

THE HIGH COURT

[2024] IEHC 273

[Record No. 2023/1876P]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

WENDY DOYLE PRACTISING UNDER THE STYLE AND TITLE OF WENDY

DOYLE SOLICITORS

DEFENDANT

JUDGMENT of Mr Justice Liam Kennedy delivered on the 14th day of May, 2024.

Introduction

1. My judgment dated 6 March 2024 (“the Judgment”) granted the Defendant’s applications for orders vacating a *lis pendens* and striking out the proceedings. This judgment deals with the costs of that application and the proceedings and with additional points raised by the Plaintiff.

2. The Defendant had filed a short affidavit and written submissions in advance of the costs hearing to which the Plaintiff had not responded. I acceded to the Plaintiff’s request to make preliminary submissions. Having done so, the Plaintiff indicated her intention to withdraw after her preliminary objections had been dealt with. Counsel for the Defendant disagreed with the Plaintiff’s preliminary submissions but stated that nothing required a response. I confirmed that I would rule on the points raised by the Plaintiff at the same time I

ruled on the costs, and I invited submissions in respect of the latter issue. The Plaintiff withdrew at that point and the Defendant's Counsel proceeded to make costs submissions. Before dealing with the points raised by the Plaintiff and the Defendant's costs application, I will briefly summarise the litigation and the Judgment.

The Background to the Litigation and the Judgment

3. As the Judgment details, these proceedings concern a long running dispute. In these proceedings, the Plaintiff challenged the registration of judgment mortgages against her home on foot of costs orders in related litigation. The Defendant obtained well-charging and vacant possession orders on foot of the judgment mortgages. The Plaintiff's appeals were unsuccessful. The litigation is summarised in the Judgment and its appendix. In short:

- (a) the judgment mortgages relate to unpaid cost orders obtained in 2015 and 2017;
- (b) the Plaintiff has previously unsuccessfully challenged the judgment mortgages and unsuccessfully defended the well-charging and possession proceedings;
- (d) the Plaintiff's appeals from those decisions were unsuccessful;
- (e) other proceedings previously issued by the Plaintiff essentially ventilating the same issue as these proceedings have been dismissed by the High Court as a collateral attack on previous court orders, a decision affirmed by the Court of Appeal, with the Supreme Court refusing leave to appeal (as on previous occasions);
- (f) in these proceedings, the Plaintiff sought to injunct the Defendant from enforcing the judgment mortgages and subsequent court orders (including an order for possession) but Egan J. declined the application for interim relief on 17 May 2023;
- (h) the Plaintiff registered a *lis pendens* on 22 May 2023. The Defendant argued that this was an attempt to frustrate the well-charging orders and orders for possession, and a further collateral attack on those orders;

(i) on 16 June 2023, Stack J. rejected the Plaintiff's interlocutory application for relief pending trial as the Plaintiff had not raised a fair question to be tried. Stack J. gave directions for the hearing of the current motion, directing the Plaintiff to file any replying affidavit by 30 June 2023. No affidavit was filed.

4. The Plaintiff's earlier proceedings (themselves struck out as an abuse of process, disclosing no stateable cause of action, frivolous & vexatious and bound to fail) were based on her challenge to the court orders underpinning the judgment mortgages, a claim resurrected in these proceedings. The Superior Courts have repeatedly rejected the Plaintiff's attempts to relitigate these and related issues. For the reasons set out in the Judgment, I concluded that these proceedings were likewise frivolous, vexatious, an abuse of process and bound to fail, an attempt to resurrect issues conclusively determined in earlier proceedings and an impermissible collateral attack on the outcomes of those proceedings. I noted the limited grounds on which final orders and determinations from earlier proceedings can be set aside. I concluded that the attempt to impugn the three judgment mortgages (and all subsequent proceedings) was misconceived. The Plaintiff had raised no new issue which could go to the root of the case, or which would have affected the outcome of the Well-Charging Proceedings. I also concluded that it was not open to the Plaintiff to challenge the judgment mortgages since her case was premised on documentation exhibited as long ago as August 2017 and the proofs had been confirmed in the well-charging application. The Plaintiff had not identified issues which would constitute fraud, forgery or any other basis to impugn the Well-Charging Proceedings. In any event, it was not open to the Plaintiff to challenge the judgment mortgages years later, in the absence of significant evidence which had only emerged subsequently. I concluded that the proceedings were vexatious, unstateable and bound to fail, and that:

a. These proceedings were another collateral attack like the previous actions and applications on issues already determined by the High Court and Court of Appeal which

had dismissed earlier proceedings as “*collateral attacks*” on the judgment mortgages and on the costs orders.

b. The action could not succeed, and its continuation would lead to no possible good. No reasonable person could expect relief in the circumstances.

c. The action appeared to have been brought to obstruct or delay the enforcement of the costs orders and the order for possession, and to harass and intimidate the Defendant, rather than to resolve new or genuine issues.

d. It was impermissible to relitigate issues determined in earlier proceedings (or which should have been). Accordingly, it was not possible for the Plaintiff to obtain the relief sought in these proceedings. They had been brought for improper purposes.

e. There were other indicators of vexatiousness such as: (i) the pattern of issues being rolled forward and repeated in subsequent actions, with actions brought against lawyers who acted in earlier proceedings; (ii) the failure to pay the costs of earlier proceedings; and (iii) the persistent unsuccessful appeals.

