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| **Neutral Citation No: [2022] NICA 32** | *Ref:* **McB11828** |
| | *ICOS No:* **03/24851/16 13/98980/03** |
| ***Judgment: approved by the court for handing down (subject to editorial corrections)**** | *Delivered:* **07/06/2022** |

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**DANIEL McATEER and AINE McATEER**
**Plaintiffs/Appellants**

**and**

**SANJEEV GURAM and ANOOP GURAM**
**Defendants/Respondents**

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**Mr McAteer appeared as a Litigant in Person**
**Kevin Downey Solicitor for Mrs McAteer**
**Mr Maxwell BL appeared for Mr Sanjeev Guram**

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**Before: McBride J and Sir John Gillen**

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**McBRIDE J** (*delivering the judgment of the court*)

*Applications*

[1] There are three applications before the court, namely:

(a) Summons dated 19 September 2017 by which the McAteers ("the plaintiffs") seek to appeal the decision of O'Hara J dated 13 February 2017 when he struck out their writ action No.2013/98980 entitled "Daniel and Aine McAteer v Sanjeev Guram and Anoop Guram" ("2013 Tort Action") and an extension of time to appeal.

(b) Summons dated 2 September 2019 by which the plaintiffs seek leave to appeal the decision of O'Hara J dated 13 February 2017; leave to appeal the decision of O'Hara J dated 11 October 2018 and an extension of time to appeal both decisions

(c) Summons dated 15 January 2018 by which the plaintiffs apply to reopen their appeal against the decision of Mr Peter Smyth QC ("Smyth J") sitting as a

Deputy Judge of the High Court, dated 20 June 2008 (hereinafter referred to as "the Roebuck Inn Appeal").

***Representation***

[2] Mr McAteer appeared as a litigant in person. Mrs McAteer was represented by Kevin Downey, Solicitor. On 7 May 2021 this court ruled that neither Mr Anoop Guram nor Sanjeev Guram had locus standi to defend the Roebuck Inn appeal proceedings. Mr Maxwell of counsel appeared on behalf of Mr Sanjeev Guram in the 2013 tort action only. Mr Anoop Guram did not appear and was not represented.

***History of Proceedings***

[3] The present proceedings emanate from proceedings issued in the High Court in 2003 by the Gurams against the McAteers relating to a sale and lease back of the Roebuck Inn (Roebuck Inn proceedings). By judgment dated 27 March 2008 Smyth J held that the sale and lease back agreement had been procured by the undue influence of Mr McAteer and that he had induced the Gurams to enter into the agreement by false representations.

[4] On 11 July 2008 the McAteers appealed Smyth J's decision. The Court of Appeal made an order for security for costs on 27 April 2010. The McAteers failed to comply with this order and the Court of Appeal struck out their appeal on 28 May 2010.

[5] On 29 February 2012 the McAteers by notice of motion sought to set aside the Court of Appeal's order striking out their appeal and further sought to set aside the order for security for costs and/or in the alternative sought an extension of time to comply with the security for costs order. The Court of Appeal dismissed this application on 23 March 2012.

[6] On 30 September 2013 the McAteers issued the writ in the 2013 tort action and served their statement of claim on 12 January 2014.

[7] On 5 January 2017 O'Hara J struck out the 2013 tort action pursuant to an application brought by the Gurams under Order 18 rule 19 of the Rules of the Court of Judicature.

[8] On 6 March 2017 the McAteers sought to appeal O'Hara J's decision out of time and without leave. The Court of Appeal on 22 June 2017 dismissed this appeal.

[9] Subsequently, the McAteers sought an extension of time to appeal and leave to appeal. This application was heard by O'Hara J who refused leave to appeal on 11 October 2018.

*Consideration*

*A. The 2013 tort action*

[10] By summons dated 19 September 2017 the McAteers seek:

> "(i) Leave to appeal the decision of the Honourable Mr Justice O'Hara dated 13 February 2017;
>
> (ii) An extension of time within which to lodge an appeal against the decision …"

[11] By summons dated 2 September 2019 the McAteers seek:

> "(i) Leave to appeal the decision of the Honourable Mr Justice O'Hara dated 13 February 2017.
>
> (ii) Leave to appeal the decision of the Honourable Mr Justice O'Hara dated 11 October 2018 when the learned trial judge refused leave to appeal.
>
> (iii) An extension of time within which to lodge an appeal against the decision dated 13 February 2017 for an extension of time within which to lodge an appeal against the said decision dated 11 October 2018."

