

THE HIGH COURT

[2023] IEHC 290

[2019/8493 P]

BETWEEN

C

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL

THE PROPERTY REGISTRATION AUTHORITY

BANK OF IRELAND MORTGAGE BANK AND THE GOVERNOR AND

COMPANY OF THE BANK OF IRELAND

THE DUBLIN CITY SHERIFF AND THOMAS GRAY

DOUGLAS NEWMAN GOOD AND

TO ALL PERSONS CONCERNED WITH AND RESIDING AT 7 GRACE PARK

AVENUE DRUMCONDRA DUBLIN 3

DEFENDANTS

THE HIGH COURT

[2019/8723 P]

BETWEEN

C

PLAINTIFF

AND

SIMON COYLE

BANK OF IRELAND MORTGAGE BANK

THE DATA PROTECTION COMMISSIONER

THE ATTORNEY GENERAL AND THE PROPERTY REGISTRATION

AUTHORITY

DEFENDANTS

JUDGMENT of Mr. Justice Cregan delivered on the 16th day of May, 2023.

Introduction

1. There are six motions currently before the court in two different sets of proceedings.

These are:

1. In the first set of proceedings (Record number 2019/8493P):

- (a) the plaintiff's application for an injunction restraining all parties from interfering with his former home;
- (b) an application by Bank of Ireland Mortgage Bank, and the Governor and Company of the Bank of Ireland ("the Bank") and Douglas Newman Good, (the fourth, fifth and eighth defendants) to strike out the plaintiff's claim as an abuse of process, as frivolous and vexatious and/or as failing to disclose a reasonable cause of action;
- (c) an application by the Dublin City Sheriff and Thomas Gray (the sixth and seventh defendants) to strike out the plaintiff's claim on similar grounds.

2. In the second set of proceedings (Record number 2019/8723P):

- (a) the plaintiff's application for an injunction to restrain the defendants from interfering with two other investment properties;
- (b) an application by Mr. Coyle and Bank of Ireland Mortgage Bank (the first and second named defendants) to strike out the plaintiff's proceedings on the grounds that they are an abuse of process, frivolous and vexatious and/or that they fail to disclose a reasonable cause of action;
- (c) an application by the Data Protection Commissioner (the third named defendant) to strike out the plaintiff's proceedings on similar grounds to those of the Bank and the Receiver.

Background to the first set of proceedings

2. On 15th May, 2006, the plaintiff borrowed a sum of €750,000 from Bank of Ireland to enable him to purchase a house. The loan advanced to the plaintiff was secured by way of a mortgage over the property in Drumcondra.
3. The plaintiff defaulted on his obligations to Bank of Ireland and as a result the Bank issued possession proceedings in the Dublin Circuit Court by way of a Civil Bill dated 24th June, 2015 seeking an order for possession of the property.
4. On 23rd November, 2016 the Circuit Court made an order granting the Bank possession of the property, with a stay for a period of three months from the date of the order. Mr. C fully contested those proceedings.
5. The plaintiff sought to appeal the order of the Circuit Court dated 23rd November, 2016 but was out of time to do so. The plaintiff then issued a motion seeking an extension of time within which to appeal the Circuit Court order.
6. The plaintiff's motion seeking an extension of time came on for hearing before the High Court (Mr. Justice Binchy) on 26th February, 2018. The High Court refused the plaintiff's application.
7. Despite the order of the Circuit Court dated 23rd November, 2016 and the order of the High Court refusing the plaintiff's extension of time, the plaintiff refused to give up possession of the property. As a result, Bank of Ireland applied for, and was granted, an execution order dated 13th December, 2018.
8. It is clear therefore that the Bank had lawfully obtained possession of the property following court proceedings in which a final order had been made and that the Bank had obtained an execution order following the conclusion of the possession proceedings.
9. It appears from the affidavit of Mr. Joseph Burke, the Sheriff of the City of Dublin, that an execution order for possession was duly sealed by the Circuit Court office on or

about 13th December, 2018. That execution order was lodged for execution with the Sheriff's office by Bank of Ireland by letter dated 12th July, 2019. The Sheriff was then instructed in October 2019 by the Bank's solicitors to proceed to take possession of the said property.

10. It appears that while the Sheriff is not obliged to write to an occupier before executing an order for possession, a letter to the plaintiff dated 16th October, 2019 was prepared requesting him to vacate the property by Monday, 21st October, 2019. This letter was brought to the property on 16th October, 2019 by Mr. Thomas Gray of the Sheriff's office.
11. Mr. Gray stated in his affidavit that he was instructed to hand-deliver a letter to the plaintiff at the property in Drumcondra notifying him that the Sheriff had received an execution order and calling on him to vacate the property on 21st October, 2019. When Mr. Gray arrived at the property on 16 October 2019 to deliver the letter, he knocked on the door but there was no answer. He tried to put the letter in through the letterbox but it was nailed closed. He could not put it under the door as it was also blocked. As a result he left the property and reported back to the Sheriff's office.
12. On 22nd October, 2019, Mr. Gray attended at the property at 11.45 am with another person on behalf of the Dublin City Sheriff. Mr. Sean Grennan also appeared on behalf of Bank of Ireland together with private security personnel and a locksmith. Mr. Grennan informed Mr. Gray that the plaintiff was still present at the property. Mr. Gray said he therefore proceeded to enforce the enforcement order and take possession of the property. He repeatedly knocked on the front door but he received no answer. He said he asked Mr. Grennan was he happy to proceed with taking possession of the property by forcibly entering the property and he confirmed that he was. The locksmith then drilled the lock on the front door so that the Sheriff's employees could gain entry to the

property. However they still could not gain entry. According to Mr. Gray “ *At this point the plaintiff appeared in a window brandishing a screwdriver, this was the first time he made his presence known to us. The locksmith opened the lock but the door was barricaded from the inside so that we could not open it.* ” Mr. Gray then said that he called the plaintiff to step away from the door as force was going to be used to gain entry. A sledgehammer was then used to force the door open and the employees of the Dublin City Sheriff entered the premises. The plaintiff was in the kitchen. He refused to voluntarily leave the property and so, as Mr. Gray says, “*it was necessary to escort him from it*”. Rooms in the property were checked and possession of the property was then given to Mr. Grennan on behalf of the Bank who then signed the back of the execution order acknowledging receipt of vacant possession of the property.

