellant may additionally be liable for the costs of such supplemental hearing. In default of application, an order in the proposed terms will be made.

McCarthy and Donnelly JJ. having read this judgment are in agreement with same and the proposed orders.