

THE HIGH COURT

[2018 No. 8090 P]

BETWEEN

JOHN SHERIDAN

PLAINTIFF

AND

ALLIED IRISH BANKS PLC

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 6th day of March, 2020

1. This is an application on behalf of the defendant for an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts striking out the plaintiff's claim for failing to disclose a reasonable cause of action and/or on the grounds that it is frivolous and vexatious. Alternatively, the defendant asks for an order pursuant to the inherent jurisdiction of the court striking out the claim on the grounds that it is bound to fail and is an abuse of process and is frivolous and vexatious.
2. I will come in due course to the plaintiff's claim against the defendant. It is founded on a quixotic quest that goes back nearly forty years.
3. In the late 1950's James Valentine Sheridan, who was then about 30 years of age, emigrated from Dublin to Poughkeepsie, New York, where he established an industrial and home cleaning business under the name Emerald Service Industrial and Home Cleaning. Sometime later, James Valentine Sheridan was joined by his brother Patrick F. Sheridan and they both carried on the cleaning business together until about 1972.
4. On 5th February, 1965 a limited liability company was incorporated in Ireland under CRO 22322 called Emerald Contract Cleaners (Ireland) Limited. The registered shareholders and directors of this company were James V. Sheridan and Patrick F. Sheridan. The precise circumstances in which this company came to be incorporated are not clear. It did not then carry on business.
5. When in 1972 James Valentine Sheridan returned to Ireland he bought a house at 229 Sea Park Estate, Malahide, County Dublin. James Valentine Sheridan was initially involved in the motor trade with another brother, Anthony Sheridan. The accountant for the motor business was Fintan P. Flannelly, to whom James Valentine was introduced by Anthony. The motor business did not prosper and in 1974 James Valentine Sheridan established a contract cleaning business here. He instructed Mr. Flannelly to incorporate a new company but somehow or other the cleaning business came to be carried on through CRO 22322, which had not theretofore traded.
6. There is not the slightest doubt that the James V. Sheridan who was introduced to Mr. Flannelly was James Valentine Sheridan but Mr. Flannelly thought that James V. Sheridan's middle name was Vincent and used the name James Vincent Sheridan in the companies office filings for CRO 22322.

7. Between 1974 and 1989 the cleaning business carried on by CRO 22322 was carried on by James Valentine Sheridan and his family. Patrick F. Sheridan had no involvement. For reasons which at this remove are not apparent, in 1989 James Valentine Sheridan decided to form a new company. Mr. Flannelly incorporated a new company called Emerald Contract Cleaners Limited under CRO 148369. That company and CRO 22322 swapped names so that CRO 148369 became Emerald Contract Cleaners (Ireland) Limited and CRO 22322 became Emerald Contract Cleaners Limited. All of the assets and undertaking of CRO 22322 were moved into CRO 148369 and on 9th April, 1999 CRO 22322 was struck off the register. The typed forms prepared by Mr. Flannelly's office showed the directors as James Vincent Sheridan and Helen Sheridan, both of 229 Sea Park Estate, Malahide, County Dublin, and were signed James V. Sheridan.
8. As Patrick F. Sheridan had followed his brother James V. Sheridan to Poughkeepsie, New York, he appears to have followed him back to Dublin, where, in 1996 unhappy differences brought Patrick F. Sheridan and his wife Pauline Elizabeth Sheridan before McGuinness J. in the High Court.
9. In the litigation before McGuinness J., Pauline Sheridan claimed that Patrick F. Sheridan had clandestinely repatriated a large sum of money from New York. A sum of IR£2,112,210 was said to have been transferred by Patrick F. Sheridan to either CRO 22322 or CRO 148369 "in the name of James V. Sheridan".
10. The plaintiff's brother, Patrick Sheridan, then produced to the High Court a revenue form dated 14th December, 1993 which he asserted showed a payment by Patrick Francis Sheridan into the VAT account of CRO 148369. The ostensible basis of this claim was that a figure of "2112210" showed that a sum of IR£2,112,210, had been transferred by, or from the estate of, James Vincent Sheridan, late of Poughkeepsie, New York, to CRO 148369, which had been paid by Patrick F. Sheridan to the Revenue as an overpayment of VAT, with the intention of recovering it later.
11. That claim was determined in 1996 by McGuinness J. and was dismissed. In a written judgment delivered on 30th July, 1996 McGuinness J. said that apart from the inherent unlikelihood of anyone paying an unnecessary sum of over IR£2 million to the Revenue, she had the evidence of an officer of the Revenue Commissioners who explained that the number 2112210 did not represent money at all, but was a fictional figure used by the Revenue as a method of checking their computer programmes. McGuinness J. then concluded that: -

"It is clear, therefore, that this entire edifice of accusation has been built on fiction. Based on this fiction, and on some other allegations in relation to the companies, the wife has reported her husband to the Fraud Squad, and he has been interviewed at length by the Garda authorities which must have been a distressing and difficult experience for him. It also appears that this investigation by the Fraud Squad was a complete waste of public money".