13. Mr. Gray also says that “*When we went outside there was a large garda presence as the plaintiff had reported to gardaí that he was being stabbed by intruders. We identified ourselves to gardaí and they were satisfied we had simply carried out our duties and we then left*”.

The issuing of the first set of proceedings

14. Approximately two weeks later, on 5th November, 2019, Mr. C issued a plenary summons against eight named defendants including the Bank, the Dublin City Sheriff and Mr. Gray, Douglas Newman Good, the Property Registration Authority, Ireland and the Attorney General. The plenary summons is prolix and was drafted by Mr. C who is a litigant in person. It runs to four pages and contains 37 paragraphs of causes of action and reliefs.
15. Importantly, at the very beginning of the general endorsement of claim in the plenary summons, Mr. C states “*the above titled matter relates to the family dwelling situate at [], Drumcondra, Dublin 3 bearing unregistered title*”.

16. There are a large number of claims and causes of action set out in the plenary summons. The plaintiff claims damages for, *inter alia*, negligence, illegal trespass, conversion, assault and trespass by the Bank and the Dublin City Sheriff and for “illegal possession, continued illegal custody and attempted disposal, illegal conversion of the family dwelling contrary to constitutional and EU law”. He also seeks declarations that the Bank and the Sheriff failed to comply with their lawful obligations pursuant to the Constitution and EU law.
17. He also claims that the charges held by the Bank on the property were held pursuant to s. 62 (6) and (7) of the Registration of Title Act, 1964 and that the said Act was unconstitutional.
18. He sought declarations that the actions of the first defendant (i.e. Ireland) were detrimental to the private citizen, in breach of public law and constitutional law, and in breach of the EU rights and entitlements of the people of Ireland by permitting the Bank and the Sheriff to ignore the Constitution and EU law to enforce the possession and sale of the property.
19. The plaintiff also sought a declaration that he was the subject of invalid summonses and orders, and a declaration that he was entitled to be treated equally under the law pursuant to Article 40.1 of the Constitution.
20. It is difficult to summarise such a scattergun plenary summons but, in substance, the plaintiff is complaining about the fact that his property was the subject of unlawful possession and execution orders, that the property was entered into in the manner in which it was, and that he was forcibly removed from the property.

The plaintiff’s application for an injunction

21. Not content with issuing the plenary summons, the plaintiff, on the very next day, 6th November, 2019, issued an application for an injunction against all relevant parties and

sought an injunction restraining the Bank and the Sheriff from retaining custody of his home and/or disposing of his home, pending the full plenary hearing of the action and seeking an order that the house be immediately vacated by the Sheriff. The application was grounded on an affidavit sworn by Mr. C on 5th November, 2019..

22. At para. 10 of affidavit Mr. C says:

“I say and believe that my family dwelling is in immediate danger of disposal and was recently the subject of a violent possession on 22nd October, 2019 during which extensive and wanton damage was caused to the property and I was the subject of a violent assault and ejection without warning”.

23. He reiterates in this affidavit his complaints against the Bank and the Sheriff and states that any legal authority the Bank and the Sheriff had to recover possession of, and sell the property, was based on Acts which were unconstitutional.

24. Replying affidavits were filed by the Bank, the Sheriff and Douglas Newman Good to the injunction application brought by Mr. C. These affidavits took issue with each and every factual averment made by Mr. C in his affidavit.

25. Mr. C then swore a number of further affidavits replying to each of these affidavits. Further affidavits were then filed by the Dublin City Sheriff.

26. Although Mr. C was given an initial return date of 18th November, 2019, for the hearing of his injunction, it appears that this application for an injunction was adjourned from time to time in order to allow the various parties to file replying affidavits. The exchange of affidavits appeared to come to an end with the plaintiff’s replying affidavits on the 14th January, 2020 and 6th February, 2020.

27. On 28th October, 2021, the Bank and Douglas Newman Good issued their motions to strike out the plaintiff’s proceedings as an abuse of process, as being *res judicata* and as being contrary to the rule in *Henderson v. Henderson*.

28. On 25th November, 2021, the Dublin City Sheriff and Thomas Gray followed suit with similar motions.
29. All matters came before the High Court (Sanfey J.) on 4th November, 2021.
30. Although it was the plaintiff's application for an injunction, the court order recites that the plaintiff did not attend on that day to prosecute his injunction application and the court adjourned matters to 2nd December, 2021.

