



# THE HIGH COURT

[2025] IEHC 6

[Record No. 2014/6345P]

**BETWEEN**

**LUKE CHARLETON AND MICHAEL COTTER**

**PLAINTIFFS**

**AND**

**GERARD SCRIVEN**

**DEFENDANT**

**JUDGMENT of Mr Justice Liam Kennedy delivered on 24 January 2025.**

1. The Defendant seeks an order pursuant to O.122, r.11 of the Rules of the Superior Courts dismissing the claim for want of prosecution and/or pursuant to the Court's inherent jurisdiction to strike out the proceedings for inexcusable and inordinate delay. The affidavits also deal with points extraneous to the application, such as what may or may not have been disclosed to the Court in earlier proceedings. I will exclusively focus on pertinent matters.
2. At the hearing of the application, I indicated my provisional views (while reserving my right to enlarge upon or change the same) and I encouraged the parties to agree a timetable designed to progress the matter pending the dissemination of this judgment's finalisation and circulation of my decision and I have been continuing to case manage the proceedings with a view to progressing them to a hearing as soon as possible. (There has

been no suggestion that the Receivers have been failing to comply with the more recent directions or that they have not been seeking to progress the litigation since that time or that any delays experienced since then are their responsibility). At the parties' request, I delayed delivering my written judgment pending an anticipated Supreme Court decision on another case which could have been relevant to the application. However, since that decision is not yet available, the Defendant requested that I issue my written judgment and I am accordingly doing so.

### **Nature of the proceedings**

3. In 2014 the Plaintiffs were appointed receivers ("the Receivers") of eight buy-to-let residential properties originally mortgaged by the Defendant to Bank of Scotland Ireland. The Defendant owed €4.25m under associated loan facilities. No payments have been made since 2013. Orders for possession and ancillary reliefs to allow the Receivers to conduct the receivership were the primary relief sought in the proceedings and the Receivers sought and obtained corresponding interlocutory relief.

4. The Defendant appealed the High Court's judgment on the interlocutory injunction application with partial success. Clarke CJ noted that the central issue was whether the Receivers' appointment was valid in circumstances in which the relevant mortgage deeds referred to the appointment of "*Receivers and Managers*". Clarke CJ concluded at para. 6.7 of his judgment that the Receivers' position was "*at least arguable*" as a matter of construction of the documents but also acknowledged at paras. 6.2 – 6.5 the alternative view, reflected in judgments such as those of MacDonald J. *McCarthy v Moroney & Anor* [2018] IEHC 379 which described a similar argument by receivers as "*an uphill struggle*" in view of the importance of adherence to the formalities for such an appointment. Accordingly, the Supreme Court concluded that the Receivers met the usual "*arguable case*" test which is generally applied in the context of an application for prohibitory injunctive relief but they did

not meet the higher test as required in order to seek mandatory reliefs. The High Court order was affirmed, and the Defendant remained restrained from interference with the Receivers' collection of rent on the properties. However, the terms of the injunctive relief were varied in the light of the Supreme Court judgment on the basis of the Receivers' undertaking not to sell or otherwise dispose of the properties pending trial. The costs in both courts were reserved to the trial of the action, varying the High Court order to that extent. The Supreme Court judgment also criticised the Receivers' failure to progress the litigation, as noted below.

5. I have carefully considered all authorities cited by the parties, including: *Rainsford v Limerick Corporation* [1995] 2 ILRM 561, *Primor Plc v Stokes Kennedy Crowley* [1996] 2 IR 459 ("*Primor plc*"), *Truck & Machinery Sales Ltd. v General Accident Fire & Life Assurance Corporation* [1999] IEHC 201, *Silverdale and Hewitt Travel Agencies Altaliatour Ltd.* [2001] 1 ILRM 464, *Anglo Irish Beef Processors Ltd. v Montgomery* [2002] 3 IR 510, *Mangan v Dockeray* [2002] IESC 67, *O'Connor v John Player & Sons* [2004] IEHC 99, *Stephens v Paul Flynn* [2005] IEHC 148, *Comcast International Holdings Inc. v Minister for Public Enterprise* [2012] IESC 50 ("*Comcast*"), *Millerick v Minister for Finance* [2016] IECA 206, *Cassidy v The Provincialate* [2015] IECA 74, *Maxwell v Irish Life Pie and Fallon* [2018] IEHC 111, *Sullivan v Health Service Executive* [2021] IECA 287, *Gibbons v N6 (Construction) Ltd, and Galway County Council* [2021] IEHC 138, *Carroll v New Ireland Assurance Company T/A Bank of Ireland Life* [2021] IEHC 260, *Rooney v Health Service Executive* [2022] IEHC 132, *Cave Projects Limited v Gilhooley and Others* [2022] IECA 245 ("*Cave*"), *Gerard McCarthy v The Commissioner of An Garda Síochána & Ors* [2023] IECA 224 ("*McCarthy*").