[12] Mr McAteer accepted that the summons dated 2 September 2019 superseded the earlier summons dated 19 September 2017 and, accordingly, accepted that the earlier summons should be struck out as it seeks identical relief to the later summons. Accordingly, we dismiss the summons dated 19 September 2017.

[13] Four issues arise for determination in respect of the 2019 summons, namely:

(a) Has the court jurisdiction to entertain the present application?

(b) If yes, should the court grant an extension of time to appeal?

(c) If yes, should the court grant leave to appeal, and;

(d) If so, should the appeal be granted?

*Issue 1 – Jurisdiction*

[14] By order dated 22 June 2017 the Court of Appeal ordered:

> "On motion pursuant to Notice dated 6 March 2017 made to this court this day by Daniel McAteeer (a litigant in person) by way of an appeal against the order of the Honourable Mr Justice O'Hara made on 5 January 2017, … the court:
>
> 1. Refuses leave to appeal to the Court of Appeal.
>
> 2. Dismisses the appeal …"

[15] Mr Maxwell submitted that as a result of this order the appeal was finally determined by the Court of Appeal and therefore any further proceedings in respect of the matters are barred. He submitted that as leave had been declined by both the Court of Appeal and now by the court below the appeal ends. He therefore submitted that this court is functus officio on the issue

[16] In reply Mr McAteer referred to the transcript of the hearing before the Court of Appeal in June 2017 and submitted that the Court of Appeal made it clear that it could not entertain the appeal as leave to appeal had not been granted by the trial judge. He further submitted that the Court of Appeal then invited him to seek leave to appeal from the trial judge.

[17] On 22 June 2017 this court dismissed Mr McAteer's appeal on the technical ground that it had been issued without leave and also because service of the appeal had not be properly effected.

[18] Thereafter Mr McAteer sought leave to appeal from the trial judge. At the leave hearing before O'Hara J no issue was taken by the Gurams in respect of the learned trial judge's jurisdiction to hear that leave application. We further note that the questions which are raised in the present summons have never been determined by this court on their merits. Accordingly, we are satisfied that this court retains jurisdiction to hear the present application.

***Issue 2 – Extension of Time to Appeal***

[19] O'Hara J gave judgment orally on 5 January 2017. A written judgment and order was made on 13 February 2017 and the order was entered on the books on 17 February 2017. The 21 day appeal period therefore, at the latest, ended on 10 March 2017. The earliest application made by the McAteers is the summons dated 13 September 2017. Accordingly it was issued after the expiry date for appeal. The McAteers therefore require an extension of time to appeal.

[20] Under Order 59 of the Rules of the Court of Judicature the court has a discretion to extend time to appeal. The factors the court takes into account were succinctly set out by Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 9 as follows:

"(i) Whether the time is already sped: a court will look more favourably on an application made before the time is up;

(ii) When the time limit has expired, the extent to which the party replying is in default;

(iii) The effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;

(iv) Whether a hearing on the merits has taken place or would be denied by refusing the extension;

(v) Whether there is a point of substance to be made to which could not otherwise be put forward;

(vi) Whether the point is of general, and not merely particular significance;

(vii) That the Rules of Court are there to be observed."

[21] Accordingly, in deciding whether to exercise its discretion to extend time to appeal the court must consider the length of delay; reasons for delay; the degree of prejudice to the defendants if the application is granted and the merits of the substantive appeal.

[22] Mr Maxwell submitted that the delay in this case is now four years and six months and therefore is out of all proportion to the time permitted for appealing. He submits that there is no good reason for this substantial delay and the effect of such inordinate delay is seriously prejudicial to the Gurams.

[23] In response Mr McAteer submitted that he first issued a notice of appeal on 6 March 2017, which was within the time period. Due to his lack of procedural knowledge given that he is a personal litigant, the notice was invalid as he had not obtained leave and had not served it in accordance with the rules. In his affidavit dated 18 September 2017 Mr McAteer then set out the reasons for the delay which has accrued since that date and he specifically set out reasons why the delay did not arise as a result of any default on his part.

[24] There has been a very significant delay in this case and the relevant jurisprudence makes clear that litigants in persons must be au fait with the rules and procedures of the court. Nonetheless, we consider that in this case there would be no prejudice to the Gurams if time was extended as they have been aware from at

least March 2017 that the McAteers wished to appeal and were aware of the grounds of that appeal.