Plaintiff's application for adjournment and/or discontinuance

31. It is clear from the procedural history of this case and related cases that the plaintiff has a long history of seeking to rely on medical grounds to obtain last minute adjournments of hearing dates. Thus, in a related case, *Coyle v. C*, ("the Receiver's proceedings") Mr. C lost a High Court application brought by Mr. Coyle, the receiver. Mr. C appealed the matter to the Court of Appeal and the matter was listed for hearing in the Court of Appeal on 14th October, 2021.
32. However Mr. C obtained a GP's letter dated 27th September, 2021 which said that he was unwell and would remain so until January, 2022. Mr. C applied to the Court of Appeal for an adjournment of his appeal. However at the call-over, the Court of Appeal refused to adjourn the appeal on the basis of the GP's letter.
33. On 11th October, 2021, Mr. C obtained a second GP's letter and on 14th October, 2021 the Court of Appeal reluctantly agreed to adjourn the hearing of the appeal.
34. On 15th November, 2021, Mr. C obtained a third GP's letter and on the 24th November, 2021 the Court of Appeal adjourned the matter to 8th February, 2022.
35. On 24th January, 2022 and on 28th February, 2022 Mr. C obtained further GP's letters. Mr. C also obtained a further GP's letter on 27th June, 2022 and on 4th October, 2022. However the Court of Appeal was not satisfied with the substance of these letters and struck out his appeal.

36. The plaintiff's injunction application in these proceedings before the High Court was listed in the High Court on 10th March, 2022 to obtain a hearing date. The High Court listed the matter for hearing for 12th July, 2022 for two days. However when the matter came before the High Court for hearing on 12th July, 2022, the plaintiff sought an adjournment on medical grounds. The High Court granted an adjournment until 20th October, 2022. On 20th October, 2022, the plaintiff again produced a GP's letter and the High Court then fixed the matter for hearing on the 1st and 2nd February, 2023. The plaintiff then obtained another GP's letter on 5th January, 2023 and sought to have the matter adjourned again. However at the call-over, Mr. Justice O'Moore declined to adjourn the motions at the plaintiff's request but gave the liberty to the plaintiff to renew his adjournment application before me.
37. The plaintiff then filed a motion before the court with a number of grounding affidavits seeking an adjournment of the hearings before me and/or discontinuance of the said proceedings on certain terms. These applications were opposed by the defendants. I refused the application for an adjournment and/or discontinuance and adjourned the motions to the following day to give the plaintiff an opportunity to appear. Matters then proceeded before me on the following day.

Plaintiff's application for an injunction

38. As the plaintiff did not appear at the hearing to move his application for an injunction against the defendants, all defendants applied to have the plaintiff's injunction application dismissed. In the circumstances, I am of the view that this is the appropriate order to make and I will make an order dismissing the plaintiff's application for injunction.
39. I also made this order because, as will be seen later in this judgment, I am of view that the plaintiff's proceedings are an abuse of process and should be struck out.

Bank's application to strike out the plaintiff's proceedings.

40. On 28th October, 2021 the Bank and Douglas Newman Good brought an application to dismiss the plaintiff's claims against the Bank and Douglas Newman Good on the grounds *inter alia* that it was an abuse of process, that the plaintiff's claim was estopped by reason of the doctrine of *res judicata* and because the plaintiff's claim was contrary to the rule in *Henderson v. Henderson*.
41. This application to dismiss the plaintiff's claim was brought pursuant to the inherent jurisdiction of the court and/or pursuant to O. 19 r.28 of the Rules of the Superior Courts on the grounds that the plenary summons failed to disclose any reasonable cause of action and/or that the claim was bound to fail and/or that the pleadings were frivolous and vexatious.
42. The Bank's application was grounded upon the affidavit of Mr. Emmett Pullan an employee of the Bank of Ireland.
43. Douglas Newman Good also filed an affidavit of Ms. Catherine McGarry who stated that the plenary summons issued by the plaintiff did not seek any relief directly against the 8th named defendant (Douglas Newman Good) although it did seek a number of reliefs against all defendants including Douglas Newman Good.

Order 19 rule 28 and the Court's inherent jurisdiction

44. Order 19 rule 28 provides:

"The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

45. A court dealing with an application pursuant to O.19 r. 28 must deal with it on the pleadings only and ignore any other extraneous evidence.
46. However in *Barry v. Buckley* [1981] IR 306 Costello J. stated:
- “But apart from Order 19, the Court has an inherent jurisdiction to stay proceedings and, on applications made to exercise it, the Court is not limited to the party’s pleadings but is free to hear evidence on affidavit relating to the issues in the case. The principles on which it exercises this jurisdiction are well established - basically its jurisdiction exists to ensure that an abuse of the process of the courts does not take place. So, if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the Plaintiff’s claim must fail (per Buckley, J., in Goodson v. Grierson at 675).”*
47. As Denham J. (as she then was) stated in *Aer Rianta v. Ryanair Ltd* [2004] IR 506:
- “The jurisdiction under O. 19, r. 28 to strike out pleadings is one a court is slow to exercise. A court will exercise caution in utilising this jurisdiction. However, if a court is convinced that a claim will fail, such pleadings will be struck out.”*

Res Judicata

48. It is clear from the facts set out above that the plaintiff commenced these pleadings shortly after an order for possession had been executed by the Sheriff. These proceedings therefore concerned matters which had already been decided by the Circuit Court and the High Court.
49. It is also clear from the within proceedings that the plaintiff was dissatisfied with the outcome of the Circuit Court proceedings and indeed with his appeal to the High Court. It is also clear that the plaintiff in these proceedings has now sought to put forward arguments which could have been put forward before the Circuit Court and/or the High Court.

