

THE HIGH COURT

[2024] IEHC 415

Record No. 2019 8306P

Between

PAT GLEESON

Plaintiff

and

**IRELAND AND THE ATTORNEY GENERAL
THE PROPERTY REGISTRATION AUTHORITY
BANK OF SCOTLAND PLC
START MORTGAGES DESIGNATED ACTIVITY COMPANY
THE DATA PROTECTION COMMISSIONER
TOWNLEY KINGSTON SOLICITORS
AB WOLFE SOLICITORS
ARTHUR COX SOLICITORS
EITHNE COUGHLAN**

Defendants

Judgment of Mr. Justice Conor Dignam delivered on the 4th day of July 2024

Introduction

1. Start Mortgages DAC and AB Wolfe Solicitors seek an Order striking out these proceedings against them pursuant to Order 19 Rule 28 of the Rules of the Superior Courts and the Court's inherent jurisdiction as being frivolous, vexatious, failing to disclose a reasonable cause of action and being bound to fail.

2. When this matter came before me there was no attendance by or on behalf of the plaintiff. I was satisfied that the plaintiff had been properly served with the Motion and was therefore aware of the original return date in the Chancery list (on the basis of an Affidavit of Service of Robyn Pim sworn on the 22nd June 2023). Indeed, the plaintiff stated in a letter of

the 15th May 2023 which was exhibited to the grounding affidavit that *"...I am regularly in contact with the court office etc, regarding the next date for mention/hearing..."*. Notwithstanding that I was satisfied that he had been properly served I adjourned the matter to give him an opportunity to attend and directed that the applicants inform the plaintiff that the matter had been adjourned and of the adjourned date. The plaintiff did not attend on that date either and I was satisfied on the basis of an Affidavit of Service of Debbie Siu sworn on the 12th December 2023 that the plaintiff had been informed of the adjourned date.

3. These proceedings were instituted by the plaintiff by Plenary Summons of the 29th October 2019. A Statement of Claim was subsequently delivered by the plaintiff. Unfortunately, these pleadings appear to refer to the various defendants by the incorrect numbers and this causes significant confusion. This has arisen because the plaintiff treated "Ireland" and "the Attorney General" as one and the same defendant ("the first-named defendant") rather than as the first and second-named defendant. This led, for example, to the Property Registration Authority of Ireland being referred to as the "second-named defendant" rather than the "third-named defendant" and so on, including the applicants being referred to as the "fourth-named defendant" and "seventh-named defendant" respectively whereas they are in fact the fifth and eighth-named defendants. They are referred to in the Notice of Motion as the fifth and eighth-named defendants but it means that care must be taken in the analysis of the claims that are pleaded. I will refer to them as "Start" and "AB Wolfe" respectively.

Background

4. The application is grounded on an affidavit of Robyn Pim sworn on the 17th May 2023. The plaintiff did not swear a replying affidavit. The background to this matter is set out in the grounding affidavit and the exhibits contained therein.

5. By Civil Bill for Possession dated the 30th September 2014, Bank of Scotland PLC issued proceedings against the plaintiff in Kildare Circuit Court seeking possession of the lands in Folio KE23778F Co. Kildare. The grounding affidavit for that relief (sworn by Mr. Gary Collins on the 4th September 2014) deposed that the plaintiff borrowed a sum of €500,000 from the Governor and Company of Bank of Scotland on the 21st May 2004 and a condition of that loan was that the lands in Folio KE23778F would be mortgaged by the plaintiff by way of first Legal Mortgage/Charge as security for that loan. The plaintiff executed an Indenture of Mortgage and Charge on the 21st May 2004 in favour of the Governor and Company of Bank of Scotland. The charge was registered on the said Folio on the 21st March 2005.

6. By a Mortgage Transfer Agreement between the Bank of Scotland and Bank of Scotland (Ireland) Limited dated the 1st July 2004 that mortgage was transferred to Bank of Scotland (Ireland) Limited.

7. By cross-border merger pursuant to the European Communities (Cross-Border Mergers) Regulations 2008 of Ireland and the Companies (Cross-Border Mergers) Regulations 2007 of the United Kingdom approved by the High Court of Ireland on the 22nd October 2010 and by the Scottish Court of Session on the 10th December 2010, all of the assets and liabilities of Bank of Scotland (Ireland) Limited, including the mortgage the subject of those Circuit Court proceedings, were transferred to Bank of Scotland PLC, from 23:59 hours on the 31st December 2010.