[25] We consider however that the determinative factor in deciding whether to grant leave to extend time is whether there is merit in the appeal. Accordingly, we now turn to consider the merits of the appeal.

***Merits of the Appeal***

[25] By summons dated 28 February 2014 the Gurams applied to strike out the 2013 tort action pursuant to Order 18 rule 19. The application to strike out was made on the grounds that the writ and statement of claim disclosed no reasonable cause of action; it was frivolous and vexatious; it was an abuse of process and was res judicata and otherwise the court should strike it out under its inherent jurisdiction.

***Relevant Order 18 Rule 19 Legal Principles***

[26] In *O'Dwyer v Chief Constable of the RUC* [1997] NI 403 Carswell LCJ set out the relevant principles relating to applications under Order 18 rule 19, at page 406 he stated:

> "For the purposes of the applications, all the averments in the Statements of Claim must be assumed to be true … In considering the averments contained in them we must bear in mind the well-settled principle that the summary procedure for striking out pleadings is to be used only in plain and obvious cases (see Lonrho Plc v Tebbit [1991] 4 All ER 973 at 979 per Browne-Wilkinson VC) Various formulations of this principle have been used; it has been said that it 'ought not to be applied to an action involving serious investigation of the ancient law and questions of general importance' (see Dyson v AG [1911] 1 KB 410 at 414 per Cozens-Hardy MR) that should be confined to cases where the causes of action was 'obviously and almost incontestably bad' (see Dyson at 419) per Fletcher Moulten LJ,) and that an order should not be made unless the case is 'unarguable' (see Nagle v Feilden [1966] 2 QB 633 at 651 per Salmon LJ.) That said, it is to be recognised that if the claim is bound to fail on the law, the courts should not shrink from striking out. As Sir Thomas Bingham MR expressed in *E (A Minor) v Dorsett CC* [1995] 2 AC 633 at 693-694, in a passage approved by the House of Lords:
>
> 'I share the unease many judges have expressed at deciding questions of legal principles without knowing

> the full facts. That applications of this kind are fought on the ground of a plaintiff choosing, since he may generally be assumed to plead his best case, and there should be no risk of injustice to plaintiffs if orders to strike out are indeed made only in plain and obvious cases. This must mean that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if, after argument, the court can be properly persuaded that no matter what (within the reasonable grounds of the pleadings) the actual facts the claim is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached.'"

*Statement of Claim*

[27] In the statement of claim the McAteers set out the history of the relationship between them and the Gurams leading to the agreement for the sale and lease back of the Roebuck Inn. The statement of claim then sets out details of the Roebuck Inn proceedings and sets out the following material factual averments:-

> "13. By November 2004 and as a result of a plethora of litigation, the plaintiffs' financial position had been severely damaged. Their then solicitors, McCollum & Company, advised the plaintiffs that they would be entitled to legal aid. An application was made and after a long fought battle legal aid was granted. The plaintiffs had the benefit of a full legal team to prepare for the Roebuck Inn action. Shortly before the Roebuck Inn action came on for hearing legal aid was withdrawn and the plaintiffs were forced to represent themselves in the action. Neither of the plaintiffs had any experience whatsoever of running a court action especially not a High Court action. The hearing took place in 2007 and lasted for 21 days. A substantial part of the trial time was taken up with what effectively was the 'Guram failure to account case' whereby the plaintiffs had to deal with the allegations of theft and misappropriation of funds. During the trial, the defendants repeatedly lied about key facts in dispute. The defendants, on more than one occasion, reassured the judge that they had the money to purchase back the Roebuck Inn. During the trial, the judge pointed out to the first-named plaintiff that there was technically no legal obligations for the plaintiffs to

transfer the bar back as the five years had expired but the plaintiffs confirmed their willingness to do so. The judge went on to say, in no uncertain terms, that if the defendants did not have the funds to repurchase the Roebuck Inn, then there would be very serious consequences for them.

14. Judgment was given in the case in March 2008 and, one month later the Legal Services Commission confirmed that they had been wrong to withdraw the legal aid from the plaintiffs and in April/May 2008 the Legal Services Commission confirmed that legal aid was to be reinstated. The plaintiffs subsequently found out that their former solicitor (who had begun acting for the Gurams and the Devines) had been intermeddling with the Legal Services Commission which, at least in part, had caused the withdrawal of legal aid. The defendants and their legal advisers had therefore interfered with the plaintiffs' rights in relation to access to justice.