12. Patrick F. Sheridan and Pauline Elizabeth Sheridan had seven children, one of whom was variously called Seamus V. Sheridan, Seamus Vincent Sheridan and James Vincent Sheridan.
13. James Vincent Sheridan was born in Holles Street Hospital in Dublin on 16th May, 1952 and died in a road traffic accident in Cobleskill, Schoharie, New York on 20th December, 1971. James Vincent Sheridan was 19 years of age when he died. He was blind from birth and had attended a special school for the blind in the Bronx, New York, from the age of six years to fifteen years. He lived in school from Monday to Friday and came home for the weekends.
14. James Vincent Sheridan's birth certificate gives his name as James Vincent Sheridan. His death certificate suggests that he was variously known as Seamus V. Sheridan, Seamus Vincent Sheridan and James Vincent Sheridan.
15. By reference to papers filed in the Surrogate's Court, Dutchess State, State of New York, in 1972, James Vincent Sheridan owned no property. A grant of letters of administration intestate was extracted by Patrick F. Sheridan on 7th February, 1972 to allow a fatal injuries action to be brought on behalf of the estate and the papers show that that action was settled in 1974 for US\$35,000. The net proceeds of the claim after the attorney's fees were deducted amounted to US\$25,000 and that was divided equally between Patrick F. Sheridan and Pauline Elizabeth Sheridan.
16. On 4th June, 1997 Pauline Elizabeth Sheridan obtained a grant of letters of administration intestate of the estate of James Vincent Sheridan. The grant showed that James Vincent Sheridan had died on 20th December, 1971 in Cobleskill, New York but gave an address at 57 St. Agnes Park, Crumlin, Dublin. It showed a net estate of IR£11.00
17. On 4th December, 2000 Pauline Elizabeth Sheridan – holding herself out as a member of the company - presented a petition to the High Court for the restoration of CRO 22322 to the register of companies and on 19th February, 2001 the High Court (Carroll J.) made the order sought. The premise of the application was that the petitioner was the owner of the shares previously owned by James Vincent Sheridan.
18. On 6th December, 2001 an application was made to the High Court on behalf of James Valentine Sheridan to vacate the order of 19th February, 2001; to dismiss the petition; to strike out any returns made by the petitioner to the companies registration office; and to restrain Pauline Sheridan and her children from holding themselves out as directors or shareholders of CRO 22322 or CRO 148369. That application was heard by Carroll J. on 29th and 30th October, 2002. The order of Carroll J. made on 5th November, 2002 shows that besides the affidavits of James Valentine Sheridan and Pauline Elizabeth Sheridan the court had the judgment of McGuinness J. and that on the second day of the hearing Pauline Elizabeth Sheridan consented to the 2001 order being vacated. An affidavit of Mr. Paul Farrell, Registrar of Companies, filed on 29th June, 2004 shows that in the course of the hearing on 30th November, 2002, Carroll J. observed that the order of 19th February, 2001 had been obtained by perjury.