8. The plaintiff periodically defaulted in the repayment of the said loan and Bank of Scotland PLC formally demanded repayment of the amount outstanding on the 25th January 2012 and then solicitors on their behalf requested that the plaintiff give up possession of the mortgaged property, failing which proceedings seeking possession would be issued.

9. Bank of Scotland PLC then issued the Circuit Court proceedings on the 30th September 2014 .

10. By Deed of Assignment of the 20th February 2015, Bank of Scotland PLC assigned to Start Mortgages Limited its title and interest in the said loan and mortgage.

11. On the 10th April 2015, Start was registered as owner of the mortgage and charge on the Folio.

12. On the 11th June 2015, an ex parte application was made seeking the substitution of Bank of Scotland PLC by Start Mortgages Limited as plaintiff in the Circuit Court proceedings and that Order was made on the 22nd June 2015.

13. The plaintiff swore an affidavit in those proceedings on the 14th April 2016 in which he deposed to writing to a representative of Start Mortgages Limited on various dates in 2015 with a list of demands and requests and with a "*Statement of Truthful Facts*" in October 2015 and that her "*failure to verify and validate the alleged claim within the terms of [those] letters, stands as proof that the alleged claim cannot stand.*" He also averred that she was not a competent witness and that Start Mortgages Limited had no locus standi as subject matter jurisdiction had not been and could not be established. He also stated that Start Mortgages Limited were claiming under an account number that he had never seen and that he did not sign an application form for this account.

14. The Circuit Court made an Order on the 18th October 2016 that Start Mortgages Limited "*recover from the Defendant possession of...the property comprised in Folio 23778F of the Register of Freeholders County Kildare being the property situate at Nicholastown, Kilcullen, County Kildare.*"

15. By Notice of Motion of the 13th December 2016 the plaintiff sought an Order of the Circuit Court vacating the Order for Possession on various bases, including that the house could not be his principal private residence because he had no other residence and the concept of a 'principal' residence required there to be at least two residences, the difference between residence and domicile, and that the Circuit Court did not have jurisdiction. The Circuit Court refused to vacate the Order for Possession.

16. The plaintiff did not file any appeal against the Order for Possession or the refusal to vacate the Order for Possession.

17. On the 3rd September 2018, an Order was made reconstituting the proceedings in the name of Start Mortgages DAC to reflect the fact that Start Mortgages Limited had converted to a Designated Activity Company.

18. An Execution Order of Possession issued out of the Circuit Court on the 19th September 2019 on the application of the solicitors for Start Mortgages DAC.

19. The plaintiff then issued these proceedings. As noted above, the Plenary Summons was issued on the 22nd November 2019. A Statement of Claim was subsequently delivered. This is in very similar terms as the General Indorsement of Claim and any differences are not material to the current discussion (they are mostly, though not exclusively, differences in paragraph numbering). There are no facts pleaded and instead the pleadings consist of various assertions or prayers for relief. The plaintiff pleads that his claim is a claim "*for breach of duty, breach of statutory duty, negligence, deceit, conduct contrary to law, contrary to precedent, contrary to the Constitution and EU primary law, contrary to fundamental rights and entitlements. By reason of the aforementioned, the Plaintiff suffered substantial loss, damages, disadvantage, prejudice, loss of opportunity, loss of confidence, destruction of peace, dignity, defamation, and destruction of good name, business reputation, standing and character.*"

20. There are a number of specific claims made against Start and AB Wolfe, including in paragraphs 30, 31, 32, 33, 39, 44, 45, 46, 47, 60 of the Statement of Claim (the claims in paragraphs 46 and 47 are made against Start only). One or both of them are also referred to in several other paragraphs of the Statement of Claim but these references are in the context of claims against another defendant or other defendants. It is worth reciting the claims that are pleaded against Start and/or AB Wolfe. For ease of reference, it may be recalled that Start is referred to in the Statement of Claim as the fourth-named defendant and AB Wolfe as the seventh-named defendant:

"30. The Plaintiff claims that wrongfully, the **second, third, fourth, sixth, seventh, eighth** and **ninth** named defendants' conduct is incompatible with the first named defendant's lawful obligations under **Article 6(1)** and **(2)** of the EU Treaty (European Convention for the Protection

of Human Rights and Fundamental Freedom), **Article 8, Article 13** and specifically **Article 1, Protocol 1**.