50. In the circumstances the Bank argued that the matter was *res judicata* and/or that the plaintiff's application contravened the rule in *Henderson v. Henderson*.
51. In *D. v. C.* [1984] ILRM 173 Costello J. quoting from Halsbury's Laws in relation to the doctrine of *res judicata* stated as follows:
- "A party is precluded from contending the contrary of any precise point which having once been distinctly put in issue has been solemnly and with certainty determined against him"*.
52. The issue of *res judicata* was considered in *McConnon v. President of Ireland* in which Kelly J. (as he then was) stated as follows:
- "The inherent jurisdiction to dismiss or strike out proceedings in limine can also be invoked in circumstances where somebody attempts to relitigate matters already decided conclusively by a judicial tribunal of competent jurisdiction. Such a determination is conclusive. A party is precluded from litigating the matters decided in the judgment or indeed from giving evidence to contradict them in subsequent proceedings"*.
53. The court in *McConnon* identified four relevant factors which must be present in order for a party to be entitled to rely upon the doctrine of *res judicata*. These are as follows:
- (a) there must be a previous decision of a judicial tribunal of competent jurisdiction;*
- (b) that decision must have been a final and conclusive judgment;*
- (c) there must be an identity of parties;*
- (d) there must be an identify of subject matter.*
54. It is clear in the present case that all four elements which would entitle a party to rely on the doctrine of *res judicata* are met in that:

1. The Circuit Court has made an order in respect of the plaintiff's property granting the Bank possession of the property and the plaintiff's application to appeal to the High Court was refused as being out of time;
 2. The decisions of the Circuit Court and the High Court were final and conclusive judgments;
 3. There is an identity of parties between the plaintiff and the Bank;
 4. There is an identity of subject matter in that the Circuit Court and High Court proceedings related to the house in Drumcondra as indeed do the within proceedings.
- 55.** In these circumstances, I am satisfied that the Bank is entitled to rely on the doctrine of *res judicata* in this matter and on that basis alone the plaintiff's proceedings as against the Bank must be struck out.
- 56.** The plaintiff sought to argue in his written legal submissions that there are special circumstances in this case to justify the refusal to apply the rule of *res judicata*. However I do not accept this submission. There are no special circumstances in this case which would justify not applying the rule of *res judicata*.
- 57.** Mr. C also sought to argue that there were public policy reasons as to why *res judicata* would not apply in particular cases. However there are no public policy reasons as to why it should not be applied in the present case.
- 58.** Mr. C also sought to argue that it was a good defence to a claim of *res judicata* to show that the judgment was procured by fraud or collusion. However it is abundantly clear that there is no evidence of fraud or collusion in the present case and such an allegation by Mr. C was made without any evidence whatsoever.
- 59.** Mr. C also submitted that the doctrine of *res judicata* could be excluded if fresh evidence came to light. However Mr. C failed to provide any such evidence.

The rule in *Henderson v. Henderson*

60. Counsel for Bank of Ireland carefully and painstakingly reviewed the various declarations and reliefs sought in the 37 paragraphs of the plenary summons.
61. Most of these points, as counsel for the Bank submitted, were matters that could have been raised in the Circuit Court when the plaintiff was defending the possession proceedings in the Circuit Court. It was also submitted that the plaintiff participated fully in the Circuit Court, and that he filed three affidavits in opposition to the application.
62. It was also submitted by the Bank that the plaintiff had indicated that the home was never a family home, that the plaintiff was married but separated, that his wife never lived in this house and that the plaintiff's wife had passed away in 2013.
63. It was submitted that any arguments about the Family Home Protection Act, or any issues relating to the Unfair Terms Regulations(which were also pleaded) could all have been raised in the Circuit Court case and therefore the rule of *Henderson v. Henderson* applies.
64. The Bank argued that the plaintiff cannot seek to relitigate matters which have already been determined before the Circuit Court and the High Court as a result of the decision in *Henderson v. Henderson*.
65. The rule in *Henderson v. Henderson* (1843) 3 Hare 100 was set out by Wigram VC as follows:

“where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter[s] which might have been brought forward as part of the subject in contest, but which

was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. ... it is plain that litigation would be interminable if such a rule did not prevail.”

- 66.** This rule was later summarised by Lord Woolf in *Taylor v. Lawrence* [2003] QB 528 where he stated:
- “parties who are involved in litigation are expected to put before the court all the issues relevant to that litigation. If they do not, they will not normally be permitted to have a second bite at the cherry”*
- 67.** In *McAteer v. Burke* [2017] IEHC 247, Noonan J. specifically adopted the summary of the rule as set out by Lord Woolf in *Taylor* quoted above. Likewise the rule in *Henderson v. Henderson* was adopted by the Supreme Court in *A.A. v. The Medical Council* [2003] 4 IR 302.
- 68.** It is clear from the plenary summons in this matter and from the affidavits sworn by Mr. C in these proceedings, that all, or almost all, of the issues raised by the plaintiff relate to the entitlement of the Bank to take possession of the property. All, or almost all, of the arguments raised by the plaintiff in this plenary summons are arguments which could have been raised by him in the Circuit Court proceedings or in the High Court.
- 69.** I am of the view that it is not open to the plaintiff to launch a collateral attack on the orders made in the Circuit Court and the High Court by seeking to raise in these proceedings a battery of arguments which he could have raised in the Circuit Court or High Court proceedings.
- 70.** In the circumstances, I am of the view that the Bank’s submissions that the plaintiff’s proceedings are contrary to the rule in *Henderson v. Henderson* and are therefore an

abuse of process are well founded and that the plaintiff's proceedings should be struck out on that basis also.

