APPROVED **[2024] IEHC 377**

THE HIGH COURT

Record No: 2021/6375 P

Between:

RICHARD O'HARA

Plaintiff

-AND-

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY, START MORTGAGES DESIGNATED ACTIVITY COMPANY, HELENA O'HARA

Defendants

THE HIGH COURT

Record No: 2023/3092 P

Between:

RICHARD O'HARA

Plaintiff

-AND-

THE GOVERNMENT OF IRELAND, IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY, BRIAN O'MOORE, START MORTGAGES DESIGNATED ACTIVITY COMPANY, HELENA O'HARA

Defendants

NO REDACTION REQUIRED

JUDGMENT of Mr Justice Rory Mulcahy delivered on 28 June 2024

Introduction

1. In the last number of years, the High Court has had to deal with several cases in which the argument relied on by the plaintiff in these proceedings has been advanced by one of the parties in the case that they are "immune to court summons" by reason, it would appear, of an alleged failure by a state defendant to file a defence in other, unrelated, court proceedings. It was contended that this failure by the state defendant rendered it immune to suit, and that because of the equality guarantee in the Constitution, all persons were thus immune from suit. In one of the first judgments addressing this argument, *Fennell v Collins* [2019] IEHC 572, the Court (Simons J) described the argument variously as "*simply preposterous*", "*outlandish*", and based on a "*hopeless misconception*" of the meaning and effect of the equality guarantee under the Constitution.

2. More recently, the Court of Appeal in *Mullaney v Ireland* [2023] IECA 195, when refusing an appeal against a decision to strike out proceedings based on the same "*unstateable*" argument, was able to record that it had been rejected five further times in written judgments of the High Court:

- *Mullins v Ireland and Ors* [2022] IEHC 296 (O'Moore J)
- *Keary v Property Registration Authority* [2022] IEHC 28 (O'Moore J)
- *Towey and anor v The Government of Ireland and Ors* [2022] IEHC 559 (Dignam J)
- *Brennan v Ireland and Ors* [2023] IEHC 107 (Roberts J)
- *O'Hara v Ireland and Ors* [2023] IEHC 268 (O'Moore J)

3. The Court of Appeal (Costello J) described the argument as "*a legal nonsense*" and said that the abuse of process in that case had been compounded by "*the continuation of [the] utterly unmeritorious proceedings*".

4. I note that there are at least three further written judgments of the High Court in which the same or a similar argument has been roundly dismissed: see *Bank of Ireland v McCarthy* [2019] IEHC 497; *Lavery v Humphreys* [2023] IEHC 266 and *Start Mortgages DAC v Kavanagh* [2023] IEHC 452.

5. The courts have repeatedly expressed their concern that unscrupulous persons appear to be peddling this type of claim to those who do not have the benefit of professional representation. Given the similarity in the claims being advanced, there can be no doubt that that is precisely what is occurring. Though some sympathy might be afforded to those without the benefit of representation who are victims of unscrupulous persons who take advantage of their lack of expertise, as O'Moore J stated in *O'Hara*:

> "*4. To some extent, it is a matter for the conscience of the individual self – represented plaintiff as to whether or not they can justify bringing proceedings (such as the current claim) which simply make no sense, occupy a significant amount of court time, and run up costs and expenses both to the plaintiff and for those unfortunate enough to be sued by these individuals.*"

6. Where, as in this case, the plaintiff has had the benefit of a High Court judgment in these proceedings, which he has not appealed, explaining that his claim is unstateable, and where his ultimate purpose, insofar as any purpose can be discerned at all, is to frustrate the implementation of an order of the Circuit Court made in family law proceedings between him and his former wife (the fifth defendant in the first proceedings, and the seventh defendant in the second proceedings) made in 2018 and which he has also not appealed, any sympathy one might have for the plaintiff quickly begins to evaporate.

7. This judgment concerns applications by the defendants in two sets of proceedings to dismiss the plaintiff's claim as being bound to fail and an abuse of process. For the reasons so carefully explained in all of the above-mentioned judgments, I have no hesitation in making the orders sought. There is also a wholly misconceived motion by the plaintiff alleging contempt by certain of the defendants, notwithstanding that there is no court order in respect of which they are alleged to be in contempt. That motion must also be dismissed.