15. In March 2008 the court directed that counsel for the defendants draft an order setting out how the transaction would be undone. In essence, the defendants were to pay an amount of money to the plaintiffs and the plaintiffs were to return the Roebuck Inn to the defendants. …

16. The plaintiffs launched an appeal against the March 2008 judgment. However, at all times they formally indicated their willingness to transfer the bar back to the defendants. The plaintiffs had once again been represented by a legal team but, once again, their legal aid was torpedoed by the defendants' legal team. Again, misleading information had been provided to the Legal Services Commission that caused the withdrawal of legal aid. Once again the Legal Services Commission eventually confirmed that they had got it wrong. The solicitors for the defendants, whilst at the same time torpedoing legal aid, made an application to the court for security for costs. The Court of Appeal who were already aware the plaintiffs had been legally assisted made the order for security of costs which the plaintiffs were not able to meet and the appeal was dismissed. …

20. "… when they could not get insurance, they concocted a case alleging undue influence and used this

> as a basis for not paying the rent while continuing to take all the profits of cash flow from the business. They and their legal team turned a simple commercial proposition into a complicated and prolonged legal battle, they improperly undermined the plaintiffs' legal representation, caused the withdrawal of legal aid, infected the trial with so-called failure to account issues and perjured themselves throughout. They misled the court about their intentions and ability to fund the repurchase of the Roebuck Inn. After the judgment they, once again, paralysed the plaintiffs' ability to have legal representation and they caused an extraordinarily long delay in the Master's inquiries process by, *inter alia*, failing to comply with the orders of the court. They claimed to have the money to repurchase the pub on equitable terms when they did not. When the time came for them to put up the money they stage-managed a sham of a bankruptcy in Scotland …"

[28] The case thus pleaded in the statement of claim is that the Gurams secured judgment in the Roebuck Inn case by fraud and/or the proceedings and judgment obtained amounted to an abuse of process. The particulars of fraud and abuse of process are set out at paragraph 21 of the statement of claim as follows:

> "(a) Perjury in court.
>
> (b) Interference with legal aid prior to hearing.
>
> (c) Withholding their expert report and discoverable documentation.
>
> (d) Infecting the Roebuck Inn case with the Guram failure to account case.
>
> (e) Delay from March 2008 to June 2008 on the production of the order.
>
> (f) Misleading the court about the availability of funds.
>
> (g) Tampering with the court order in February 2009.
>
> (h) Making bogus application about their costs and the status of the Bank of Ireland and Diageo mortgages.

(i) Failing to comply with the various orders made by the Master.

(j) Interfering with legal aid in the Court of Appeal.

(k) Staging a bankruptcy and misleading the Master about availability of funds."

***Fraud – Legal Principles***

[29] There is an established jurisdiction that a judgment or order of the High Court may be set aside on the grounds of a proved fraud. In such proceedings a mere allegation of fraud is not sufficient – see *Birch v Birch* [1902] at page 130. Rather, as noted, by Lord Carnworth CJ in *Sheddon v Patrick* [1854] 17 D(HL) 18:

> "How, when, where and in what way the fraud was committed must be set forth."

[30] In addition, a plaintiff must produce evidence of facts discovered since the former judgment and if these do not establish a reasonable possibility and the action succeeds it will be treated as frivolous and vexatious – see *Birch v Birch*.

***Abuse of Court – Legal Principles***

[31] Abuse of court is a separate head of claim in civil proceedings. The tort was described by the Privy Council in *Crawford Adjusters v Sagicor General Insurance (Cayman) Limited* [2013] 3 All ER 8 in the following terms:

> "149. Abuse of process emerged as a tort considerably later than malicious prosecution and differs from it in significant respects. It applies to the initiation or conduct of civil proceedings. It is not necessary to prove malice. It is not necessary to show that the proceedings have gone to judgment. It is not even necessary to show that they were baseless, although in practice they often will be. The essence of the tort is the abuse of civil proceedings for a predominant purpose other than that for which they were designed. This means for the purpose of obtaining some wholly extraneous benefit other than the relief sought and not reasonably flowing from or connected with the relief sought. …"

***O'Hara J's Ruling***

[32] In the course of his judgment O'Hara J dealt with what Mr McAteer's counsel described as "the main issue" namely the particulars of claim set out at paragraph

21(f) of the statement of claim. Paragraph 21(f) related to the allegation that the original court had been misled by the Gurams about the availability of funds to buy back the Roebuck Inn and Mr McAteer submitted that contrary to the case advanced to the original trial judge, funds were not available to the Gurams and specifically they did not have the £500,000 required for the revocation of the sale and lease back agreement.