5. I concluded that all claims were precluded by the doctrine of *res judicata* (and/or the rule in *Henderson v Henderson* (1843) 3 Hare 100) and were frivolous, vexatious, bound to fail and an abuse of process and a collateral attack on successive orders of the High Court and Court of Appeal:

“There is no basis to doubt the sincerity of the Plaintiff’s convictions in respect of the matters in issue in the various proceedings, but she has had ample opportunity to make her case in that regard and she has been unsuccessful. The validity of the judgment mortgages has been confirmed by the High Court judgments and Court of Appeal judgments of, inter alia, Allen, Reynolds, Costello, and Collins JJ.. Since the Supreme Court has refused leave to appeal those decisions, the issues which the Plaintiff seeks to ventilate have been conclusively determined. The emergence of significant new evidence (which was not previously available to the Plaintiff) would be required to reopen those issues. No such development has occurred.

Allen J. concluded that:

“... the plaintiff in these proceedings has made out her case, that she recovered the order for costs... and that those costs were measured in the case of the District Court at €4,700 and taxed in the case of the High Court costs at €58,888.69 in accordance with the Conveyancing and Law of Property Act, those costs orders were registered as judgment mortgages on the defendant’s interest in the folio and it is not contested that the plaintiff has paid nothing on foot of those orders for costs or judgment mortgages.”

I agree with that conclusion. There is no basis to reopen the proceedings. Accordingly, and particularly in the light of the findings, judgments and rulings briefly summarised and cited in the Appendix hereto, I am satisfied that I should dismiss and strike out the claim against the Defendant pursuant to Order 19, rule 28 of the Rules of the Superior Courts on the grounds that it is frivolous and/or vexatious and/or that the pleadings disclose no reasonable cause of action. I would also consider it an appropriate case in which to exercise my inherent jurisdiction, in any event.”

6. I confirmed that I would make orders sought and I would hear submissions to deal with any issues arising, including legal costs.

Preliminary Issues

7. At the Plaintiff’s request, the hearing was conducted on a hybrid basis. The Plaintiff’s preliminary submissions were wide ranging and diffuse, often rehearsing issues resolved at the original hearing and sometimes difficult to follow. She submitted that I was “*estopped*” from dealing with the matter on various grounds because, she submitted, I had conducted the proceedings in breach of her constitutional rights. In particular, she submitted that there had been no jurisdiction for the hearing of the dismissal motion before me because the Court of Appeal was seized with the matter as a result of a then pending appeal, and this had been acknowledged in an earlier ruling by Roberts J.. As it happened, the appeal was dismissed during the period between my hearing the application and delivering my reserved Judgment. I rejected similar submissions at the substantive hearing of the motion that the pending appeal

(on a narrow point as to the costs of the interlocutory injunction application) meant that the Court was unable to proceed to deal with the Defendant's application. I also checked the DAR on that occasion and disagreed with the Plaintiff's interpretation of the ruling of Roberts J. when she adjourned a previous listing of the motion at the Plaintiff's request. My understanding was that Roberts J. made clear that the Plaintiff could not expect further adjournments.

8. Secondly, the Plaintiff sought to revisit other points from the substantive hearing, suggesting that I had displayed "*malice*" by declining to accede to her application – made for the first time during the hearing – to cross examine the Defendant. The proceedings had been frequently listed but there had been no application for such cross examination before the hearing. I rejected the application primarily because the Plaintiff had filed no affidavit (although given ample opportunities to do so). Accordingly, no issue required cross examination for the application. Although the Plaintiff claimed to have been deprived of "*a constitutional right to cross examine*", the jurisprudence does not support her. I was satisfied that there was no need or justification for cross examination in the circumstances.

9. Thirdly, the Plaintiff referred to correspondence she had apparently recently sent to various state authorities and to associated data access requests, but I did not understand the relevance of such matters to the issues before me.