8. The first of the proceedings the subject matter of this judgment concerns precisely the argument that has been rejected in each of those other cases. Indeed, the judgment of the High Court (O'Moore J) in *O'Hara*, referenced above, concerns an application to dismiss the first set of proceedings which are the subject of this judgment by the fourth defendant, Start Mortgages. As set out in the passage cited above, O'Moore J described the proceedings as making "*no sense*" and dismissed them as an abuse of process and failing to disclose any reasonable cause of action. As set out below, there is no basis for distinguishing the plaintiff's claim against Start Mortgages and the other defendants in those proceedings and therefore no basis upon which it could succeed against those defendants when bound to fail against Start Mortgages.

9. Mr O'Hara's claim in the second proceedings is, if this is possible, even more misconceived than his claim in the first proceedings. Having had his claim against Start Mortgages dismissed on the basis of the court's rejection of the legal fiction that he is immune from suit, he relies *on that same legal fiction* to contend that the decision in the earlier case was flawed and should be set aside. No basis for invoking the exceptional jurisdiction of the court to revisit a final determination of the court identified. The claim in the second proceedings, therefore, represents absurdity built upon absurdity.

The first proceedings (2021/6375P)

10. There are two motions in the first proceedings. The first is that of the fifth defendant, Ms O'Hara, seeking to dismiss the proceedings pursuant to Order 19, rule 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of the Court. The second is the motion of the first, second and third defendants (the State defendants) seeking similar orders.

11. The plenary summons is in the following terms:

> *The plaintiff seeks a declaration from the Honourable Court that his constitutional rights have been denied and the plaintiff is aware of High Court constitutional case law no. 2018 / 9410 P where the Minister for Justice, Charlie Flanagan, and the Attorney General, Seamus Woulfe, failed to enter an appearance and that case was struck out. High Court case law no. 2018 / 9410 P along with Article 40.1 means that like the Justice Minister and the Attorney General, the plaintiff is immune to court summons*

and the case in court against the plaintiff should have been struck out. The plaintiff is aware that there is an investigation by the Justice Department under three reference numbers: DJE / MO / 00516 / 2019, DJE / MO/ 04404 / 2019 and DJE / MO / 00889 / 2019, also PULSE number HQCSO.1/348140 / 16 from the Garda Commissioner in relation to this Constitutional Crisis.

The plaintiff is aware of how the DPP failed to comply with High Court order no. 2006 / 1114 P and like the DPP the plaintiff is immune to court orders 165 / 2018 Circuit Court Kilkenny FL 00020 / 2016 Family Law Court Kilkenny. The plaintiff is aware that the State has failed, since September 2019, to provide a defence in related constitutional case no. 2019 / 6501 P.

The plaintiff is aware that the State has failed to enter an appearance in related constitutional cases no. 2018 / 9410 P and no. 2021 / 2308 P which is due before the High Court on November 1st, 2021. The plaintiff is protected from all court summons and all court orders under Article 40.1 of the Constitution, also under Article 2 of the Treaty of Europe.

12. The Statement of Claim is in slightly different terms:

The plaintiff's indorsement of claim makes it very clear that the plaintiff, like the DPP, is immune to court orders and like Seamus Woulfe and Charlie Flanagan, is immune to court summons. The defendants are aware that there is NO defence possible as the plaintiff's constitutional rights are UNTOUCHABLE which is confirmed in the Supreme Court ruling Denis O'Brien v. Oireachtas Members. The plaintiff is aware that since September 2019, the Chief State Solicitor has FAILED to provide a defence in the related High Court constitutional case no. 2019 / 6501 P which exposes the fact that all court summons and court orders are unconstitutional under Article 40.1 of the Constitution and Article 2 of the Treaty of Europe. The plaintiff is aware that the Chief State Solicitor has failed to provide a defence in related High Court constitutional case no. 2021 / 2308 P.