[33] The learned trial judge then conducted an analysis of the available evidence to ascertain whether funds were available. To enable him to carry out this analysis he received further affidavit evidence during the course of the hearing which included, in particular, a letter from Cleaver Fulton Rankin, solicitors, which stated that at the relevant time between April and July 2008 funds in excess of £400,000 were available to the Gurams. The learned trial judge concluded that this evidence presented a "difficulty for the McAteers in this application."

[34] The learned trial judge further found at paragraph 8 of the judgment that the issue whether the Gurams had funds available to them at the relevant time was an issue which was "indisputably raised before Deputy Judge Smyth" and at paragraph 10 he concluded:

> "There is clear evidence which was considered in the course of the hearing before Deputy Judge Smyth that funds were available to the Gurams at the relevant time. As a result the contention upon which the McAteers primarily rely, that the court was misled about funds, simply cannot be made out."

[35] In conclusion the learned trial judge held:

> "However aggrieved the McAteers are by the 2008 decision, it was reached after considerable hearing in which there was extensive scrutiny of the issues. Nothing advanced before me has reached the level necessary to persuade me that there is a case for reopening the issues, whether in the primary basis advanced by the McAteers or on the other issues which were identified as secondary."

***Test on Appeal***

[36] The appeal is against the exercise of the learned trial judge of a discretion and therefore an appeal will not be entertained unless it is shown he exercised discretion under a mistake of law, or in disregard of principle or under a misapprehension of the facts, or on the basis he took into account irrelevant matters or failed to take into account relevant matters or the conclusion he reached is outside the generous ambit within which reasonable disagreement is possible.

*Consideration of the merits of the appeal*

[37] As appears from the written judgment the learned trial judge only considered in detail the particulars of fraud/abuse of process set out at paragraph 21(f) of the statement of claim. The learned trial judge did not consider in detail the other ten particulars of fraud/abuse of process set out in the statement of claim at paragraph 21.

[38] After having regard to material which was contained in an affidavit filed during the currency of the Order 18 hearing and in particular a letter from Cleaver Fulton Rankin, solicitors, he was satisfied that this particular of the claim had no merit.

[39] We consider that the learned trial judge erred in conducting what was essentially a mini-trial in respect of this particular of fraud/abuse of process. The learned trial judge accepted the evidence presented by the Gurams', namely a letter from Cleaver Fulton Rankin, solicitors without the McAteers being given an opportunity to challenge this evidence or to obtain relevant discovery in respect of it. In particular, the McAteers were unable to cross-examine the proponent or author of this letter.

[40] We are satisfied that the fact the learned trial judge considered it necessary to conduct what was in effect a mini-trial on this issue indicates that this ground of claim is neither vexatious nor frivolous and a full investigation is merited. Consequently this particular claim should not have been struck out under the Order 18 procedure as it did not meet the threshold of being 'uncontestably bad'.

[41] We are further satisfied that the learned trial judge erred in not considering whether the other particulars pleaded at paragraph 21 of the statement of claim were sufficient to enable the case to proceed to trial. Whilst we accept the learned trial judge was not required to slavishly go through all the particulars of fraud and abuse of process set out in the statement of claim we consider that he ought to have at least given some consideration to the other particulars pleaded so that he was satisfied the entire claim was plainly unarguable.

[42] In the statement of claim the McAteers seek to have the judgment of Smith J set aside on the basis it was procured by abuse of process and/or fraud. In respect of abuse of process, paragraph 20 of the statement of claim avers that the Gurams could not get insurance and therefore concocted a case alleging undue influence. We are satisfied that that pleading, which we must accept as true for the purpose of this application, is sufficient to amount to a particular of abuse of process and therefore we consider the learned trial judge erred in dismissing it as unarguable. We consider this claim ought to proceed to a trial judge who can hear all the evidence and then determine whether or not such a case is made out.

[43] In respect of the claim for fraud the McAteers set out their case generally in the statement of claim and more particularly at paragraph 21. To establish that they have an arguable case for fraud they must plead fraud with sufficient particularity and in particular set out details of how, when and where it occurred. In addition, they must show that the particulars of fraud have arisen since the date of the original trial. In such circumstances it is then for the Gurams to establish that the case is unarguable on the basis the pleaded case is true.