No reasonable cause of action

71. The Bank also submits that the remaining claims in the plenary summons fail to disclose any reasonable cause of action and that the matters pleaded therein are frivolous and vexatious. I agree with this submission also. In my view, these proceedings are entirely without merit, they fail to disclose any reasonable cause of action, they are frivolous and vexatious, and designed to cause inconvenience and expense to the Bank.
72. For example, one of the claims made by the plaintiff in the first set of proceedings was that possession was executed without notice to him. However counsel for the Bank submitted that such notice was not required. In this regard he referred the court to the dicta of Butler J. in *Start Mortgages DAC v. Rogers and Rogers* [2021] IEHC 691 where at para. 36 of the judgment Butler J. stated as follows:
- “Equally, I am not satisfied that the second defendant has identified any basis for suggesting that the application made by the plaintiff for the issuing of execution (as distinct to the application for leave to issue such execution) is one which should have been made on notice. Manifestly, in normal course, the issuing of execution is not a step which is required to be taken on notice to the other side and a formal application to the High Court, the merits of which will be considered and decided by a High Court judge, is not envisaged.”*
73. Another example is that the plaintiff sought in his plenary summons to raise an argument based on the decision in *Rousk v. Sweden*. However as Murray J. stated in *Decobake Ltd* [2022] IECA 31 (about Rousk) at para. 70:

“As I outlined in the course of my judgment in Fennell v. Corrigan [2021] IECA 248 at paras. 105 and 106, that [Rousk] was an extreme case. There, the court found actions of the Swedish tax authorities to be a disproportionate interference with the property rights of the applicant under Article 1 of the First Protocol to the ECHR in circumstances where those authorities caused the applicant’s home to be sold at public auction and him to be evicted from it. All of this occurred on foot of a very small tax liability when the applicant was not formally served with the relevant writ of execution, where the writ had not obtained legal force at the time of the sale, where the court found that the applicant had been effectively deprived of the opportunity to exhaust all rights of appeal against the execution, where the tax authority had granted a respite either shortly before or shortly after the time at which the execution authority proceeded with the sale but before his eviction, where the ground on which that respite was sought included the medical condition of the applicant and where there were other assets of the applicant that could have been seized and sold to meet the small debt without the necessity for an eviction.”

74. The facts of the present case are a long way from the facts in *Rousk v. Sweden*. In the first place, the plaintiff borrowed money from the Bank to purchase the property in question; secondly the plaintiff defaulted on these loans to the Bank; thirdly, the plaintiff had agreed to grant a mortgage or charge over the property in favour of the Bank. Thus the plaintiff had agreed, as a matter of contract, that if he defaulted on his loan, the Bank had a right to sell the property to discharge the debt.
75. I am also mindful of the dicta of McCracken J. in *Fay v. Tegral Pipes Ltd* [2005] IESC 34 in relation to O. 19 r. 28 where he stated that:

“Such abuse cannot be permitted for two reasons. Firstly, the Courts are entitled to ensure that the privilege of access to the Courts, which is of considerable

constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second, and equally important, purpose of the jurisdiction is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed.”

76. I am of the view that, in the present case, the plaintiff’s claim is a “lost cause” and no matter how strongly he feels about it, he has no basis in law for such claims.
77. I would also note the remarks of Butler J. in *Scanlon v. Gilligan & Ors* [2021] IEHC 825 where at para. 6 of her judgment when commenting on cases brought by lay litigants she states as follows:

“The cases brought by these litigants are characterised by dense, repetitive and prolix pleading, by the joinder of a multitude of often unnecessary or inappropriate parties and by multiple applications and appeals. Causes of action are rarely clearly identified or properly pleaded. Instead, every alleged wrong is pleaded as a breach of the litigant’s rights under the Constitution, the European Convention on Human Rights, under European law and the EU Charter of Fundamental Rights. This makes it very difficult for the court to extract the essence of the dispute between the parties from the pleadings. It also tends to prompt a comprehensive response from the other side in which issue is taken with every plea lest something remain on the record undenied. Needless to say, this is often taken as an affront by the litigant-in-person who will rarely appreciate that the simple denial of a plea serves to put the onus of proving that claim on them.”

78. At paragraph 8 Butler J. states as follows:

“This is not to say that cases brought by litigants-in-person are invariably bad cases. Frequently, at the core of the litigation there may be a point of real substance although it is often obscured by excessive pleading and by an insistence on pursuing all points, however unmeritorious, to the detriment of the real issue. The court's task is to ensure that if there is a point of merit in the case, it is not overlooked or disregarded because of the verbiage by which it is sometimes surrounded.”

- 79.** These remarks are particularly apposite to the two cases before the court. The plenary summonses in both sets of proceedings are dense, repetitive and prolix. Indeed the plaintiff himself has accepted that they are prolix. The plenary summons in each case is replete with pleas of breaches of the plaintiff’s right under the Constitution, the European Convention on Human Rights and various other EU law provisions.
- 80.** Whilst the court must consider the plenary summons in a case where the plaintiff is a lay litigant and whilst the court must try to ascertain whether there is a stateable case despite all the verbiage, it is not really part of the court’s function to make the plaintiff’s case for him.
- 81.** As Clarke J. (as he then was) remarked in *Burke v. O’Halloran and the DPP* [2009] IEHC 343 at paragraph 5.5:
- “In saying that, it does have to be noted that a party who chooses to represent themselves is no less bound by the laws of evidence and procedure and any other relevant laws, and by the rulings of the court in that regard, than any other party.”*
- 82.** Whilst of course a plaintiff who is a lay litigant does not have a lawyer’s knowledge or expertise, it is simply not sufficient to throw the “kitchen sink” into the pleadings, make some generalised reference to the Constitution and/or EU law and expect the court to decipher what the plaintiff’s case might be under the Constitution and/or under EU law.