10. Fourthly, the Plaintiff expressed her unhappiness with the Judgment, which she portrayed as defamatory, claiming that it defamed her good name and described her as "*a criminal*". She complained that publicity associated with the Judgment had caused her detriment and distress. She noted that she was considering defamation proceedings and asserted that the absolute privilege normally pertaining to judgments would not be applicable. In her view, neither I nor the Court Service were entitled to publish the Judgment. I do not consider that there is any basis for the Plaintiff's comments (her sensitivities appear difficult to reconcile with her own disregard for the reputation of other parties as displayed in the course of these

proceedings). The Judgment reflected my conclusions on the issues which I was required to deal with. However, although I necessarily examined the way the Plaintiff had conducted these and related proceedings and the basis for those proceedings, I did not attack the Plaintiff's good name as suggested, nor did I advance any suggestion of criminality on her part. To the contrary, the Judgment expressly acknowledged her sincerity, while also noting that the proceedings were misconceived and bound to fail. Accordingly, I disagree with the Plaintiff's characterisation of the judgment or the way I and previous judges dealt with the application. It is unfortunate from the Plaintiff's perspective that the Judgment should have had to criticise these and related proceedings, but it is the Plaintiff who chose to issue the proceedings, putting the Defendant in the position of having to apply for their dismissal and requiring my adjudication of such issues. The Plaintiff must accept the consequences of her own actions. In any event, the Judgment explained my conclusions. The Plaintiff has not raised any reason for me to reprise those conclusions (even if it were open for me to do so).

11. The fourth objection comprised further gratuitous attacks on the Defendant and her solicitor. It is particularly inappropriate and unfair that the Plaintiff should make such unjustified attacks from the bar. Once again, no evidence has been adduced to support such claims. She raised no point which has a bearing on the matters which I still need to decide.

12. The next objection was that I should not deal with the matter further because of my previous judgment (or the way the Plaintiff interpreted it). She also insinuated on obscure grounds that I might be subject to some sort of conflict due to a potential connection with the Defendant. To the best of my recollection, I have never met the Defendant. I believe that there is no basis for the Plaintiff's speculation in that regard.

13. The Plaintiff also noted that a former colleague of mine had recently become the chairman of a firm of solicitors ("the Firm") which the Defendant previously joined as a partner or employed solicitor, presumably merging her previous practice with that of the Firm. I believe

that the Defendant joined the Firm some years after the events giving rise to the cost orders and related judgment mortgages and it appears from the Law Society directory that the Defendant has since left the Firm and is again practising on her own behalf. However, on certain grounds, the Plaintiff says that she has a claim against the Firm “*for residual damages*” to which she claims a continuing entitlement following the resolution of her original proceedings against the Defendant. She appears to claim that, as a result of employing the Defendant or making her a partner for a period or merging practices with the Defendant, the Firm assumed the Defendant’s liability for the “*residual damages*”. I will return to the reference to my former colleague but will first deal with the “*residual damages*” claim.

14. I have seen no basis for any such claim. As appears from the Judgment, the defamation claim against the Defendant was resolved by the consent order of MacEochaidh J.. The Plaintiff did secure declarations but was ordered to pay the costs of the proceedings. I do not agree that the consent order (including declarations) provides the Plaintiff with a basis to seek a jury trial to pursue a further damages claim on foot of the declarations in respect of issues ventilated and resolved in the defamation proceedings. To the contrary, the consent order expressly directed that the proceedings should be struck out (and required her to pay the costs of the proceedings). In my view, express language would have been required to preserve a right to bring further proceedings in respect of the same claim and I doubt that a court would have been willing to make such an order in respect of claim actually called on for hearing.

15. The principles applicable to the interpretation of settlement agreements and court orders have been helpfully explained in *Ranbaxy Laboratories Ltd v. Warner-Lambert Company* [2009] 4 I.R. 584 (“*Ranbaxy*”) and in *Solicitors Mutual Defence Fund Limited v. Peter Costigan & Ors.* [2020] IEHC 213 (“*SMDF*”). Clarke J. (as he then was) discussed the interpretation of agreements and orders in *Ranbaxy* at p. 600:

“37. ... *the overall principle behind the construction of any document which is intended or is likely to affect legal entitlements and obligations is that it must be construed in the*

context of its purpose and in a manner which those whose rights and obligations are likely to be affected by it, would understand it.

38. ... significant commercial contracts, carefully negotiated with the assistance of experienced lawyers, must be assumed to have been properly worked out by those lawyers. A court will not likely assume a mistake in this regard either. ... In addition, a court may need to know the overall context of the circumstances leading to the negotiation of the contract in the first place. This is because the contract should be construed in the way in which a reasonable and informed person entering into a contract of that type would be likely to interpret it. That person will not come to the interpretation of the contract with a blank mind. The contractual negotiations will commence against a particular factual backdrop and the parties will be seeking to advance their commercial interests against that factual back drop.”

16. In *S MDF*, McDonald J. cited the above passage and offered similar guidance as to the interpretation of court orders:

“In my view, the authorities discussed above demonstrate that, in each case, it is necessary to construe a court order, made by consent, by reference to its terms but also by reference to the specific context in which the order was made”.