31. A Declaration that the **second, third, fourth, sixth, seventh, eighth and ninth** named defendants' conduct is incompatible with the first-named defendant's lawful obligations under **Article 6(1) and (2)** of the EU Treaty (European Convention for the Protection of Human Rights and Fundamental Freedoms), **Article 8, Article 13** and specifically **Article 1, Protocol 1**.

32. The Plaintiff claims that wrongfully, the **second, third, fourth, sixth, seventh, eighth and ninth** named defendants' reliance upon and use of Regulation **19(1) (g) and (h)** of the **Irish Regulations** on the Cross Border Merger was invalid/repugnant to the provisions of the Constitution and in particular **Article 40.3.1** and Article **40.3.2** of the referred Constitution.

33. A Declaration that the **second, third, fourth, sixth, seventh, eighth and ninth** named defendants' reliance upon and use of **Regulation 19(1)(g) and (h)** of the **Irish Regulations** on the Cross Border Merger was invalid/repugnant to the provisions of the Constitution and in particular **Article 40.3.1** and **Article 40.3.2** of the referred Constitution.

...

39. A Declaration that the **third and fourth** named defendants, in availing **of Irish Regulations 19(1) g and h**, accepted the benefit/interest of the referred instruments, committed fraud in ignoring its Statutory obligations as successor company in the demands and obligations as imposed under the primary EU Directive 2005/56 EC which is guaranteed and protected in accordance with the Constitution.

...

44. The Plaintiff claims that wrongfully in breach of duty and breach of statutory duty by the **third, fourth, sixth, seventh and eighth** named Defendants for unlawful and illegal procurement, custody use, further use and disclosure of the Plaintiff's private and privileged data, contrary to **The Data Protection Acts 1998 & 2003, Section 16-21** of the said Acts, of the **EU Directive 96/45/EC, Article 40.1** and **Article 40.3** of the Constitution and **Articles 8** of the EU Charter and Convention.

45. A Declaration that the **third, fourth, sixth, seventh and eighth** named Defendants failed to comply with lawful obligations of **Sections 16-21** of the **Data Protection Acts 1998 & 2003**, the provisions of **EU Directive 96/45/EC, Article 40.3** and **Article 8** of the EU Convention and Charter, and **GDPR**, contrary to the fundamental Constitutional and EU rights and entitlements of the Plaintiff.

46. The Plaintiff claims that, wrongfully, the **fourth** named defendant used their private data in a manner not lawful nor compliant with obligations under **EU primary directive 2015/849** on **Anti Money Laundering and Anti-Terrorism**, as transposed through **Article 29.4.6 of the Constitution and the Criminal Justice Act**.

47. A Declaration that the **fourth** named defendant used their private data in a manner not lawful nor compliant with obligations under **EU primary directive 2015/849** on **Anti Money Laundering and Anti-Terrorism**, as transposed through **Article 29.4.6** of the **Constitution** and the **Criminal Justice Act**.

...

60. The Plaintiff claims for substantial loss, personal distress, loss of health, loss of income, loss of privacy, peace of mind, loss of fundamental rights, loss of confidence in said rights, loss of business reputation and irreparable damage to good name and standing by the **first, second, third, fourth, sixth, seventh, eighth and ninth** named defendants and contrary to **Article 1 & 8** of **EU Convention of Human Rights Article 8 of the Charter** including **Article 17, Article 15** and **Article 21** of the EU Charter of Fundamental Rights, the **EU Directive 95/46/EC**, the **Constitution** and the **Lisbon Treaty**." (emphasis in the original).

21. Paragraphs 30 and 31, 32 and 33, 45 and 46, and 47 and 48 should be read as pairs, with the declarations sought in the second of each pair being based on the first paragraph in the pair.

Applicable Principles

22. The principles governing the exercise of the Court's jurisdiction to strike out a claim under Order 19 rule 28 of the Rules of the Superior Courts or under the Court's jurisdiction are well-established (see, for example, *Barry v Buckley* [1981] IR 306, *Salthill Properties Limited v Royal Bank of Scotland plc* [2009] IEHC 207, *Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 21, *Clarington Developments Limited v HCC International Insurance Company plc* [2019] IEHC 630, *Kearney v Bank of Scotland* [2020] IECA 92). They have recently been stated by the Court of Appeal in *Scotchstone Capital Fund Ltd & anor v Ireland & anor* [2022] IECA 23, and in *McAndrew v Launceston Property Finance DAC & anor* [2023] IECA 43.