19. The order of Carroll J. made on 5th November, 2002 declared that all documents filed in the companies office subsequent to 19th February, 2001 were null and void and had no legal effect and directed that a copy of the order be filed with the registrar and placed on the file of Emerald Contract Cleaners Limited but refused so much of the application as had sought an order restraining Pauline Sheridan and her children from holding themselves out as directors or shareholders.
20. Unfortunately, Mrs. Sheridan and her son John, the plaintiff, misunderstood the refusal of an order restraining them from so holding themselves out as an acceptance by the court that they were directors and shareholders and as permission to so hold themselves out.
21. In the Spring of 2004 Mrs. Sheridan and the plaintiff tried to persuade Allied Irish Banks plc to release to them the banking records of Emerald Contract Cleaners (Ireland) Limited. On 2nd April, 2004 the order of Carroll J. of 5th November, 2002 was presented to Allied Irish Banks plc as supporting Mrs. Sheridan's "*position and rightful place regarding directors, shareholders and agents of the trading company, company number 148369*". Of course the order did no such thing and the request for records was refused.
22. Pauline Sheridan died on 27th August, 2016. She left a will naming John Sheridan as her executor. John Sheridan proved Pauline Sheridan's will on 31st January, 2017 and on 9th May, 2018, as Pauline's legal personal representative, took out a grant of letters of administration intestate *de bonis non* in the estate of James Vincent Sheridan. On 16th May, 2018 John Sheridan took out a grant of letters of administration intestate in the estate of Seamus Vincent Sheridan, aka Seamus V. Sheridan, aka James Vincent Sheridan in the Surrogate's Court of the State of New York, Dutchess County.
23. The grant of 9th May, 2018 suggested that the estate of James Vincent Sheridan amounted to €2,898,406. It will be recalled that the original grant of letters of administration intestate to Pauline Sheridan showed the value of James Vincent Sheridan's estate as IR£11.00. John Sheridan claimed to have uncovered new evidence and in support of his application for letters of administration filed an affidavit of Fintan Flannelly, sworn on 26th July 2017.
24. Mr. Flannelly, who by then had retired, swore that he was the auditor of CRO 22322 from 1973 and of CRO 148369 from 1989 until about 1993. It will be recalled that it was Mr. Flannelly who made the several companies office returns which identified the director and shareholder of the companies as "*James Vincent Sheridan*". Mr. Flannelly said that he was introduced to his client as James Vincent Sheridan, but it is perfectly clear, and Mr. Flannelly acknowledged, that his client was James Valentine Sheridan.
25. Mr. Flannelly in his affidavit asserted a very clear recollection of a transfer "*in the late 1980's/ early 90's of ... IR£2,112,210 in the name of James Vincent Sheridan being transferred from AIB Manhattan, New York, to the AIB Bank account of the companies (CRO 22322 and 148369) at both Crumlin Cross in Dublin 12 and AIB Rathgar, Dublin 6, along with smaller transfers in the sum of IR£80,000 and IR£90,000 . . .*" but,

unsurprisingly, there was not a shred of evidence in support of that assertion. In any event, the stated purpose of those alleged transfers was said to have been director's loans from "*James Vincent Sheridan's account in Poughkeepsie, New York*". The James Vincent Sheridan referred to by Mr. Flannelly can only have been the person known to Mr. Flannelly as James Vincent Sheridan, and who in fact was James Valentine Sheridan. However confused Mr. Flannelly (and Mr. Sheridan) may have been, nothing that happened at any time after 1972 or 1973 when Mr. Flannelly was first introduced to James Valentine Sheridan can have had anything to do with James Vincent Sheridan who had by then died.

26. If further proof was required of the hopelessness of John Sheridan's case, the Revenue affidavit Form A3C which was filed in support of his application for a grant of letters of administration of the un-administered estate of his late brother suggested that €950,000 of the €2,898,406 represented the the estimated market value of the house 229, Sea Park, Malahide, Co. Dublin which was bought by James Valentine Sheridan in 1972, the year after James Vincent Sheridan died. Following the death of James Valentine Sheridan on 2nd September, 2008 the house in Malahide devolved to his widow, Helen Sheridan, who was registered as the owner of the property on 2nd March, 2017. The house in Malahide could not conceivably have been part of the estate of James Vincent Sheridan.
27. In the meantime, by notice of motion issued on 11th April, 2017 John Sheridan applied to the High Court for an order pursuant to s. 738 of the Companies Act, 2014 to restore Emerald Contract Cleaners Limited, CRO 22322, to the register. The application was marked as a creditor's application and the grounding affidavit told the well-worn tale that James Vincent Sheridan had been allotted shares and had been appointed a director of the company three or four years after he had died, and that a revenue audit in 1993 showed that IR£2,112,210 had been loaned to the company by James Vincent Sheridan. The affidavit referred to another action 2008 No. 8715P by which Pauline Sheridan was said to have sought a declaration that James Vincent Sheridan was not and never was a director of Emerald Contract Cleaners (Ireland) Limited.
28. The 2018 restoration application was made on notice to Helen Sheridan, who resisted it. An unfortunate summons server was sent on a wild goose chase to Whitehall Road West looking for the building in which the company had last carried on business nearly thirty years previously but which had long since been demolished.
29. Following a protracted exchange of affidavits the motion was listed for hearing before McDonald J. on 20th July, 2018 but collapsed when, following the opening, Mr. Sheridan applied for an adjournment: which McDonald J. granted upon terms that he pay the costs thrown away. The motion came back into the list for hearing before McDonald J. on 16th January, 2019 and was dismissed with costs.
30. By this action, commenced by plenary summons issued on 11th September, 2018 the plaintiff claims that Allied Irish Banks plc has "*neglected to recognise [his] standing as executor of Pauline Sheridan and the administrator of the estate of James Vincent*

Sheridan". The general endorsement of claim asserts that the cause of action is negligence, but the relief claimed is an order "*directing Allied Irish Banks plc to release documents/records to the plaintiff as administrator of the estate of James Vincent Sheridan*".

