



## THE COURT OF APPEAL

Record Number: 2024/208  
High Court Record Number: 2019/6583P  
Neutral Citation: [2025] IECA 26

Noonan J.  
Binchy J.  
Pilkington J.

**BETWEEN/**

**O.S.**

**PLAINTIFF/APPELLANT**

**-AND-**

**NATIONAL IRISH BANK LIMITED AND DANSKE BANK AND  
CHRISTOPHER D LEHANE AND O.S AND GEORGE MOLONEY AND  
PROPERTY REGISTRATION AUTHORITY OF IRELAND**

**DEFENDANTS/RESPONDENTS/  
CROSS APPELLANTS**

**JUDGMENT of Mr. Justice Noonan delivered *ex tempore* on the 11th day of  
February, 2025**

1. This is the latest chapter in a very long running saga. The plaintiff's husband, Mr. O.S, borrowed sums of money from National Irish Bank Limited in 2003 secured by way of

a mortgage on the lands comprised in Folio 976 of the Register of Freeholders County Kildare. This appears to be primarily farmland. Mr. O.S and the plaintiff were married in 2009. The loans were transferred to Danske Bank and went into arrears. Mr. Moloney is a receiver appointed on the 4<sup>th</sup> March, 2013 by the bank over the lands. Subsequently the bank obtained judgment on the 4<sup>th</sup> March, 2013 for approximately €1.3m which is registered as a judgment mortgage over Mr. O.S's lands comprised in Folio 38675F County Kildare.

2. The lands comprised in the two folios appear to adjoin and one of them, although it is not entirely clear which, contains the plaintiff's family home. The receiver endeavoured to take possession of the lands but this was resisted by the O.S's and ultimately, the receiver obtained an injunction from the High Court separately in respect of each parcel of land on the 9<sup>th</sup> July, 2013 and the 22<sup>nd</sup> December, 2014 respectively. On the 4<sup>th</sup> July, 2016, Mr. O.S was adjudicated a bankrupt, hence the involvement of the third defendant, the official assignee.

3. The within proceedings were issued by Mrs. O.S on the 24<sup>th</sup> August, 2019 and it is not necessary to go into a great deal of detail about what is claimed in the circumstances hereinafter appearing. Suffice to say that Mrs. O.S claimed that her family home and property rights were breached by various transactions and activities on the part of the defendants in respect of which she sought relief. The various defendants, with the exception of Mr. O.S, brought motions before the High Court seeking to have these proceedings dismissed as an abuse of process on a number of grounds, including that they were bound to fail and sought to reopen matters already conclusively determined by the judgments of various courts.

4. In the event, the High Court (Dignam J.) acceded to the defendants' applications, with one exception, to which I will come shortly. Mrs. O.S appealed against that determination

but her appeal was struck out on foot of an unless order made by the President. That does not however dispose of the matter because in respect of one issue, the defendants, excluding Mr. O.S, have cross-appealed. That issue arises in the following circumstances.

5. The original statement of claim was delivered by the plaintiff on the 9<sup>th</sup> October, 2019. At para. 30, under the heading “*Intimidation*”, the plaintiff pleads as follows:

*“30. By reason set out above George Maloney abandoned his duty on the execution of a 3am raid accompanied by circa 50 masked men illegally breaking and entering this claimant’s Family Home and lands causing irrevocable mental injury to this claimant and her children and thereafter imprisoning this claimant’s then husband for three months denying this claimant’s children a father and this claimant her husband. Causing continued psychological trauma affecting the daily lives of this claimant and her family.”*

6. As the trial judge observed, the pleading here is remarkably vague and does not identify a date or place when the alleged event occurred. In dealing with the history of the matter, the judge recorded the fact that Mr. O.S had been jailed for contempt of court for failing to comply with prior orders to surrender possession of the charged lands. A sentence of 100 days was imposed on him by the High Court.

7. The judge speculated that the lead up to Mr. O.S’s arrest may well be what para. 30 refers to but noted that it was unacceptable that the court or parties should have to guess what is actually being claimed. Partially because of this level of uncertainty, the judge felt he should give the benefit of the doubt to the plaintiff and felt unable to safely conclude that her claim, apparently arising from the arrest of Mr O.S, is frivolous or vexatious or bound to fail. While declining therefore to dismiss this part of the plaintiff’s claim, the judge directed

the plaintiff to deliver an amended statement of claim to properly plead this issue within three weeks of the judgment.