23. In summary, the jurisdiction, whether under Order 19 rule 28 or the Court's inherent jurisdiction, is subject to a number of overarching principles: first, it is a jurisdiction to be exercised sparingly, given that it relates to the constitutional right of access to the courts; second, the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the case is frivolous or vexatious or bound to fail or that it is an abuse of process, and the threshold to be met is a high one; third, the Court must take the plaintiff's claim at its high-water mark; fourth, the Court must be satisfied not just that the

plaintiff will not succeed but cannot succeed; and fifth, the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the utilisation of pre-trial procedures such as discovery or by the evidence at trial.

24. It is well-established that there is a difference between the jurisdiction which arises under Order 19 rule 28 of the Rules and the inherent jurisdiction of the Court.

25. In an application to dismiss proceedings under Order 19 rule 28 the Court must accept the facts as asserted in the plaintiff's claim and if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim and should not be struck out. On an application under Order 19 rule 28 there is to be no enquiry into, or assessment of, the facts as pleaded. They must be taken as correct and the enquiry must be solely concerned with whether those facts give rise to a cause of action. On an application under the Court's inherent jurisdiction, on the other hand, there may be a limited analysis of the facts.

26. It is also well-established that the Court can exercise its inherent jurisdiction to dismiss an action where the plaintiff is attempting to re-litigate matters that have already been determined or where they are attempting to litigate matters which could have been raised in earlier proceedings and were not. Costello J said in *Morrissey v Irish Bank Resolution Corporation [2015] IEHC 200* (paragraph 5):

"It is a fundamental principle of law that a party should not be entitled to re-litigate matters or raise issues which have already been determined by a final judgment of a court of competent jurisdiction between the same parties and their privies. This is known as the principle of res judicata. But beyond the strict limitations of res judicata the courts have long recognised that there may be abuse of process outside of the relatively confined limitations of the rule and the courts have always been prepared to balance the rights of parties to have their cases heard and determined by the courts with the rights of the opposing parties to fair procedures in the conduct of litigation and, where necessary, to strike out proceedings if they amount to an abuse of process."

27. The Court can also dismiss proceedings where they are being used as a mode of collateral attack on a final and binding decision.

28. Irvine J dealt with the meaning of "frivolous and vexatious" in *Fox v McDonald [2017] IECA 189*. While she was writing in respect of Order 19 Rule 28, the same principle applies to the Court's inherent jurisdiction. She said, inter alia:

"[t]he word 'frivolous' when used in the context of O. 19 r.28 is usually deployed to describe proceedings which the court feels compelled to terminate because their continued existence cannot be justified having regard to the relevant circumstance."

29. These are the principles by reference to which I have determined this application.

Application under Order 19 Rule 28

30. As noted above, the Court must proceed on the basis that the plaintiff will be able to establish the facts pleaded and must take the plaintiff's case at its high-water mark. However, that presupposes that the plaintiff has pleaded a factual basis for his claim. Order 19 rule 3 of the Rules of the Superior Courts provides that "*Every pleading shall contain...a statement in a summary form of the material facts on which the party pleading relies for his claim or defence...*" However, there is no factual basis at all pleaded for the plaintiff's claims against either Start or AB Wolfe. As noted above, for the most part the Statement of Claim simply replicates the General Indorsement of Claim and consists of assertions that those defendants are guilty of certain wrongs (but not the factual basis on which that is asserted) and prays for relief on the basis of those assertions.

31. The jurisdiction to strike out proceedings is one to be exercised sparingly and, if proceedings can be saved by an appropriate amendment, the plaintiff should be given an opportunity to make such amendment(s). However, the plaintiff did not indicate that he wished to make any amendments. Indeed, he did not even appear to oppose the application and did not meaningfully engage with or oppose the application. He did set out various points in correspondence with the solicitors for Start (AB Wolfe) before the motion was issued (or even threatened) but he has not sought to argue any of these points. In those circumstances, there is no basis upon which I could properly refuse the application for the purpose of allowing the plaintiff an opportunity to amend the proceedings. Furthermore, the type of amendment that would be required would be an entire repleading of the case.