31. On 2nd October, 2018 the plaintiff served a form of "*Notice of Claim*" in more or less the same terms, adding that he had new evidence, specifically, an affidavit from a relevant person, the auditor and accountant of both CRO 22322 and CRO 148369. He asserted that the bank had refused to provide him with records of both companies and of James Vincent Sheridan as it did not recognise his standing as a director of both companies "*as ordered by Justice Mella Carroll*" and claimed an order directing the bank to provide him with all documents and records in relation to the accounts of the two companies and the personal accounts of James Vincent Sheridan in AIB Manhattan and AIB Ireland. On the following day, 3rd October, 2018 the plaintiff issued a motion seeking an order for discovery in the same terms.
32. In answer to the plaintiff's motion for discovery an affidavit of Tom Durkan was filed on behalf of the defendant on 10th December, 2018. Mr. Durkan, the manager of the AIB Bank branch at Rathgar, had companies office searches carried out and resurrected the correspondence between the defendant and Pauline Sheridan in 2004, in the course of which the bank had been provided with copies of the orders of Carroll J. made in 2001 and 2002. The point was made that the refusal by Carroll J. to enjoin the plaintiff from holding himself out as a director or shareholder did not mean that he was in fact a director and shareholder: and as far as the bank was concerned he was neither. Mr. Durkan was also able to say that there was no AIB branch in New York until 1977, six years after the death of James Vincent Sheridan.
33. On 21st February, 2019 the plaintiff and his brother, Patrick Francis Sheridan, filed Forms B10 in the companies registration office which suggested that they had been directors of CRO 148369 since 5th November, 2002 and listing among their other directorships CRO 22322.
34. In February, 2019 the plaintiff delivered a form of statement of claim in this action, again asserting his entitlement to all of the accounts and documentation of both companies and claiming a declaration that the defendant has refused to accept his legal standing, and a declaration that the defendant has no duty of confidentiality to its customer.
35. On 23rd January, 2019 the plaintiff commenced proceedings against Emerald Contract Cleaners (Ireland) Limited, CRO 148369, and its officers claiming a declaration that the defendants had willingly and knowingly used the name of James Vincent Sheridan in matters relating to both companies; a declaration that funds were incorrectly transferred from an account in the name of James Vincent Sheridan into a company account in Ireland; and a declaration that the defendants had caused unjust loss to the estate and assets of James Vincent Sheridan: and on 12th February, 2019 the plaintiff issued a motion seeking a *Mareva* order against the defendants. The defendants countered with

an application for an order dismissing the action as frivolous and vexatious and bound to fail and an Isaac Wunder order.

36. The plaintiff's motion for discovery in these proceedings, the plaintiff's motion in the action against CRO 148369 and its officers for a *Mareva* injunction, and the defendants' motion to strike out those proceedings were listed for hearing together before me on 30th May, 2019.
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 nineteen 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 that 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. The affidavit of the plaintiff on which the *ex parte* application was grounded disclosed that on 6th July, 2019 - only five weeks after his action had been dismissed as frivolous and vexatious - the plaintiff had made a complaint to An Garda Síochána at Bray, County Wicklow that the estate of James Vincent Sheridan had been "*fraudulently stolen by misrepresentation and misappropriated*" by the defendants in that action. In the hope of forestalling a further waste of public money, I asked my registrar to send a copy of that judgment to the Garda Superintendent in Bray.
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 Síochána* (Unreported, High Court, 27th August, 1997, Laffoy J.) (Unreported, Supreme Court, 22nd July, 1998) and *Blythe v. Commissioner of An Garda Síochána* [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 I.R. 463 of the six indicia of vexatious proceedings identified in the Canadian cases of *Dykun v. Odishaw* (Unreported, Alberta Court of Queen's Bench, Judicial District of Edmonton, 3rd August, 2000) and *Re Lang Michener and 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.
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 nineteen years, was never a director or shareholder of Emerald Contract Cleaners Limited, which was incorporated in Dublin when he was thirteen 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 Flannelly in 1973 was the plaintiff's uncle, James Valentine Sheridan.
43. There never was any IRE2,112,210. 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.
44. Emerald Contract Cleaners Limited CRO 22322 was struck off the register of companies and dissolved on 9th April, 1999. The action against Emerald Contract Cleaners (Ireland) Limited CRO 148369 and its officers has been struck out as an abuse of process. Even if the law permitted an action against Allied Irish Banks plc for discovery for the purpose of prosecuting an action against a third party, there is no longer any such purpose.
45. It is well established that the jurisdiction invoked 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 Ltd.* [1992] 1 I.R. 425. For the reasons given, I am satisfied that the case is hopeless and that the statement of claim is irremediable.
46. I am satisfied that this is a case which has been shown by the plenary summons and statement of claim to be frivolous and vexatious and will make an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts dismissing it.