The plaintiff is aware that judgment no. 2017 / 210 CA was removed from courts.ie as the State fears that 450 million EU citizens will realise that like the DPP they are immune to court orders, also, like Charlie Flanagan and Seamus Woulfe, they are immune to court summons.

The plaintiff is aware that the State has failed to enforce High Court order no. 2008 / 1680 JR and that the related High Court order no. 2015 / 239 JR was ignored by GSOC.

13. In both the Plenary Summons and Statement of Claim, the plaintiff claims €2 million.

14. As noted above, the proceedings against Start Mortgages were dismissed by the High Court for the reasons set out in the judgment of O'Moore J ([2023] IEHC 268). He referred to the principles applicable to an application to strike out as summarised in *Towey v The Government of Ireland* [2022] IEHC 559 and concluded as follows:

"*20. Applying these principles and considering the specifics of the claim made in these proceedings, it involved what I described in Mullins (at para. 21) as a "phenomenally far ranging proposition. . .". As in Mullins, in this case Mr. O'Hara "has not even attempted to establish" as a stateable proposition the contention that he is protected from all court summonses and all court orders. As I pointed out in Lavery, there is a piquancy in making this claim in proceedings in which (presumably) a court order is sought in circumstances where the foundation stone of the proceedings is that there is no such thing as a valid summons and no such thing as a valid court order. Even without relying upon this profound failure in logic which lies at the heart of the current claim, the proceedings launched by Mr. O'Hara cannot succeed. They therefore constitute an abuse of process. These proceedings also fail to disclose any reasonable cause of action.*"

15. The Court's conclusion was entirely consistent with all of the other decisions of the High Court and Court of Appeal on this form of claim. There are no circumstances in which an order in one set of proceedings could render any party immune to suit, still less all parties in every set of proceedings. That this is so should have been immediately obvious to the plaintiff and has, in any event, been explained at length in the judgments referred to above. Moreover, the same illogical attempt to approbate and reprobate the jurisdiction of the courts subtends the claim against the State respondents and Ms O'Hara as was evident in the claim against Start Mortgages. Accordingly, I have no hesitation in dismissing the claims against all the remaining defendants in the first proceedings as disclosing no cause of action and as an abuse of process.

The Second Proceedings (2023/3092P)

16. The second proceedings appear to be the plaintiff's response to the judgment dismissing his claim against Start Mortgages in the first proceedings. The plaintiff did not appeal that judgment, the appropriate course if he had any ground for believing that it was wrongly decided, rather he issued separate proceedings against the five defendants in the first proceedings, together with additional defendants, the Government of Ireland and Mr Justice O'Moore.

17. There are four motions in these proceedings, three of which are the defendant's motions to dismiss the plaintiff's case pursuant to Order 19, rule 28 or in accordance with the court's inherent jurisdiction. The other is the plaintiff's motion for orders for contempt. In circumstances where the motions to dismiss will, if granted, necessarily resolve the plaintiff's motion, I propose dealing with those first.

18. The plenary summons is in the following terms:

> *The Plaintiff seeks a Declaration from the Honourable Court that his Constitutional Rights have been denied under Article 40.1 and Article 2 of the Treaty of Europe due to the fact that the Plaintiff's case was Struck Out by Judge O'Moore, while at the same time the Judge was aware that he had Ruled in FAVOUR of the Plaintiff in an identical Constitutional Case, No. 2021/2308P which relied on the same Supreme Case law that was relied on by this Plaintiff in Case No. 2020/2020P.*
> *Supreme Court Case Law No. 334/2007, along with Article 40.1 of the Constitution means that the Plaintiff, like the DPP is immune to Court Orders. The DPP failed to comply with High Court Order No. 2006/1114P and the Supreme Court validated that Contempt. The Supreme Court ignored a Directive from the ECHR to resolve the Contempt by the DPP for Order No. 2006/1114P*
> *The Plaintiff is aware of High Court Case Law No. 2021/6436P where the Government failed to Enter an Appearance and that case was Struck Out. High Court Case Law No. 2021/6436P along with Article 40.1 and Article 2 means that like the Government, the Plaintiff is immune to Court Summons. Case No. 2021/6436P is in the ECHR in Strasbourg.*

Judge Brian O'Moore failed to comply with his oath to the Constitution, which is a much bigger crime than male fides.