6. While I understand that the Supreme Court may be reviewing the law as outlined in *Primor plc*, I am proceeding on the basis of the current authorities. I do not consider it necessary to rehearse the decisions cited individually. The principles have been recently

summarised in *Comcast, Cave and McCarthy* and those decisions, as well as the others listed, have informed my approach to this motion, including but not limited to the discussion:

- in *Comcast* of the need to consider the conduct of both parties (with litigation being a “two way street”)
- of the fundamental concepts of prejudice and the balance of justice at paras 36 -37 of *Cave* in particular
- the recent review of the authorities in paras. 25 – 34 of *McCarthy* in particular.

For present purposes, it suffices to note that I must determine whether there has been inordinate delay, and if so, if any such delay was inexcusable. If so, I must assess what if any prejudice has been suffered, and the factors relevant to the balance of justice including the extent to which the Defendant holds himself responsible for some of the delay. I will consider those factors in turn.

### **Chronology**

7. At the outset it is worth outlining some of the key events both in these proceedings (shown in bold) and in some of the related proceedings (in grey shading).

3 April 2007	First loan facility granted.
21 August 2007	Second loan facility granted.
2009	Mr Scriven defaults on loan facilities.
2013	Last repayment by Mr Scriven.
2013	Mrs Scriven (the Defendant’s wife) issues proceedings (2013/12852P) against him and lodges <i>lis pendens</i> against eight buy-to-let residential properties which were secured by the two loan facilities.
<b>4 June 2014</b>	Receivers appointed to the eight properties. The Plaintiffs sought possession in the weeks that followed. The Defendant is alleged to have refused to yield up the properties and obstructed attempts to collect the rent.
<b>20 July 2014</b>	These proceedings were issued.

<b>12 August 2014</b>	High Court hearing of application for interlocutory relief in these proceedings; receiver took control of properties and progressed the receivership thereafter.
<b>30 August 2014</b>	Statement of Claim delivered in these proceedings.
16 November 2016	Receivers and lenders joined (on their own application) as parties to the proceedings issued by the Mrs Scriven.
27 February 2017	Mrs Scriven forced to deliver statement of claim in her proceedings on the application of the Plaintiffs (and the current charge holder).
<b>3 August 2017</b>	First Plaintiff retires but Defendant refuses to consent to his removal as a party to these proceedings.
<b>22 November 2017</b>	Defence and counterclaim delivered in these proceedings.
<b>03 July 2019</b>	Plaintiffs delivers reply and Defence to Counterclaim in these proceedings.
<b>2014 - 2019</b>	Delays with regard to the hearing of the appeal of the interlocutory injunction in these proceedings (outside the control of the parties).
<b>08 May 2019</b>	Supreme Court judgment in these proceedings, rejects appeal of 2014 injunction and expresses concern as to delay
15 May 2019	Mr Scriven serves Notice of Indemnity and contribution on the Plaintiffs and the then chargeholder in respect of his wife's proceedings.
<b>23 September 2020</b>	Defendant registered <i>lis pendens</i> against the properties notwithstanding undertaking not to sell or dispose of the properties – Plaintiffs characterise this as a further attempt to delay matters.
15 March 2023	Mr and Mrs Scriven resist the Plaintiffs' application to join Pepper Finance, the successor in title as chargeholder, as a party to Mrs Scriven's proceedings. Granting the application,
12 July 2023	Defendant issues application seeking trial of preliminary issue in Mrs Scriven's proceedings.
<b>16 October 2023</b>	Plaintiffs send Defendant a Certificate of Readiness in these proceedings, inviting views on length of trial and of progress of related litigation and indicate intention to set the matter down.