The court's role is not to advise the plaintiff in the drafting of his case but to try to do justice between the parties.

- 83.** It also goes without saying that all of these generalised pleas impose enormous costs on defendants. The courts must be vigilant to ensure that the constitutional rights of defendants are protected from vague and generalised pleadings and from proceedings which are so oppressive that they are manifestly an injustice to the defendant. The courts, therefore, have to balance the lay litigant's right to have access to the courts, to represent himself and to plead his own case, with the defendant's right not to be subjected to oppressive litigation by an unmeritorious plaintiff.
- 84.** I do not believe that it is necessary in all cases for a court to laboriously consider every single one of 35 lengthy pleas set out in a plenary summons in considering whether to dismiss a case on the grounds of abuse of process. The Court should seek to ascertain the central complaints which the plaintiff is making in his plenary summons and engage with those central arguments. In this case, the central arguments of the plaintiff are that the Bank and the Sheriff had no legal right to take possession of his property and to remove him from his property in the way that they did. When stated in those terms, it is clear that the plaintiff's central claim is *res judicata*; in addition the arguments he makes could have been made in the Circuit Court or High Court and therefore many of his arguments infringe the rule in *Henderson v. Henderson*; the rest of his claims are generalised assertions of breaches of the Constitution and European law which do not advance the plaintiff's case any further and/or fail to disclose a reasonable cause of action.
- 85.** In the circumstances I will strike out the plaintiff's proceedings as against the Bank and Douglas Newman Good (i.e. as against the fourth, fifth and eighth named defendants).

Application to strike out by the Dublin City Sheriff and Mr. Gray (the sixth and seventh named defendants)

86. The Dublin City Sheriff and his employee Mr. Thomas Gray (the sixth and seventh named defendants in these proceedings) brought a similar application to that of the Bank and also provided legal submissions to the court. Their application to strike out the plaintiff's proceedings is also based on O.19 r. 28 and/or the inherent jurisdiction of the court.
87. These defendants adopted the submissions of the Bank and sought to have the proceedings dismissed on similar grounds.
88. They also submitted that the proceedings were bound to fail in circumstances where the plaintiff's claim in trespass and/or conversion were all founded on the premise that the possession of the property was unlawfully obtained. They submitted that no case could be made against the Sheriff where the execution order was lawful on its face, was directed to him and where he had a statutory obligation to effect execution with reasonable diligence.
89. They also submitted that the within proceedings were a clear abuse of process on the part of the plaintiff in that he is seeking to litigate matters already determined by the courts.
90. I am of the view that the submissions made by the Dublin City Sheriff and Mr. Gray are also well-founded for reasons set out earlier in my judgment. In the circumstances, I am of the view that the proceedings brought by the plaintiff against the Sheriff and Mr. Gray are an abuse of process, are frivolous and/or vexatious, are misconceived and are bound to fail. It is clear that the Sheriff in this case received a valid execution order pursuant to the decisions of the courts and that he was lawfully obliged and entitled to execute upon same.

91. There was one matter which gave me pause for thought and this was that the plaintiff in his affidavits indicated that he had suffered personal injuries as a result of the manner in which he was removed from the premises. This is entirely denied by the Dublin City Sheriff and Mr. Gray. However it is clear from papers submitted to the court that the plaintiff has also filed a personal injuries claim with the Personal Injuries Assessment Board in respect of this matter. Any claim for personal injuries which the plaintiff has therefore can, and should be, pursued in that forum.
92. I also note in this regard that there is an email from the Bank's solicitors to the plaintiff dated 2nd February, 2023 stating that "*Any personal injury proceedings relating to Thomas Gray and the Dublin City Sheriff relating to the events of October 2019 will fall to be determined in the separate personal injury action which PIAB has authorised as against named individuals. No order striking out these proceedings will render any such separate personal injuries action res judicata*".
93. I will therefore strike out the proceedings against the Dublin City Sheriff and Thomas Gray.

The plaintiff's application to discontinue his proceedings.

94. On 30th January, 2023 (i.e. a day before the defendants' applications to strike out the plaintiff's proceedings were due to be heard), Mr. C filed a notice of motion before the court seeking various orders including an application to adjourn the proceedings. However his motion also sought, in the alternative, as "a very last resort", "an order to discontinue proceedings in their entirety but that such discontinuance be subject to terms that (a) all parties bear their own costs and/or (b) there were no costs penalties involved and/or (c) withdrawal of discontinuance and re-entry to be unhindered".
95. The defendants understandably opposed that application on the grounds that if the proceedings were discontinued, it could allow the plaintiff to come again,

96. As set out above, I have made orders dismissing the plaintiff's claim in the first set of proceedings against Bank of Ireland Mortgage Bank, the Governor and Company of the Bank of Ireland, the Dublin City Sheriff, Thomas Gray and Douglas Newman Good. The remaining defendants are Ireland, the Attorney General and the Property Registration Authority. These parties have not brought applications to strike out the plaintiff's claim. However I note that the plaintiff himself has brought a motion to seek to discontinue the proceedings provided that there were no cost penalties involved. In the circumstances, I will make an order discontinuing the proceedings as against the first, second and third defendants. However I am not doing so on any of the terms or conditions whether as to costs or otherwise sought by the plaintiff.