17. *S MDF* also confirms that the Court would have been unlikely to agree to a “settlement” order on the day fixed for hearing on a basis which envisaged the same action being relitigated on a separate occasion. In interpreting the expression “liberty to re-enter” McDonald J. observed at paragraph 57 that:

“... it is unthinkable that Finlay Geoghegan J. would, in those circumstances, have contemplated that the original claim could be litigated at some point in the future. It must be borne in mind that court hearing time is a valuable commodity. Parties frequently have to wait for significant periods before a hearing date can be secured. For that reason, courts do not readily allow parties to abandon a hearing date and to reserve the right to re-litigate the matter at some time in the future. In my experience, a court would not do so without a convincing and comprehensive explanation and there is no evidence, in this case, of any such explanation having been given ...”

18. McDonald J. added at paragraph 58(b) that:

“...it cannot have been intended that the proceedings would be re-entered with a view to allowing the original claim to be litigated. In my view, it would be inconceivable that the court would permit parties to proceed in that way in the absence of some detailed explanation. For example, in a case that was recently listed for hearing before me for 3 weeks, I insisted on being shown the terms of a confidential settlement before I was prepared, on the first day of the hearing, to adjourn the matter for mention to a later date. My concern was that the hearing of the action might have to be recommenced at some stage in the future notwithstanding that 3 weeks of valuable court time had already been allocated to it. In that case, a consideration of the confidential settlement terms showed that there was a good explanation for the proposed adjournment and also demonstrated that the case would not require a new hearing date in the future. Given the pressure on court lists, I believe that, similarly, in the present case, in the absence of some indication to the contrary, the granting of liberty to re-enter cannot have been intended to allow the parties to bring the original claim back before the court at some time in the future. The court can only have proceeded on the basis that liberty to re-enter was given for some other purpose.”

19. I do not agree that the consent order can reasonably be interpreted as recognising that the Plaintiff had been defamed and as preserving a right to claim damages. To the contrary, since the proceedings had been listed for hearing and it was clear that they were defended, the Defendant or the Court were unlikely to have agreed to resolve the proceedings on any such basis. There is no suggestion of any such intention in the language of the order which was evidently intended to resolve all matters and conclude the proceedings.

20. For completeness, I also note the Plaintiff’s reference to seeking damages that were “denied” to her by MacEochaidh J. As far as I am aware, the only order made by MacEochaidh J. was the *consent* order. Accordingly, I do not understand the reference to the Court having denied the Plaintiff’s entitlement. In any event, the order was never appealed and there is no basis on which it could be impugned at this stage.

21. The Plaintiff also referred to an “*agreement*”, allegedly reached in a May 2023 Court of Appeal hearing, that a jury trial should take place in these proceedings. I have seen no

evidence of any such “agreement” and I am not persuaded that the Plaintiff’s understanding is well founded. In any event, for the reasons that should be apparent from the Judgment, I doubt that the Plaintiff has any basis to pursue any such ongoing claim.

22. Even if, contrary to my view, the Plaintiff retained a claim for “*residual damages*” against the Defendant, I do not understand the basis on which the Plaintiff asserts that the Firm assumed responsibility for that liability. No evidence or submissions have been received to explain that proposition. The Plaintiff did cite the decision of the English Court of Appeal in *Robert Whitney v Monster Worldwide Ltd* [2010] EWCA Civ 1312. That case concerned the terms of an employee’s pension entitlement and whether that entitlement was novated when his employment was transferred to another company. With respect, I do not think that it assists the Plaintiff in her contention that the Firm is liable for “*residual damages*” arising from the consent order made by MacEochaidh J., which itself related to the Plaintiff’s claim that the Defendant had previously defamed her. In my view, the Plaintiff’s defamation claim was resolved by the consent order, but, in any event, I see no basis on which she could seek redress against the Firm given that it had no involvement in the relevant events. The Judgment (at pages 19-21) records my doubts as to the basis for the Plaintiff’s submissions in this regard and noted that the Court of Appeal appeared to have similar reservations.

23. In any event, no issue arises as a result of the recent appointment of a former colleague of mine as the chairman of the Firm. Prior to my appointment to the judiciary in July 2023, the two of us had indeed been partners for many years in one of Ireland’s largest law firms (which currently has approximately 115 partners), from which he retired in December 2023 before joining the Firm and being appointed its Chairman this year. Although the two of us were partners and colleagues, we always specialised in different areas and worked in different departments. Accordingly, our paths seldom crossed, and we only ever worked together on a handful of occasions (I can only remember a single client instruction on which we worked

together to any great extent). In any event, the Firm is not a party to the current proceedings and his recent appointment does not provide a basis for me to recuse myself from dealing with this matter. Nor am I aware of any other circumstances which would do so.

24. The Plaintiff also complained about the way I had dealt with another application (for leave to issue a motion) in the Well-Charging Proceedings, which she had proposed to make while my judgment on this application was pending. The Defendant had objected to the proposed application on grounds apparently similar to those advanced in these proceedings (I say “apparently” because, when the matter was opened to me, an affidavit had been sworn by the Defendant objecting to the proposed application. However, I declined to read that “replying” affidavit until the Plaintiff had had the opportunity to file her own affidavit). The Plaintiff initially welcomed my assignment to deal with that new application and both parties were disposed to my dealing with it at the same time as I delivered judgment following the hearing of the Defendant’s application for dismissal of these proceedings. Accordingly, on the first occasion the new application was mentioned to me (without proper papers), I requested that affidavits and submissions should be lodged following which I would hear oral submissions.