<b>20 October 2023</b>	Defendant replies disagreeing as to readiness for trial and indicating that he has issued the current application to dismiss for want of prosecution.
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### **Supreme Court Comments on Plaintiffs' Responsibilities**

One passage in the Supreme Court judgment is particularly pertinent to this application. The Chief Justice took the unusual step of appending the following passage to the judgment:

#### **“7. An Observation**

*7.1 It is unfortunate that such a long time has elapsed since the grant of the interlocutory injunction in this case, without the substantive proceedings being brought on for hearing. Interlocutory injunctions should not be treated as a means of attempting, in practice, to obtain a summary judgment. They are designed to do what they say, that is, to hold the situation until there can be a full trial. While there will inevitably be some cases where the result of an interlocutory injunction may, in practical terms, bring the proceedings to an end, it remains the case that there is an obligation on any party which has obtained an interlocutory injunction not to rest on their laurels, but to bring the matter on for full hearing. If the defendant does not cooperate, then any appropriate procedural measures may be adopted, either to have the proceedings finally determined by default or to ensure that they come to trial in a timely way.*

*7.2 This Court does not have sufficient information to form a view as to where the fault lies for these proceedings not having been finally determined, although it is clear that with even reasonable diligence, this case could now be well finalised, as a result of which the question of whether or not there should be interlocutory orders pending a full hearing would have become irrelevant. However, in a case where it could be shown that a plaintiff who had obtained a beneficial interlocutory injunction had not moved with reasonable expedition thereafter to bring the matter on for trial, it may well be open to, and appropriate for, a court to consider whether that party should retain the benefit of what was clearly intended to be a temporary order for a prolonged period of time.*

*7.3 It is, of course, the case that this appeal has, regrettably and through no fault of the parties, taken a long time to come on for hearing. Be that as it may, it remains the*

*case that, as noted earlier, the Receivers do not yet seem to be in an immediate position of requiring to sell the properties. Having regard to the fact that it would have been possible to have had a full trial of this matter well before now so that the question of the technical argument as to the validity of the appointment of the Receivers could have been finally resolved, it would, in any event, be inappropriate at this stage to make an order which would have the effect of allowing the relevant properties to be sold without a final determination of the legal issues which have arisen as to the validity of the appointment of the Receivers.*

*7.4 Finally, I would observe that the fact that there may be an appeal against the grant of an interlocutory injunction should not be regarded as a legitimate basis for the parties' failure to progress the substantive proceedings to trial. The issues are separate issues. As this judgment demonstrates, a range of factors, such as the strength of the case and the balance of convenience, may come into play in considering whether to grant or refuse an interlocutory injunction and, indeed, if one be granted the terms thereof. But those issues are not necessarily relevant at a final trial which makes a determination on a permanent basis of the legal rights and obligations of the parties. Such a trial is the proper means for such final determination and parties should progress to it in a timely fashion, whether or not an interlocutory injunction has been sought and, if sought, whether or not there is an appeal against the result of the interlocutory hearing". (emphasis added)*

### **Was the delay inordinate?**

**8.** The Plaintiffs have conceded, appropriately in my view, that there was an inordinate delay in progressing these proceedings between their initiation in 2014 and the issuing of this motion in 2023. The following significant delays occurred while the appeal was pending:

- a. The three-year delay prior to the delivery of the Defence
- b. The 20-month delay in delivering a Reply to the Defence

However, I am most concerned with a further, 53-month, period of delay following the Supreme Court decision. These three periods were clearly inordinate, and the Plaintiffs must accept responsibility for at least two of them.

**Was the delay inexcusable?**

9. The Defendant's grounding affidavit noted that matters were deemed so urgent as to justify a vacation hearing, an approach which contrasted with the subsequent progress of the proceedings. He says that the nine-year delay since the commencement of the litigation is the Plaintiffs responsibility and is inexcusable. He particularly relies on the delay (for almost five years) in progressing the proceedings pending the Supreme Court decision as well as the four-year delay thereafter. My conclusions as to the period before the 2019 Supreme Court decision, are that:

- a. the five-year delay in resolving the interlocutory appeal was outside the control of the parties. Neither side can fairly be criticised in that regard. However, as the Supreme Court judgment notes, the Plaintiffs could and should have continued to progress the litigation during that period.
- b. The Plaintiffs' approach was deficient for parts of that period:
  - i. Matters moved expeditiously until the delivery of the statement of claim in August 2014. At that point the onus shifted to the Defendant but its defence was only forthcoming on 22 November 2017. The Defendant gave no explanation for this three-year lacuna, other than that he was not being pressed. The Plaintiffs should have pressed for the defence, and they share responsibility for this extraordinary period. However, the defendant must bear the primary responsibility for this period, the first major delay in the litigation.
  - ii. The Plaintiffs still failed to progress the litigation following the delivery of the Defence on 22 November 2017. They failed to serve their Reply and Defence to Counterclaim until 3 July 2019 - after the Supreme Court judgment. Accordingly, the Plaintiffs were primarily



responsible for this 20-month delay, a delay rendered more egregious by the Defendant's earlier delay, a delay for which the Plaintiffs must take some responsibility due to their own inertia.