The second set of proceedings - Record Number 2019/8723P

97. The second set of proceedings are brought by Mr. C against Mr. Simon Coyle as receiver, the Bank of Ireland Mortgage Bank, the Data Protection Commissioner, the Attorney General and the Property Registration Authority. This second set of proceedings were brought shortly after the first set of proceedings and the plenary summons issued on 13th November, 2019 i.e. one week after the first set of proceedings.
98. These proceedings are very similar to the first set of proceedings except that they relate to two different properties, one at Palmerston Wood, Clondalkin and a second at Loughrea, County Galway and they name some different defendants.
99. The plaintiff, Mr. C, importantly, also states at the start of the plenary summons that these proceedings relate to those two properties.
100. Again the plenary summons runs to some six pages with some 35 paragraphs and it is clear that the causes of action and the grounds of relief pleaded are very similar to those

set out in the first set of proceedings - *mutatis mutandis* given that there are different defendants.

Plaintiff's application for an injunction

101. In a similar fashion, Mr. C, brought an application for an injunction with a notice of motion dated 13th November, 2019 which was given a return date of 9th December, 2019. The application for an injunction was grounded on an affidavit which he swore on 13th November, 2019 and claims *inter alia* that Mr. Coyle, the receiver appointed by the Bank, was never registered with the Data Protection Commissioner and that the plaintiff's rights to data protection under European and Irish law were breached.
102. The plaintiff's application for an injunction against the receiver was contested by the receiver and the Bank. Mr. Coyle, (the receiver and the first named defendant), swore a replying affidavit in this matter. In this affidavit, he says he was the receiver appointed by the Bank over certain specified assets of the plaintiff which included the property at Palmerstown Wood, Clondalkin and also the property in Loughrea, County Galway.
103. Again, as in the first set of proceedings, Mr. C had obtained loans from Bank of Ireland which loans were secured by mortgages over the two properties. Mr. C then defaulted on these loans and the Bank appointed a receiver to collect any rents in respect of these properties and also to take possession of these properties.
104. The receiver said that he and the Bank issued proceedings against Mr. C (as defendant) (record number 2018/11027P) (hereinafter referred to as the "Receiver's proceedings") seeking various injunctive reliefs relating to the properties in circumstances where Mr. C was interfering with Mr. Coyle's functions as receiver. The Receiver's proceedings also sought orders for recovery of possession of the two properties in circumstances where Mr. C continued to place tenants in the properties and to collect rental payments in respect of the properties.

105. On 23rd October, 2019, the High Court (Jordan J) granted the receiver and the Bank orders against Mr. C preventing him from interfering with the receiver and preventing him from collecting rents. The High Court also made orders for possession of the Dublin and Galway properties in favour of the receiver.
106. Mr. C sought to appeal the order of the High Court dated 23rd October, 2019 and issued an appeal before the Court of Appeal, by way of notice of appeal dated 13th November, 2019. Mr. C's appeal to the Court of Appeal was subsequently dismissed by the Court of Appeal.
107. However, subsequent to the granting of the order of the High Court on 23rd October, 2019, Mr. C issued a motion (returnable for 25th November, 2019) in the Receiver's proceedings by way of a reply and counterclaim to the injunction application. The issues raised in that motion were similar in nature to the matters set out in the affidavit of Mr. C sworn in the second set of proceedings (2019/8723).
108. Mr. C's motion in the Receiver's proceedings were struck out on 25th November, 2019 by the High Court (Reynolds J.) where the court accepted that the High Court was *functus officio* in respect of the orders made relating to the Dublin and Galway properties.
109. Just as in the first set of proceedings, the plaintiff also sought an adjournment and/or discontinuance of the hearing of his injunction application in the second set of proceedings on medical grounds. I refused this application for the reasons set out above. I also indicated that the matter would proceed the next day. When the matter was called on the following day, the plaintiff did not appear to move his injunction application and on that basis, all parties applied to the court to dismiss the plaintiff's injunction.

110. In the circumstances I will accede to those applications and dismiss the plaintiff's application for an injunction against all defendants.

Application by the Receiver and the Bank to dismiss the plaintiff's claim

111. The second motion before the court in the second proceedings is that brought by the Receiver and the Bank (the first and second defendants) to dismiss the plaintiff's claim against the first and second defendants on the grounds that it is an abuse of process, that it is estopped by the doctrine of *res judicata* and/or is contrary to the rule in *Henderson v. Henderson*.
112. The said application was issued on 28th October, 2021 and was given a first return date of 13th December, 2021. That application is also grounded on the affidavit of Emmet Pullan, an executive within the Bank of Ireland who made the affidavit on behalf of the first and second defendants. The first and second defendant also filed legal submissions in this matter.
113. The Receiver and the Bank submitted that the plaintiff issued these second proceedings shortly after an order of the High Court (dated 23rd October, 2019) was made in the Receiver's proceedings granting possession of the said properties to the receiver and the Bank. They submit that the second proceedings concern matters already determined by the High Court in the context of the Receiver's proceedings - or in the alternative are matters which ought as a matter of law, to have been argued in the course of those proceedings.
114. Mr. Coyle, the receiver, says that Mr. C in this second set of proceedings is seeking to relitigate the granting of the interlocutory injunction in the Receiver's proceedings. He states that the issues raised by Mr. C in the second set of proceedings are *res judicata*, and cannot, and should not, be relitigated before the High Court. He submitted that the primary reliefs sought by Mr. C include an order restraining the first and second

defendants from “attempting to take custody and/or attempting the disposal of” the Dublin and Galway properties in circumstances where the legal position of these two properties has already been determined in the Receiver’s proceedings and the High Court has made orders granting the Receiver and the Bank possession of the properties.