25. At a subsequent hearing, the Plaintiff appeared to be under the impression that Sanfey J. had already determined that she was entitled to issue the motion as of right. I was concerned that the matter did require judicial consideration because it appeared to me that, as would be normal, Sanfey J. had allocated the matter to me on the basis that I would deal with all aspects of the application, including whether the Plaintiff was entitled to issue the application at all. I disagree with the Plaintiff’s recollection of what transpired before me. My recollection is that I never had occasion to form a view one way or the other on the substance of the new application because the Plaintiff took exception to my concern to consider an affidavit and submissions from both sides before dealing with the matter. The Plaintiff ultimately chose not

to proceed with her application, so I made no decision in that respect. Instead, I completed the Judgment on this application. The Plaintiff was entitled to withdraw her motion but that does not affect the issues on this application. Nor do I agree with the Plaintiff's characterisation of what transpired in respect of that application on the few occasions it was before me.

26. The Plaintiff submitted that an estoppel arose from the points she had raised, preventing me from dealing with the matter further and that I would be violating my oath of office if I continued to deal with the matter. I disagree. No point of substance was raised in the Plaintiff's submissions, nor was evidence adduced to support her contentions. In my view, it remains my duty to deal with outstanding issues following on from the Judgment.

Costs

27. There are three issues to be considered – whether there are circumstances which might displace the usual rule that costs of the application and the proceedings should follow the event, whether any such costs should be measured on a “*party and party*” or “*legal practitioner and own client*” basis and whether I should myself determine the amount payable.

28. The Defendant submitted that there were no special circumstances to justify a departure from the rule that the costs of the proceedings and the motion should follow the event. She sought her costs but on a “*legal practitioner and own client*” basis and submitted that I should proceed to determine the amount payable on the basis of the evidence before the Court.

Law

29. Sections 168 and 169 of the Legal Services Regulation Act 2015 provide as follows (in the relevant part):

“Power to award legal costs

168. (1) *Subject to the provisions of this Part, a court may, on application by a party to civil proceedings, at any stage in, and from time to time during, those proceedings—*

(a) order that a party to the proceedings pay the costs of or incidental to the proceedings of one or more other parties to the proceedings...

Costs to follow event

169. (1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including—

(a) conduct before and during the proceedings,

(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,

(c) the manner in which the parties conducted all or any part of their cases...”.

30. Order 99 of the Rules of the Superior Courts (“the RSC”) states in relevant part:

“II. Right to Costs

2. Subject to the provisions of statute (including sections 168 and 169 of the 2015 Act) and except as otherwise provided by these Rules:

(1) The costs of and incidental to every proceeding in the Superior Courts shall be in the discretion of those Courts respectively.

(2) No party shall be entitled to recover any costs of or incidental to any proceeding from any other party to such proceeding except under an order or as provided by these Rules.

(3) The High Court... upon determining any interlocutory application, shall make an award of costs save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application.

(4) An award of costs shall include any sum payable by the party in favour of whom such an award is made by way of value added tax on such costs, where and only where such party establishes that such sum is not otherwise recoverable.

(5) An order may require the payment of an amount in respect of costs forthwith, notwithstanding that the proceedings have not been concluded.

3.(1) The High Court, in considering the awarding of the costs of any action or step in any proceedings...shall have regard to the matters set out in section 169(1) of the 2015 Act, where applicable.

...

7.(1) *An order for the payment of costs may require the costs to be paid forthwith, notwithstanding that the proceedings have not been concluded.*

(2) *In awarding costs, the Court may:*

(a) *direct that a sum in gross be paid in lieu of adjudicated costs;*

...

(c) *direct that the costs of preparing a report referred to in paragraph (b) be added to the sum in gross awarded or be paid by another party.”*

31. The general principles that apply to the awarding of legal costs were helpfully summarised by Murray J. in *Chubb European Group SE v Health Insurance Authority* [2020] IECA 183 as follows:

“...the general principles now applicable to the costs of proceedings as a whole (as opposed to the costs of interlocutory applications) can be summarised as follows:

(a) *The general discretion of the Court in connection with the ordering of costs is preserved (s.168(1)(a) and O.99, r.2(1)).*

(b) *In considering the awarding of costs of any action, the Court should ‘have regard to’ the provisions of s.169(1) (O.9, r.3(1)) [sic].*

(c) *In a case where the party seeking costs has been ‘entirely successful in those proceedings’, the party so succeeding ‘is entitled’ to an award of costs against the unsuccessful party unless the court orders otherwise (s.169(1)).*

(d) *In determining whether to ‘order otherwise’ the court should have regard to the ‘nature and circumstances of the case’ and ‘the conduct of the proceedings by the parties’ (s.169(1)).*