32. That is sufficient to conclude that the proceedings should be struck out pursuant to Order 19 Rule 28 because without any factual basis the pleadings cannot disclose any reasonable cause of action.

Inherent jurisdiction

33. There are three broad areas of claim against Start and AB Wolfe: (i) their conduct, which it is alleged is incompatible with the first-named defendant's (the State's) obligations under "*the EU Treaty (European Convention for the Protection of Human Rights and*

Fundamental Freedom"); (ii) they do not have title to the charge upon which the Order for Possession was made because they wrongfully relied upon or benefitted from the Cross Border Merger and the Irish Regulations which effected same are repugnant to the Constitution; and (iii) Start wrongfully dealt with the plaintiff's data.

34. I am satisfied that these claims should be dismissed in the exercise of the Court's inherent jurisdiction.

35. In relation to the first, it is in fact framed as a claim against the State. However, even if it is seen as a claim against Start and/or AB Wolfe, the plaintiff has not even pleaded the most basic factual basis for the claim that Start and AB Wolfe's "conduct" is incompatible with the State's obligations under those various instruments. It does not even do the minimum of stating what the alleged "conduct" is. To the extent that the conduct complained of might be the act of obtaining the Order from the Circuit Court (and that is just speculation) that is a matter which has already been determined.

36. In relation to the second broad claim, what seems to be contended for is that the European Communities (Cross-Border Merger) Regulations 2008 are unlawful as being repugnant to the Constitution and therefore Bank of Scotland PLC could not have taken a valid transfer under such a merger and because Start took an assignment from Bank of Scotland PLC that assignment must also be invalid and ineffective. The plaintiff may also be contending that the registration of the change of ownership of the charge is unlawful for the same reasons.

37. These points essentially go the question of Start's title. The question of their title was determined by the Circuit Court Order. Even if these particular points were not made in the Circuit Court, they are matters which could have been raised in the context of those proceedings. Of course, the Circuit Court could not have been asked to adjudicate on the constitutionality of the Regulations but the point could have been raised by the plaintiff during those proceedings for the purpose of seeking an adjournment or a stay of those proceedings in order to bring a challenge to the Regulations or the registration. That was not done. It is an abuse of process to not raise a point in earlier proceedings and then years later to seek to go behind those earlier proceedings and the Order made in them on the basis of that point.

38. This second broad claim essentially amounts to an attempt to go behind a final and binding Court Order and is therefore a collateral attack on that Order on the basis of a point which could have been raised at the time and was not.

39. Of course, whether or not proceedings should be dismissed under the Court's inherent jurisdiction on this basis is a matter for the Court's discretion but in the absence of the plaintiff even offering an explanation for not raising these points it seems to me that it is an appropriate exercise of that discretion to dismiss the proceedings.

40. Start and AB Wolfe also submit that the lawfulness of the Regulations has already been determined (in *Freeman v Bank of Scotland (Ireland) Limited* [2013] IEHC 371) and therefore this claim is bound to fail. In light of my decision, it is not necessary to determine this.

41. I should also say at this stage that it is impossible to see how any reasonable cause of action is disclosed against AB Wolfe under the first or second broad areas of claim. They came on record for Start in the Circuit Court proceedings by a Notice of Change of Solicitor of the 26th November 2015, replacing Townley Kingston Solicitors, and presumably they are sued because they acted for Start. However, there is no basis disclosed in the pleadings for believing them to have been doing anything other than acting on the instructions of their client.

42. The third broad claim is that Start used the plaintiff's private data in an unlawful manner. It is impossible to know whether this is a matter which could have been raised in those earlier proceedings because it is completely unclear from the Statement of Claim what is alleged in respect of the use of private data by Start. However, this underlines the fundamental lack of any pleaded factual basis for the claims being made and in those circumstances I have no hesitation in concluding that the claim in this respect is frivolous and vexatious and discloses no reasonable cause of action and as such is an abuse of process.

43. The plaintiff's claim consists of mere assertions that Start and AB Wolfe have acted wrongfully and that he is entitled to relief without setting out any factual basis for those claims or relief.

44. In all of the circumstances I am satisfied that it is appropriate to strike out the plaintiff's claim under Order 19 Rule 28 and the Court's inherent jurisdiction.