[44] Having considered the particulars pleaded at paragraph 21 we are satisfied that they are individually and collectively sufficiently pleaded to comply with the rules relating to fraud which require fraud to be pleaded with sufficient particularity as to "how, where, when etc.," Further we are satisfied that the allegations of fraud relate to matters which have arisen since the original trial. This is what is alleged in the statement of claim and at this stage we must accept the averments in the statement of claim are true. Accordingly, we are satisfied a case of fraud has been disclosed on the pleadings.

[45] We therefore consider that the pleadings on their face disclose a case of abuse of process and fraud and therefore cannot be stuck out under ground (a) of Order 18 rule 19. In accordance with *O'Dwyer* the proceedings can then only be struck out under the Order 18 procedure if they are "uncontestably bad" or are otherwise unarguable.

[46] We turn then to consider whether the particulars of fraud set out in the body of the statement of claim generally and more specifically at paragraph 21 are 'uncontestably bad.' At paragraph 21(b) and (j) the McAteers' allege that the Gurams unlawfully interfered with their entitlement to legal aid and thereby prevented them from having access to justice. We consider that this pleading discloses a case of fraud and on the basis that we must accept the averments made in the statement of claim as true, we consider that this claim cannot be considered to be "unarguable" at this stage and accordingly this claim ought to proceed to trial. Further at paragraph 21(d) it is alleged that the Roebuck Inn case was infected with the failure to account case and at paragraph (a) the Gurams were guilty of perjury. We again consider the learned trial judge erred in striking out these pleadings as the judgment of Smith J was based on a finding that the McAteers were guilty of undue influence. It cannot be said that it is unarguable that such a finding was not, at least in part, based upon the evidence presented to the court about Mr McAteer in the failure to account case. According to the averments in the statement of claim, which we must accept as true, this evidence was later established to be inaccurate misleading and untrue.

[47] Having regard to all the particulars of abuse of process and fraud pleaded in the statement of claim we are satisfied, on the basis that we must have accept the averments made therein as true, that the test for striking out under Order 18 is not made out.

[48] Accordingly, we consider that the learned trial judge erred in summarily dismissing these claims.

***Conclusion***

[49] We therefore allow the appeal and dismiss the Gurams' summons to strike out the 2013 tort action. We make it clear however that in so doing we are not ruling that the claims are proved. We are merely holding that it is unjustifiable to strike out the pleadings at this stage. It will ultimately be for the trial judge to hear the evidence and in the light of the evidence to determine whether the claims made in the pleadings are or are not proved.

[50] Costs reserved to the trial judge.

***B. Roebuck Inn appeal***

[51] By summons dated 15 January 2018 the McAteers claim:

> "Relief under the inherent jurisdiction of the court to reopen the [Roebuck Inn] appeal and/or to extent time to comply with an order for security for costs under Order 3 of the Rules of the Court of Judicature."

[52] On 18 January 2011 the McAteers applied for the following relief:

> "1 An order that the decision of the court dated 28th May 2010 striking out the defendant's appeal may be set aside.
>
> 2 An order that the decision of the court imposing a security costs order on 27th day of April 2010 may be set aside.
>
> 3 Further and/or in the alternative an order that time be extended within which the defendant may lodge security for costs pursuant to the order made on 27th day of April 2010."

[53] On 24 February 2011 the Court of Appeal dismissed the application dated 18 January 2011.

[54] On 29 February 2012 the McAteers issued a further summons seeking "relief under the inherent jurisdiction of the court to reopen the [Roebuck Inn] appeal and/or to extend time to comply with an order for security costs under Order 3 of the Rules of the Court of Judicature." This application was again dismissed by the Court of Appeal on 21 June 2012.

[55] We are satisfied that the relief sought in the summonses of 18 January 2011 and 29 February 2012 is identical to the relief sought in the present summons dated 15 January 2018. The Court of Appeal has already heard and determined these applications and has dismissed them. We are therefore satisfied that the present summons amounts to re-litigation.

[56] In *Taylor v Lawrence* [2003] QB 528 the Court of Appeal held that it had power to take the exceptional course of reopening proceedings which it had already heard and determined but would do so only on the basis that it was clearly established that significant injustice had probably occurred and there was no alternative effective remedy. We are satisfied that there is an alternative remedy open to the appellants given that they have now issued the 2013 tort action.

[57] In the present case we consider that the application is res judicata and therefore an abuse of court and there is no basis for the court to take the exceptional course of reopening proceedings it has already determined. We therefore dismiss the summons dated 15 January 2018.

[58] Costs to be reserved to the trial judge.