(e) *Further, the matters to which the court shall have regard in deciding whether to so order otherwise include the conduct of the parties before and during the proceedings, and whether it was reasonable for a party to raise, pursue or contest one or more issues (s. 169(1)(a) and (b)).*

(f) *The Court, in the exercise of its discretion may also make an order that where a party is ‘partially successful’ in the proceedings, it should recover costs relating to the successful element or elements of the proceedings (s.168(2)(d)).*

(g) *Even where a party has not been ‘entirely successful’ the court should still have regard to the matters referred to in s.169(1)(a)-(g) when deciding whether to award costs (O.99, r.3(1)).*

(h) In the exercise of its discretion, the Court may order the payment of a portion of a party's costs, or costs from or until a specified date (s.168(2)(a))."

32. In *Trafalgar Developments Limited and Others v Dmitry Mazepin and Others* [2020] IEHC 13 ("*Trafalgar*"), Barniville J. (as he then was) set out the legal principles applicable to such a determination as to whether costs should be awarded on a "*legal practitioner and client*" basis. Although he declined to make such an award in the particular case, he summarised the jurisprudence, including *Geaney v Elan Corporation Plc* [2005] IEHC 111 (Kelly J.) and *Dunnes Stores v An Bord Pleanála* [2016] IEHC 697 (Barrett J.), at paragraph 54:

"...the following principles can be derived from O. 99 r. 10 and from the judgments of the Irish courts discussed above and should inform the exercise by a court of its discretion to make an order for costs on the solicitor and client basis:-

(1) The normal position is that where costs are awarded against one party in favour of on other [sic], those costs will be taxed or adjudicated on the party and party basis.

(2) The court has a discretion to depart from the normal position in the particular circumstances of the case, where the court thinks fit to do so, and to direct that the costs be taxed or adjudicated on the solicitor and client basis.

(3) There has to be a good reason for the court to depart from the normal position and to make an order for costs on the solicitor and client basis (or on the even more severe basis, the solicitor and own client basis).

(4) The court may exercise its discretion to order costs on the solicitor and client basis where it wishes to mark its disapproval of or displeasure at the conduct of the party against which the order for costs is being made.

(5) The conduct in question can include: -

(a) A particularly serious breach of the party's discovery obligations;

(b) An abuse of process by that party in commencing and maintaining proceedings for an improper purpose or for an ulterior motive, designed to seek a collateral and improper advantage;

(c) The failure to exercise the requisite caution in commencing proceedings making claims of fraud or dishonesty or conspiracy without

ensuring there exists clear evidence supporting a prima facie case in relation to such claims;

(d) Any other conduct in relation to the commencement or conduct of the proceedings, or any aspect of the proceedings, which the court considers merits be marked by the court's displeasure or disapproval, such as a particularly serious or blatant breach of a court order, the directions of the court or the Rules of the Superior Courts.

(6) In considering whether the conduct of a party is such that the court should exercise its discretion to make an order for costs on the solicitor and client basis, the court should: -

(a) Clearly identify the particular conduct or behaviour of the party which is said to afford the basis for the court exercising its discretion to award costs on the solicitor and client basis;

(b) Carefully examine and consider the explanation (if any) offered by the party for the conduct or behaviour in question;

(c) Carefully consider and examine the consequences (if any) of the conduct or behaviour in question for the other party, whether in terms of delay or costs or any other form of prejudice to that party;

(d) in light of the above, determine whether, in all the circumstances, it would be appropriate and in the interests of justice to award costs on the solicitor and client basis under O. 99, r 10 (3).

(7) While a failure to comply with the provisions of the Rules of the Superior Courts or of a direction or order of the court will normally merit the award of costs against the party in default, such costs will normally be awarded on the party and party basis. It will generally only be if the breach or failure to comply is of a particularly blatant or serious nature, having serious consequences for the other party, that the court will be justified, in the exercise of its discretion, to award costs on the solicitor and client basis (or, exceptionally, on the solicitor and own client basis).”

Conclusion on costs

33. I am well placed to make a determination in respect of costs since the proceedings have been finally determined (subject to any appeal). The first question is very straight forward. There are no circumstances to justify a departure from the normal rule that the costs should follow the event. The Plaintiff must pay the costs of the proceedings and the application.

34. Turning to the second question, as the above summary makes clear, it is only rarely appropriate to award costs against an unsuccessful litigant on a “*legal practitioner and own client*” basis. However, such an award is appropriate in this case in view of the nature and history of these proceedings and the related proceedings and the way they have been conducted. The Plaintiff has initiated multiple actions and appeals generally traversing the same issues, as can be seen from: (a) the Judgment; (b) the previous judgments and orders in these and related proceedings; (c) the affidavit grounding the successful dismissal application; and (d) the recent affidavit from the Defendant’s solicitor for the purposes of this hearing. With the exception of an appeal in respect of the issuing of an Issac Wunder Order, the Plaintiff’s applications and appeals have been uniformly unsuccessful.