**10.** However, the far greater concern arises in respect of the 4-year period of delay after the Supreme Court judgment. I have noted above the directions agreed at my suggestion at the hearing of this application. There is no reason why such directions could not have been sought by the plaintiffs and implemented expeditiously after the Supreme Court decision.

**11.** That said, the Defendant was scarcely blameless in terms of the way the proceedings developed, or failed to develop. While the Plaintiffs do have primary responsibility for the carriage of the litigation, the Defendant could have sought to progress matters at any time. He was not disposed to do so, and he was in default for a three year period with regard to his defence in these proceedings. The Plaintiffs for their part, seemed equally inclined to let sleeping dogs lie, although, as the Supreme Court made clear, that should not have been the attitude of Plaintiffs in their position. There is no evidence of any concern on the Defendant's part to progress these or the related proceedings to trial. To the contrary, he adopted positions in these and other proceedings which tended to delay the litigation rather than to progress the resolution of the substantive issues. Examples include his refusal to agree to amend these proceedings to reflect the First Plaintiff's retirement and his opposition to applications to join the Plaintiffs and, subsequently, the current owner of the Defendant's debts, as parties to the proceedings initiated by the Plaintiff's wife. In the context of the latter application, O'Moore J. observed at para. 24 of his judgment that:

*"... Mr. Scriven has [not] provided any plausible reason as to why he has gone to such lengths to resist the joinder of Pepper. The reason offered by Mr. Scriven (which is that he would find settlement more difficult) is not credible. A more likely reason is that his resistance to what should be a fairly straightforward application (whichever way it is decided) has resulted in a motion which has caused considerable delay in bringing this action to trial. This delay is, in turn, frustrating*

*enforcement measures being taken against Mr. Scriven in respect of very substantial sums borrowed by him which he has not yet repaid.”*

**12.** The Plaintiffs’ main justification for their inordinate delay was by reference to the related litigation involving the Defendant. It appears that there were at least 4 High Court proceedings (including this action) involving some of the same parties and issues. In my summary of the chronology, I have only featured the most relevant proceedings. The others seem less relevant either because they were less active or because they involved different loans and security from different original lenders. The most relevant litigation was the claim issued by the Defendant’s wife against him, to which the Plaintiffs (and, subsequently, the current owner of the loan facilities) successfully applied to be joined notwithstanding opposition from both the Defendant and his wife. The Plaintiffs say that the approach adopted by the Defendant and his estranged wife (who was separately represented) was obstructive and resulted in delaying and complicating the various proceeding. The Plaintiffs suggest that their involvement in such other litigation explained the delay in these proceedings, particularly given the obstruction experienced.

**13.** I am satisfied that the Defendant and his wife could have been more helpful with regard to uncontroversial applications (such as those concerning the joinder and substitution of parties to the various proceedings). However, having reviewed all papers furnished in respect of the various claims, the litigation as a whole does not seem to me to be so complicated as to explain or justify the Plaintiffs’ delay. Having examined the wider litigation tapestry, I am not satisfied that need to deal with the other proceedings explains the Plaintiffs’ inertia. Many quibbles raised by the Plaintiffs, such as the Defendant’s refusal to release the first plaintiff from the proceedings or the redundant registration of a *lis pendens*, may have been irritants and distractions but do not withstand scrutiny as obstacles preventing a determined litigant from progressing this claim.

**14.** In my view the Plaintiffs could and should have brought these proceedings to trial before now. However, they failed to any step to advance them until October 2023 – after, it may be noted, Mr Scriven had issued a motion in his wife’s proceedings in July 2023 seeking the trial of a preliminary issue. After he took that step in his wife’s proceedings, the Plaintiffs moved to set these proceedings down for trial. No satisfactory reason has been given for taking that step in October 2023 rather than far earlier.