The Plaintiff is aware that Supreme Court Case Law No. 354/2008 VALIDATED the fact that Margaret Creaton FAILED to DEFEND in the High Court Case No. 2007/1680JR and Validated the fact that Margaret Creaton is ongoing in DEFIANCE of that Order, like Margaret Creaton, the Plaintiff is IMMUNE to Court Orders, that Equality is Guaranteed under Article 40.1 and Article 2.

The Plaintiff is aware of the Supreme Court Ruling, in the Denis O'Brien V Oireachtas Members case, that Constitutional Rights are UNTOUCHABLE

The Plaintiff will provide a detailed Statement of Claim and reserves the right to provide additional evidence of identical Constitutional Cases becomes known.

19. The plaintiff now seeks €4 million in damages.

20. The second case thus relies on the same false premise as the first proceedings, that the effect of orders made in a variety of other unrelated proceedings is to render him immune from suit. On top of this spurious claim, he layers the additional argument that in dismissing proceedings which were based on that unstateable proposition, he has been denied his constitutional rights.

21. There are innumerable difficulties with these proceedings, each of which would, by itself, justify their dismissal. Firstly, and most obviously, it is not permissible, save in the most exceptional circumstances, to bring proceedings for the purpose of setting aside the decision in an earlier set of proceedings. The proper remedy is an appeal. The plaintiff has, unsurprisingly, not identified any basis upon which the High Court's exceptional jurisdiction to review one of its own decision is engaged.

22. Even if this court could entertain such a claim, it is apparent that it is as without merit as the first proceedings. The only difference between the claim for "immunity" in the second proceedings, and the first (and, for that matter, the various other cases in which the "immunity from suit" argument is advanced) is that the plaintiff now relies on different orders in different unrelated proceedings to those pleaded in the first set of proceedings. In the second proceedings, the plaintiff places particular emphasis on an order made in

proceedings 2021/2308P, *O'Doherty v Ireland, the Attorney General and the Minister for Justice and Equality.* On 18 July 2022, the High Court (O'Moore J) made an order for judgment in default of defence against the defendants, placing a stay on that order such that if a defence was delivered within two weeks, the order would be vacated. The plaintiff says that the claim in *O'Doherty* was precisely the same as the claim in the first proceedings and that, therefore the Court was bound by the Order made in *O'Doherty* and should not, therefore, have dismissed the first proceedings. He claims that it was a breach of the equality guarantee in the Constitution for the court to have dismissed his claim.

23. No evidence of the nature of the claim made in *O'Doherty* was advanced by any party, nor was any evidence given of whether a defence had been delivered on foot of the order of 18 July 2022. However, taking the plaintiff's case at its height, as I must on an application to dismiss, and assuming that the proceedings were identical to the first proceedings, and assuming further, that no defence was delivered on foot of the order, this has no bearing whatsoever on the merits of the plaintiff's claim in the first proceedings or the second proceedings. The order made in the *O'Doherty* proceedings, as is apparent from even a cursory review thereof, was merely a procedural order, not a determination on the merits of any cause of action. It is the type of procedural order frequently made in response to an application where there has been default of pleading (see, in this regard, the discussion of such orders in *Keary*, cited above). It had no precedential value at all regarding the merits of those proceedings and could not, therefore, have any bearing on the court's decision in the first proceedings, still less could it have required the court to allow the plaintiff's patently unstateable claim to continue.

24. For those reasons, it is clear that the second proceedings are just as much an abuse of process as the first proceedings, perhaps more so, and equally fail to disclose any reasonable cause of action.

25. In addition to the foregoing, it is worth noting that, as with the first proceedings, no cause of action is even suggested against Start Mortgages or Ms O'Hara. Moreover, the claim against Mr Justice O'Moore, in addition to being wholly without merit, is impermissible, as it is well settled that judges enjoy judicial immunity for their actions in the course of carrying out their judicial office (see *Kenny v Ireland* [2009] 4 IR 74).