**8.** The plaintiff did in fact subsequently deliver an amended statement of claim on the 31<sup>st</sup> October, 2024. In this document, the plaintiff claims, for the first time, that Mr. Moloney and masked men illegally broke into the plaintiff's family home and caused mental injury to her and her child. She complains about her husband being imprisoned denying the child a father and her her husband but this appears to refer to Mr. O.S's imprisonment for contempt by the High Court, a matter in respect of which the defendants can have no liability. She goes on to plead at para. 7 that she was assaulted during the course of this "*raid*". Paragraphs 11 and 13 plead that she was physically assaulted, pulled by the arms and kicked in the shins by security personnel employed by the receiver, and, in consequence, suffered "*irrevocable mental injury*" and "*unimaginable trauma*".

**9.** In their cross-appeal, the defendants claim that this is in substance and fact a claim for damages for personal injuries and in order to institute proceedings for such a claim, it is necessary to get the authorisation of the Personal Injuries Assessment Board or, as it is now known, the Injuries Resolution Board. It is immediately apparent that this argument was not advanced in the High Court by the defendants. The defendants argue however that while that may be so, it is not impermissible to do so in circumstances such as the present where no new evidence is called for and it is a purely legal argument that does not prejudice the plaintiff. The receiver pleads this point in the defence to the amended statement of claim.

**10.** Counsel for the defendants relies on the well known judgment of the Supreme Court in *Lough Swilly Shellfish Growers Co-op Society Limited v Bradley* [2013] IESC 16 in that regard. Section 12(1) of the Personal Injuries Assessment Board Act provides that proceedings may not be brought unless an application has been first made to the Board and

thereafter, the Board has authorised the bringing of such proceedings. That did not occur in this case. While the plaintiff in the present case may not be claiming to have suffered physical injuries, although this is unclear in the light of the allegation she was pulled by the arms and kicked in the shins, she is clearly alleging that she suffered non-physical or mental injury and distress. Section 2 of the Civil Liability Act, 1961 as amended provides that “*personal injury*” includes any “*disease or impairment of a person’s physical or mental condition*” and the same definition is incorporated into s. 4(1) of the Personal Injuries Assessment Board Act, 2003.

**11.** I am satisfied that it is appropriate that this Court should permit the arguments on this issue now advanced by the defendants. It seems to me that the fact that it was not made in the High Court stems in large measure from the fact that the claim was not properly pleaded in the first place and was only fully clarified by the subsequent delivery of an amended statement of claim by the plaintiff. Further I am satisfied that it is a purely legal argument that does not embarrass the plaintiff in terms of her ability to deal with it and does not require any additional evidence not before the High Court. It is in my view clearly a matter that falls very much at the lower end of the “*spectrum*” of new issues on appeal identified in the judgment of O’Donnell J. (as he then was) in *Lough Swilly*.

**12.** An issue does arise in the context of s. 4 of the PIAB Act 2003 which excludes from the definition of “*civil action*” (which triggers the need for authorisation) the following:

“(i) *an action intended to be pursued in which, in addition to damages for the foregoing matters [including personal injuries] it is bona fide intended, and not for the purpose of circumventing the operation of section 3, to claim damages or other relief in respect of any other cause of action...*”

**13.** The original statement of claim made a number of claims for damages, including for breach of the plaintiff's constitutional rights in relation to her family home, and arguably therefore the subsection applies so that an authorisation is not required. However, given that all other claims have been struck out by the High Court as an abuse of process, this no longer arises. Further, it is difficult to see how the other claims for damages could be regarded as *bona fide* claims in such circumstances.

**14.** There is also arguably an issue arising as to whether a claim for damages for assault inflicting emotional and mental injury is properly regarded as being within the scope of the 2003 Act. The judgment of the Supreme Court in *Clarke v O'Gorman* [2014] 3 IR 340 expressly considered this point. That was a claim for sexual abuse involving emotional trauma which the defendant argued was captured by the 2003 Act and thus could not be pursued in the absence of an authorisation. Giving the judgment of the court, O'Donnell J. (as he then was) held that the Act clearly applied to such claims.

**15.** I am therefore satisfied that the pursuit of this claim is impermissible in the absence of an authorisation from the Injuries Resolution Board. The claim is thus bound to fail and should, for that reason, be dismissed. Accordingly, I would allow the defendants' cross-appeal and dismiss these proceedings in their entirety.

**Binchy J.:** I am in full agreement with the judgment just delivered by Mr. Justice Noonan and I have nothing to add to it.

**Pilkington J.:** I also agree and I have nothing to add.