**15.** The other proceedings neither necessitated nor justified a unilateral decision to put these proceedings on hold. When there are related proceedings, it may be sensible to progress one of them, placing others on hold in the hope that the outcome of one case may resolve or narrow the issues in the others, thus saving the parties time and money and reducing the Court time required to deal with the litigation as a whole. However, I have seen no evidence of any such rationale. If the Plaintiffs had considered that these proceedings should be placed on hold until the other litigation was resolved or for other mutually acceptable reasons (for example, in some receivership cases it may be in all parties’ interests to await particular commercial developments on occasion) then they should have sought the Defendant’s agreement to such a course. In default of such agreement, they should have sought appropriate directions from the Court. The Court might have directed the joinder of such proceedings, or that they should travel together or that one should be stayed. However, the Plaintiffs’ unilateral decision to down tools for four years was not justified. The Plaintiffs are professional/institutional, experienced, well-resourced and well-advised litigants. They and their legal teams should have been well capable of progressing these proceedings while protecting their position in any other litigation. They had a responsibility to do so.

**16.** At the end of the day, the Plaintiffs have carriage of the litigation and corresponding responsibilities. The obligation to move quickly was increased as a result of; (a) The fact that there had already been extensive and avoidable delay for which they bore the greater

responsibility; (b) The fact that they remain the beneficiaries of injunctive relief obtained on foot of a vacation application by reason of the urgency of the matter; (c) The exhortation in the Supreme Court judgment and cited above; (d) The fact that they are professional, well-resourced and advised institutional litigants.

17. That said, and while acknowledging that the responsibility for the carriage of the litigation primarily rests with the Plaintiffs - and I do not believe that the counterclaim in these proceedings fundamentally changes the position, especially when regard is had to its terms - the Defendant does not appear to have been anxious to progress the proceedings at any stage.

### **Supreme Court “Observation”**

18. I am surprised that the Plaintiffs’ approach was not galvanised by Clarke CJ’s “Observation”. Their solicitor downplayed that issue, stating:

*“In the course of their decision, the court referred to the fact that the parties had not moved on the proceedings. In so doing, I say that the court referred to this issue in a series of paragraphs entitled ‘an observation’ which I say and believe did not form part of the ratio of the decision. Of note is the fact that whilst the court noted the delay that had accrued at that stage, it also held that it was not possible to determine where the fault lay for the proceedings not having been finally determined”.*

19. In submissions it was suggested that the Supreme Court’s comments were seen as a general exhortation to commercial litigants to progress matters and were not understood to be particularly referable to the Plaintiffs or to these proceedings. I certainly agree that the observations were intended to be of general application, and I would commend them to all litigants and their advisors but particularly professional/institutional litigants and litigants who have been granted the benefit of interlocutory orders. However, I have no doubt that the Supreme Court’s observations were also specifically directed to the Plaintiffs in these proceedings and the Plaintiffs and their advisors should have understood them as such. Even if they were technically obiter, I am surprised that such comments were not taken on board by the Plaintiffs. It was disappointing that, after the Supreme Court had been at pains to express

its concerns, the Plaintiffs failed to respond appropriately and professionally and the approach adopted did not meet the Court's expectations. However, in terms of the current position, it is important to note that, admittedly at my invitation, the Second Plaintiff furnished a personal undertaking with regard to the future conduct of the proceedings. His solicitor provided a corresponding undertaking. It should not have been necessary to request such undertakings, but it seemed essential to do so in the light of the Plaintiffs' unsatisfactory conduct of the proceedings to date.

### **Prejudice and Balance of Justice**

**20.** No specific prejudice was established in terms of, for example, unavailability of witnesses, loss of documentary evidence or otherwise. The Defendant cited the general (but undoubted) prejudice of fading memories, coupled with the fact that he has been subject to the burden of an interlocutory order affecting his property rights for a decade whereas the proceedings should have been brought to trial long before now.

**21.** Although I recognise the force of such submissions as a generally proposition, I am not satisfied that the Defendant has suffered prejudice which would make a fair trial of the action impossible, or which would significantly impact his ability to defend the proceedings, nor did his affidavits identify any such issue. Given the nature of the proceedings, I do not anticipate insurmountable difficulty with proceeding on the basis of the records of the transaction coupled with the Defendant's own evidence. Such records and other evidence should establish the details of the transaction, the legal framework, the monies advanced, details of repayments and the extent and composition of the alleged arrears. I doubt that the lapse of time will prejudice the Defendant at trial (but he would be entitled to bring a further application if the position should change in that respect). As matters stand, any prejudice is more likely to be suffered by the Plaintiffs given their evidential burden.