26. As it happens, the Court of Appeal delivered judgment on the day that these proceedings were heard in *Lavery v Humphreys* [2024] IECA 148. This was an appeal against an *ex tempore* ruling of the High Court (Sanfey J) dismissing proceedings seeking to re-open the judgment in *Lavery v Humphreys* [2023] IEHC 266, referred to above. In other words, the order of Sanfey J was in respect of proceedings similar to the second proceedings here. The Court of Appeal (Allen J) emphatically rejected the plaintiff's appeal.

> "*38. In this case it is sufficient to say that the premise of Mr. Lavery's High Court motion to set aside the order of O'Moore J. was simply and solely that it was said to have been wrong and that the grounds on which Mr. Lavery sought to set aside the order of O'Moore J. made were precisely the same as the grounds on which the making of the order had been resisted. Sanfey J. quite correctly said that he was not entitled to hear an appeal from the decision of another High Court judge and that the application was unstateable.*"

27. The Court of Appeal's decision serves to reinforce my conclusion here that the second proceedings should be dismissed.

28. For all of the foregoing reasons, I would also dismiss the second proceedings as an abuse of process and for failing to disclose any reasonable cause of action. In those circumstances, the plaintiff's motion seeking orders for contempt necessarily falls away. I address it briefly below.

Contempt Motion

29. The plaintiff seeks orders for contempt against the solicitors for the seventh defendant, solicitors for the State defendants, and against Start Mortgages and its deponent.

30. The purported basis of the contempt of the seventh defendant's solicitors is that they wrote a letter calling on the plaintiff to withdraw these proceedings. The Chief State Solicitor's purported contempt is in representing Mr Justice O'Moore while being aware of the order Mr Justice O'Moore made in *O'Doherty*. Start Mortgage's alleged contempt is in attempting to obtain a possession order in Kilkenny Circuit Court while knowing that they are in contempt of the High Court due to these ongoing proceedings.

31. There is no court order in respect of which any of the defendants, or their representatives are alleged to be in contempt. The plaintiff's motion is based on a fundamental misunderstanding of the court's jurisdiction to make an order that a party is in contempt of court and is, therefore, misconceived. An application for an order finding another party in proceedings in contempt will typically only arise where there has been a failure to comply with a court order which has been personally served on a litigant and which is penally endorsed, *i.e.* contains a statement advising the subject of the order that if they fail to comply with it they are liable to sanctions including attachment and committal. Where there is no order, then no issue of contempt can arise.

32. Nor could any issue of criminal contempt possibly be said to arise here. There is, quite obviously, nothing to the plaintiff's criticisms of any of the defendants or their representatives in this case. In circumstances, where the plaintiff's claims are without any legal basis or rationale, it was entirely proper for the seventh defendant's solicitors to write to the plaintiff asking him to withdraw his claim. The plaintiff should have acceded to that request rather than further waste the scarce resources of the courts and expose himself to the legal costs for which he will now be liable. Clearly no issue could be taken with the Chief State Solicitor representing Mr Justice O'Moore, where the plaintiff's claim against him was bound to fail. And the allegation that Start was in contempt, leaving aside that it doesn't make sense, even in its own terms, is equally without merit. There is nothing in the plaintiff's proceedings, even if they were not entirely without substance, which would make it improper for Start Mortgages to bring separate proceedings in a different court.

Isaac Wunder Orders

33. The final issues to address are the sixth and seventh defendants' applications for so-called *Isaac Wunder* Orders. In *Riordan v. Ireland (No. 5)* [2001] 4 IR 463, the High Court (O'Caoimh J) discussed the jurisdiction to make an *Isaac Wunder*-type order (at p. 465):

> "*Where the court is satisfied that a person has habitually or persistently instituted vexatious or frivolous civil proceedings it may make an order restraining the institution of further proceedings against parties to those earlier proceedings without prior leave of the court. In assessment of the question whether the proceedings are vexatious, the*

court is entitled to look at the whole history of the matter and it is not confined to a consideration as to whether the pleadings disclose a cause of action. The court is entitled in the assessment of whether proceedings are vexatious to consider whether they have been brought without any reasonable ground. The court has to determine whether the proceedings being brought are being brought without any reasonable ground or have been brought habitually and persistently without reasonable ground."