35. As appears from the Judgment, the Superior Courts have concluded on several occasions in related litigation that the Plaintiff was pursuing unfounded, frivolous or vexatious claims or applications which were an abuse of process, bound to fail or which had been taken for ulterior and collateral reasons, namely, to frustrate the Defendant and the Orders previously made in her favour. Nevertheless, the Plaintiff chose to initiate and pursue these proceedings. As an experienced lawyer herself, she should have appreciated that she had no basis to do so in view of the outcome of the earlier proceedings. She had no legitimate basis to initiate these proceedings. My concern has been increased by the intemperate manner in which they have been conducted. The Plaintiff repeatedly made personalised and unjustified attacks on the Defendant and her legal advisors (and continued to do so in the costs hearing before me). I

consider that the need to deal with such repetitious and unmeritorious claims must have been of huge concern to the Defendant, even leaving aside the enormous effort and expense to which she was repeatedly exposed for no good reason. I have seen no basis for the egregious personal attacks on the Defendant and her legal team or on other parties, nor any basis for the allegations that they had acted fraudulently or inappropriately. As a practising barrister, the Plaintiff will be aware that such claims are extremely serious and must not be advanced without good reason. It is particularly invidious that such a claim should be gratuitously made against professionals and officers of the Court where there were no legitimate grounds to do so.

36. I have already concluded that the proceedings must be dismissed. I accept the Defendant's submission that, whether the Plaintiff's actions are looked at in isolation in these proceedings, or in conjunction with her role in related proceedings between the same two parties, the Plaintiff has engaged in serial abuse of the court system through the institution of baseless proceedings and appeals which are bound to fail. Accordingly, this case falls squarely within two examples given by Barniville J. of situations in which the Court may award costs on a legal practitioner and own client basis:

“(b) An abuse of process by that party in commencing and maintaining proceedings for an improper purpose or for an ulterior motive, designed to seek a collateral and improper advantage;

(c) The failure to exercise the requisite caution in commencing proceedings making claims of fraud or dishonesty or conspiracy without ensuring there exists clear evidence supporting a prima facie case in relation to such claims”.

37. Barniville J. also noted in *Trafalgar* that costs can be awarded on a legal practitioner to client basis where there has been a failure to exercise the “*necessary caution*” before bringing proceedings alleging fraud, dishonesty or conspiracy or where such claims are made, without the exercise of the required caution, against a professional person in relation to the manner in which he or she has acted in a professional capacity. The Court of Appeal decision in *Flynn*

and Another v Breccia and Another [2017] IECA 163 is also relevant. In delivering the Court's judgment, Peart J. observed that at para. 63:

“It should be stated, however, that a plaintiff who seeks to bring claims of dishonesty and conspiracy against any person must be cautious, and should do so only when there is clear evidence to support a prima facie case in that regard. That caution is all the more important where the defendant is a professional person and where the allegations relate to the manner in which he has acted in his professional capacity. Where that caution is not exercised, and grounds of claims are advanced, which ultimately either fail or are withdrawn, the plaintiff is exposed to the risk that costs may be awarded against him/her on a solicitor/client basis.”

38. I am satisfied that I should award costs in favour of the Defendant in accordance with Order 99, rule 10 RSC and on a legal practitioner and own client basis.

39. The last question is whether I should myself measure the costs figure to be paid, rather than leaving the issue for determination by the Legal Costs Adjudicator (in default of agreement). In considering whether it is appropriate to determine the amount to be paid by way of costs rather than leaving the issue for adjudication in the normal way, it is appropriate to have regard to the Plaintiff's history with regard to previous cost orders against her. As the Defendant's solicitor has confirmed in his affidavit at paras. 23 and 24:

“... I say that despite Ms Houston having a substantial liability for legal costs to my client arising from previous of the court, dating back several years at this stage, many of which have been measured by the Legal Costs Adjudicator (which entailed us having to incur stamp duty totalling €7,867.00 in having previous costs adjudicated), Ms Houston has to date made no payments whatsoever but to the contrary is still seeking damages against the Defendant and this firm. I say that this deponent is at a loss as to any basis for either of these claims.”

40. In the light of the history of the litigation, the interests of justice require me to determine the amount to be paid so as to avoid putting the Defendant to the additional effort and expense of the adjudication process. This conclusion reflects the history of the related proceedings,

including, in particular, the extraordinary difficulties experienced by the Defendant with regard to the enforcement of earlier cost awards against the Plaintiff (even when their amount has been conclusively determined). The appendix to the Judgment summarised the difficulties experienced and reinforces my conclusion that the costs should be measured by the Court to ensure that the Defendant is not forced into further protracted engagement, effort or expense over the adjudication of those costs. It is also relevant that, although the Defendant has had to incur stamp duty totalling €7,867 in having her previous cost awards favour adjudicated, the Plaintiff has not paid a penny in respect of the cost orders which date back to 2015 and 2017.