**22.** I do not condone the Plaintiffs' inertia. There is force in the Defendant's submission that the maintenance of an interlocutory injunction for an excessive period (as in this case) can constitute prejudice. This submission is reinforced by the circumstances of the appeal and the terms of the Supreme Court judgment. However, I am not satisfied that the balance of justice would support the dismissal of the proceedings at this time in the circumstances of this case since: (a) the Defendant is primarily responsible for a significant portion of the delay and, although the Plaintiffs had responsibility for the carriage of the litigation, he does not seem to have been unduly concerned about the past inactivity, both before and after the Supreme Court judgment; (b) the Defendant's approach to the litigation and other related litigation, while not excusing the Plaintiffs' extraordinary failure to progress the litigation, is a legitimate factor in assessing the appropriate course; (c) there is apparently uncontroverted prima facie evidence as to the enormous sums borrowed by the Defendant under two relevant loan facilities - I disregarded (as extraneous) evidence of other loan facilities which the Plaintiffs sought to reference. As appears from para. 4 of the replying affidavit, the Defendant has been in default in respect of the loans since 2009, with no payments whatsoever since 2013, and this must be a factor in exercising my discretion. I have seriously reflected on the Plaintiffs' delay, which, as the Defendant correctly observes, is all the more inexcusable by virtue of the fact that they are sophisticated, well resourced, professional litigants and because they have already received a very specific indication of their legal and professional responsibilities from the Supreme Court, advice which does not seem to have been taken to heart by the Plaintiffs as it should have been. However, even allowing for those matters, I do not consider that the balance favours dismissal at this stage. The Defendant has not been sufficiently prejudiced, even allowing for the unnecessary period during which he has been constrained by the interlocutory injunction.

**23.** I doubt that the High Court would have granted the injunction in this case or that the Supreme Court would have dismissed the appeal if the Plaintiffs had indicated to the court that the case was likely to proceed according to its current timetable. Accordingly, the Plaintiffs should not expect that any further delay will necessarily be excused. As well as the “nuclear” option of striking out proceedings, the Court has the option of discharging the interlocutory orders by reason of the Plaintiffs’ delay, an option adverted to by the then Chief Justice in his ruling on the injunction appeal in these proceedings. Varying an injunction for failure to prosecute a claim would accord with the principles governing the granting of such reliefs in the first place. As O’Donnell J. observed in *Merck Sharpe & Dohme v Clonmel Healthcare Limited* [2020] 2 IR 1 and as Clarke CJ noted in his earlier judgment in these proceedings (see para. 7 above), the court may vary or withdraw interlocutory orders where Plaintiffs fail to diligently and expeditiously progress their claim. The balance of convenience assessment in granting such relief assumes that it is temporary. Significant default on the Plaintiff’s part might well cause the Court to review the appropriateness of maintaining such interlocutory orders pending trial. However, the Defendant is not entirely blameless even if greater culpability rests with the Plaintiffs.

**24.** The Defendant asked the court how long the Plaintiffs’ failure to progress the matter can proceed. In my view, there is fault on both sides and striking out the proceedings was not justified at the time of the application. However, the Plaintiffs would be tempting fate if they were to further try the patience of the Court. Other parties who are the beneficiaries of injunctive relief should similarly appreciate that if they fail to progress matters then, even if the Court does not dismiss the claim for want of prosecution, it may not be inclined to allow a plaintiff to continue to benefit from interlocutory relief if it is not progressing the claim with appropriate expedition. However, I am only concerned with this application. In the

circumstances of this case and given the part played by the Defendant himself, I do not consider that either remedies would be appropriate yet.

### **Decision**

**25.** The Plaintiffs have been guilty of inordinate and inexcusable delay. However, I am not satisfied that the Defendant has suffered significant prejudice (other than in respect of the maintenance of the injunction since 2014). As matters stand, I do not believe that the proceedings should be dismissed or that, at this point, the interlocutory order should be varied. Accordingly, I will dismiss the application. That said, the Plaintiffs would be on exceedingly thin ice if they fail to take all reasonable steps to bring these proceedings to trial at the earliest opportunity. In the event of any further significant days for which they are responsible, then they would be at great risk that the Court will either dismiss these proceedings for want of prosecution or discharge the interlocutory order.

**26.** The Defendant may bring a further application to dismiss for want of prosecution and/or to have lift the injunction if it transpires that there is further slippage for which the plaintiffs are responsible. Furthermore, the Plaintiffs will be held to the undertakings which the Second Plaintiff and his solicitor has given. The Plaintiffs should appreciate that they are on borrowed time and that any further unreasonable delay which lies at their door will expose them to a risk that the proceedings will be entirely dismissed or, at the very least, that the interlocutory application will be lifted.

**27.** Finally, in the light of my findings, the Plaintiffs did not seek their costs on the application.