34. The court referred to Canadian jurisprudence which suggested matters "*which tended to show a proceeding was vexatious.*" (at p. 466):

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

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

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

(d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

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

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

35. In *Irish Aviation Authority and Anor v Monks and Anor* [2019] IECA 309, the Court of Appeal (Collins J in a concurring judgment) cautioned against treating an *Isaac Wunder* order as some form of ancillary relief:

"*7. It is, therefore, critically important that a court asked to make an* Isaac Wunder *order should anxiously scrutinise the grounds advanced for doing so. It should not be seen as some form of ancillary order that follows routinely or by default from the*

dismissal of a party's claim, whether on its merits or on a preliminary strike-out motion. That is so even if considerations of res judicata *and/or* Henderson v Henderson *arise. The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed. It is also important that the order made be framed as narrowly as practicable (consistent with achieving the order's objective).*"

36. Though I have particular sympathy for the position of the seventh defendant who has been put to the unnecessary expense of having to apply to have these proceedings dismissed, I have concluded, with some reluctance, that it would be premature to make *Isaac Wunder* orders at this juncture. It does not appear to me that the background to these proceedings justifies the making of such an order just yet.

37. Counsel for Start Mortgages pointed out that, given the nature of the second proceedings, an application to set aside the judgment in the first proceedings as wrongly decided, it might be feared that some form of recursive loop might now be triggered in which the plaintiff responds to this judgment dismissing his proceedings with a fresh set of proceedings seeking to set aside this judgment and so on *ad infinitum*. While further vexatious proceedings might reasonably be apprehended, there is not yet a sufficient history of persistent and vexatious litigation to merit an *Isaac Wunder* order. At the time the second proceedings were issued, the first proceedings had only been dismissed against one of the five defendants. Although there were prior proceedings involving the seventh defendant, these appear to have been proceedings of an entirely different character. It can be hoped, perhaps forlornly, that the plaintiff actually engages with this judgment, and that of O'Moore J in the first proceedings, as well as the many judgments in which the argument on which he relies has been rejected, rather than simply resort to further vexatious litigation.

38. In *Michael and Thomas Butler Ltd v Bosod Ltd* [2021] IESC 59, the Supreme Court (MacMenamin J) refused to make an *Isaac Wunder* order but in its judgment made clear that this refusal should not be "misinterpreted":

"35. In the event that the appellants seek to re-litigate any matter related to these cases further, the appellants, or any person purporting to advise them, or act on their behalf, would be well-advised to bear in mind that the respondents would, in such event, be entitled to apply immediately to the High Court for an order restraining the further prosecution of such proceedings. This litigation has now ended."

39. The same is true here. The refusal of the application to make an *Isaac Wunder* order should not be interpreted by the plaintiff as an invitation to issue fresh, equally doomed proceedings. Any attempt to do so would, undoubtedly, be met with further claims to dismiss and a fresh application for an *Isaac Wunder* order, to which any court would almost certainly be receptive.

Conclusion

40. I will make orders in each of the defendants' motions in the first proceedings (2021/6375P) dismissing the plaintiff's claim pursuant to Order 19, rule 28 as disclosing no reasonable cause of action and as an abuse of process.

41. I will make orders in each of the defendants' motions in the second proceedings (2023/3092P) dismissing the plaintiff's claim pursuant to Order 19, rule 28 as disclosing no reasonable cause of action and as an abuse of process.

42. I will refuse the plaintiff's motion seeking orders for contempt.

43. I will not make any *Isaac Wunder*-type order at this time, though I wish to make clear that any further attempts to litigate the baseless claims advanced in these two proceedings would almost certainly warrant the court's intervention to prevent further abuses of its processes.

44. I will list the matter at 10.30 am on 12 July 2024 for the purpose of making final orders and dealing with costs.