41. In terms of the amount to be paid, the Defendant's solicitor has furnished an affidavit explaining the nature of the work done and the costs incurred in the successful defence of the proceedings. It exhibited a draft bill of costs. No response was received from the Plaintiff. The solicitor's affidavit confirms that – including the hearing which took two full days – these proceedings have been listed before the Court on numerous occasions, as follows:

“28 April 2023

4. I say that the Plaintiff made an ex parte application and was granted leave by Mr Justice O'Moore to serve short notice of Notice of Motion for equitable and injunctive relief returnable on the 5 May 2023...

5 May 2023

5. I say that following a hearing, Mr Justice O'Moore made certain directions to include that we file any replying affidavit by the 19 May 2023. He also transferred the matter into the list to fix dates for the 19 May 2023.

8 May 2023

6. The Plaintiff made an application to the Court and was granted a hearing date seeking interim relief for the 12 May 2023. Neither this firm nor Counsel were present for the plaintiff's application.

12 May 2023

7. I say that a hearing of the Plaintiff's application seeking an interim injunction was heard before Ms Justice Egan. The hearing entailed a full day spent at the High Court, with two members of staff being present for the afternoon of the hearing. Ms Justice Egan reserved judgment until the 17 May 2023.

17 May 2023

8. I say that Ms Justice Egan delivered her judgment on the 17 May 2023 refusing the Plaintiff's application for interim relief and reserving the costs of the application.

17 June 2023

9. I say that the hearing of the Plaintiff's application seeking interlocutory relief before Ms Justice Stack when the Plaintiff's application was refused and she was directed to pay the Defendant's costs of this application and the earlier order made on the 17 May, 2023 with a stay on execution of same pending service of a Notice of Appeal by the Plaintiff.

10. The Defendant's application seeking an order to dismiss the Plaintiff's proceedings was adjourned until the 7 July 2023 with a direction that the Plaintiff do file and serve any replying affidavit within a period of two weeks.

7 July 2023

11. I say the Defendant's application was adjourned for mention until the 11 July 2023 following a request by the Plaintiff who informed the court that she had other applications which she intended to bring, although the nature of such applications were unclear to us.

11 July 2023

12. I say that the Defendant's application was given a provisional hearing date for the 26 July 2023.

20 July 2023

13. I say that Counsel formally called our application on for hearing on the 26 July 2023.

26 July 2023

14. I say that the hearing of the Defendant's application was adjourned for hearing until the 27 July 2023.

27 July 2023

15. I say that Ms Justice Roberts made directions that the Plaintiff be allowed until the 31 August 2023 to file and serve any replying Affidavit; the Defendant would have until the 30 September 2023 to file and serve and [sic] response to such Affidavit and the application be listed for mention on the 6 October, 2023.

(Note: the Plaintiff never served any replying Affidavit).

6 October 2023

16. I say that a hearing date for the Defendant's application was fixed for the 11 October 2024 [sic].

11 October 2023

17. I say that the Defendant's application was part heard by Mr Justice Kennedy and that an interim order was made by Mr Justice Kennedy...

12 October 2023

18. I say that the hearing of the Defendant's application was concluded, and judgment reserved by Mr Justice Kennedy.

13 October 2023

19. I say that the Court of Appeal made certain directions to include the time and delivery of submissions etc to include fixing a date for the 15 January 2024 regarding the Plaintiff's Appeal re the order of Ms Justice Stack, which at that time was only on the question of costs.

15 December 2023

20. I say that the President of the Court of Appeal adjourned the Plaintiff's application to amend the grounds of her appeal until the hearing date of her appeal on the 15 January, 2024.

15 January 2024

21. I say that following a hearing before the President, Mr Justice Binchy and Ms Justice Butler that an order was made by the Court of Appeal dismissing the Plaintiff's appeal and the relief sought in the Plaintiff's Motion dated the 8 December 2023 and the Plaintiff was directed to pay the Defendant's costs"

42. The Defendant's solicitor's affidavit estimates the Defendant's costs as follows:

Solicitors' professional fee	€45,075.00
Counsels' fees	€28,000.00
Other disbursements	€1,238.00
Total	€74,313.00

43. I consider those figures to be reasonable in the context of this litigation (whether measured on a party and party or legal practitioner and client basis) and in circumstances in which these proceedings have been listed before the Court on so many dates and it has been necessary for the Defendant and her representatives to prepare affidavits and make detailed submissions at length and on several occasions. There is no suggestion that the VAT on such legal costs is not recoverable and accordingly I will disregard VAT in accordance with Order 99, rule 2(4) RSC. I will order the Plaintiff to pay the Defendant the costs of proceedings, and I direct that the amount to be paid by the Plaintiff to the Defendant in that regard should be €72,500.00, a slight reduction on the solicitor's figure to allow for the possibility that some items might not be found to be recoverable if the matter had been referred to adjudication.