115. Thus the Receiver and the Bank submitted that the abuse of process in the second proceedings was that Mr. C was seeking to relitigate matters which had already been decided in the Receiver’s proceedings (record number 2018/11027P) which proceedings are still before the High Court.
116. The Receiver and the Bank submit that the appropriate forum for the issues raised in the second proceedings against the Receiver and the Bank is in the Receiver’s proceedings.
117. It appears that the current status of the Receiver’s proceedings is that the plaintiff (i.e. the Receiver) has served a plenary summons and a statement of claim. Mr. C however has failed to file a defence in those proceedings.
118. The Receiver and the Bank also submitted that the dismissal of the second proceedings does not deprive Mr. C of his legal rights because he can still ventilate these arguments in the Receiver’s proceedings.
119. I agree with these submissions. I am of the view that the plaintiff’s second proceedings should be struck out for the reasons set out above by the receiver and the Bank. They are clearly a collateral attack upon orders already made by the High Court in respect of these two properties; they are clearly an abuse of process; they are frivolous and vexatious; and they are an infringement of the rule of *Henderson v. Henderson*. Any issues which the plaintiff has litigated in the second proceedings can of course be litigated in the Receiver’s proceedings.

Application by Data Protection Commissioner (“DPC”) to strike out the proceedings

- 120.** The third motion before the court in the second proceedings is the DPC's motion to strike out and/or dismiss the plaintiff's proceedings insofar as they concern the third defendant on the basis that they disclose no reasonable cause of action and are frivolous and/or vexatious and/or constitute an abuse of process and/or are bound to fail.
- 121.** Mr. John O'Dwyer, deputy commissioner at the office of the Data Protection Commission swore an affidavit on behalf of the Data Protection Commissioner. He states that the Commissioner is a stranger to the underlying dispute between the plaintiff and the first defendant and there appeared to be no basis for naming the Commissioner as a defendant in these proceedings. He also says that these proceedings were brought for an ulterior purpose which was to relitigate the plaintiff's dispute with the first and defendants and should be struck out.
- 122.** The Data Protection Commissioner also states that, insofar as the plaintiff complains that the first defendant, Mr. Coyle, was not registered with the Commissioner as a data controller or data processor, these matters were the subject of two investigations before the Commissioner with file reference number 3/19/249 and 3/19/379. Mr. O'Dwyer states that the plaintiff made a complaint to the Commissioner on 11th April, 2019 about the status of the registration of Mr. Coyle and Mazars Ireland with the Commissioner. The Commissioner opened a separate complaint for each based on the fact that Mr. Coyle and Mazars Ireland are separate entities.
- 123.** Mr. C, in his replying affidavit on 14th February, 2020, states in respect of this matter that *"I say and believe that the DPC be allowed to conclude its investigation to both complaints, 3/19249 and 3/19/379, pursuant to s. 10 of the Data Protection Acts, 1988 and 2003 before the within proceeding continue to a conclusion"*.
- 124.** It appears therefore that Mr. C, having issued these proceedings, now seeks to stay them in respect of the Data Protection Commissioner.

- 125.** The DPC on, 7th April, 2020, made a decision, in respect of these complaints, that Mr. Coyle and Mazars did not need to be registered with the Data Protection Commissioner. Mr. C has since appealed that decision to the Circuit Court and this appeal is due to be heard by the Circuit Court on 25th May, 2023.
- 126.** The DPC submit that, insofar as the plaintiff has any grievance in respect of the Commissioner in respect of these decisions, section 26 of the Data Protection Act provides for an appeal to the Circuit Court, (and for a further appeal on a point of law to the High Court). The plaintiff has exercised this right of appeal and his appeals are pending before the Circuit Court.
- 127.** In the circumstances, the DPC submits that insofar as the plaintiff has any complaint against the Commissioner in respect of these matters, the appropriate mechanism for addressing such complaint is through the statutory appeal process – not through separate plenary proceedings in which the Commissioner is joined alongside the other defendants.
- 128.** The DPC also submit that in circumstances where the plaintiff is pursuing statutory appeals against the Commissioner in respect of these decisions, the proceedings are vexatious and/or frivolous and/or an abuse of process.
- 129.** In my view these submissions are well founded. In the circumstances, I am of the view that the court should strike out the plaintiff's claim as against the DPC for all the arguments set out above by the DPC, all of which establish that the plaintiff has no reasonable cause of action against the DPC, that the proceedings are frivolous and vexatious , that they are an abuse of process, that they fail to disclose a cause of action, and/or that they are bound to fail.

Discontinuance

130. In addition, given that the plaintiff has made an application to discontinue the proceedings (albeit with conditions), I will also make an order discontinuing the proceedings as against Ireland, the Attorney General and the Property Registration Authority. However, I am not doing so on any of the terms or conditions as to costs or otherwise sought by the plaintiff.

Conclusions

131. In the first set of proceedings I will therefore:

- (1) strike out the plaintiff's application for injunction;
- (2) strike out the plaintiff's case against the fourth, fifth, and eighth named defendant;
- (3) strike out the plaintiff's case against the sixth and seventh defendants;
- (4) discontinue the proceedings against the first, and second and third defendants.

134. In the second set of proceedings, I will

- (1) strike out the plaintiff's application for an injunction;
- (2) strike out the plaintiff's case against the first and second defendants;
- (3) strike out the plaintiff's case against the third defendant;
- (4) discontinue the proceedings against the fourth and fifth defendants.

135. I will hear the parties further on the issue of costs.

136. I should add that when the parties were notified that I would deliver my judgment in this matter, the plaintiff sought to deliver supplemental submissions, without the leave of the court. I have reviewed these submissions and they do not further the plaintiff's case. They are, in the main, a repetition of arguments already made by the plaintiff.
