

THE HIGH COURT

[2017 No. 8094 P]

BETWEEN:

JUNE SMITH

PLAINTIFF

-AND-

IRELAND, THE ATTORNEY GENERAL, GARDA COMMISSIONER, AN GARDA SIOCHANA, BALLELINE LIMITED, JOHN EDWARD FLETCHER, JOHN CHARLES FLETCHER, HINCH PLANT HIRE

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 25th day of October, 2017.

Summary

1. This is a case involving Mrs. June Smith, a lay litigant who, with the assistance of Mr. William Murphy, who 'practises' as a McKenzie Friend, have been involved in abuse of process upon abuse of process in relation to Mrs. Smith's obsessive, hopeless and vexatious litigation which she has pursued for approximately five years in relation to her former farm at Carn in Portarlington, Co. Laois, which she mortgaged to ACC Loan Management Limited ("ACC")

2. Mrs. Smith, with the assistance of her McKenzie Friend, has deliberately contravened her understanding of the terms of an Isaac Wunder Order which was issued against her in July of 2017. This court order prevented her from ever again issuing proceedings in relation to her former farm against, *inter alia*, ACC. Despite her understanding of the terms of the Isaac Wunder Order, she instituted the current proceedings in September 2017 against *inter alia*, Ballenline Limited, the new owner of the farm. As part of those proceedings and during the vacation sittings of the High Court and on an *ex parte* basis, she deliberately misled Barrett J. by claiming, *inter alia*, that the farm was hers, in order to obtain an injunction against Ballenline Limited from trespassing on what is its own farm. Having obtained the injunction, she then sought to personally execute the court order preventing Ballenline from trespassing on its own farm, as if she was an arm of the State, even though she had no authority to do so and has no interest whatsoever in her former farm. During these court applications, which patently amount to an abuse of process, she has been assisted by her McKenzie Friend, Mr. William Murphy. Accordingly this judgment deals with the granting of a more expansive Isaac Wunder Order against Mr. Smith and a Disqualification Order against, Mr. William Murphy from ever acting as a McKenzie Friend again.

Background facts

3. The case was heard on the 3rd October, 4th October, 2017 and the 12th October, 2017 and involves Ms. June Smith's attempt to assert ownership rights, and dispute the ownership rights of others, to the farm which was mortgaged by her and her husband to ACC and which was subsequently sold by a receiver on behalf of ACC as a result of the failure of Mr. and Mrs. Smith to repay the loan of some €2 million secured on the farm.

4. The plaintiff's long and unsuccessful litigation since 2012 has been outlined previously in this Court's judgment of *June Smith v. ACC Loan Management Limited* [2017] IEHC 505 (which was joined with *Jane Smith v. ACC Loan Management Limited*, a case involving her daughter in almost identical and equally unsuccessful claims about the same farm).

5. That judgment delivered by this Court on the 21st July, 2017, dismissed the proceedings taken by Mrs. Smith and her daughter against ACC and Mr. Shane McCarthy (the 'Receiver') regarding the right of ACC and its Receiver to sell the farm. However, those unsuccessful proceedings were far from the first set of unsuccessful proceedings which had been taken by Mrs. Smith regarding the ownership of the farm.

Court resources which have been wasted in Mrs. Smith vexatious litigation

6. Judgment was initially obtained in the High Court on the 29th February, 2012, by ACC against Mrs. Smith and the extent of the court resources which have been used up in dealing with Mrs. Smith's dispute is clear when one considers that

since then, High Court and Court of Appeal judgments and orders regarding the dispute have been made on:

- 17th October, 2014,
- 1st December, 2015,
- 18th April, 2016,
- 15th June, 2016,
- 27th July, 2016,
- 7th March 2017,
- 25th April, 2017,
- 17th May, 2017, and
- 21st July, 2017 (this Court's recent judgment on the matter)

This also excludes a High Court hearing scheduled for this month which deals with Mrs. Smith's allegations that Gilligan J. had a conflict of interest in dealing with one of the previous hearings in this dispute, and the future Court of Appeal hearing regarding her claim that the High Court was incorrect to remove a *lis pendens* registered by her on the title to the farm.

Beggars belief that Mrs. Smith issued her previous proceedings

7. At para. 39 of the most recent court judgment regarding her dispute, namely the judgment of the 21st July, 2017, this Court noted that:

"This Court is of the view that it beggars belief that Mrs. Smith and Ms. Smith, after receiving the damning judgment of the High Court and the damning judgment of the Court of Appeal that their previous challenges to the sale of the farm was an abuse of process, would issue these two sets of proceedings and continue to pursue these proceedings, which they are doing to this day. It is for this reason that it has no hesitation in dismissing both sets of proceedings as an abuse of process upon abuse of process."

8. It now transpires that despite these observations and despite the fact that an order, known as an Isaac Wunder Order, was made against Mrs. Smith in that judgment of 21st July, 2017, which prevented her from issuing any further proceedings regarding the farm against ACC or the Receiver, Mrs. Smith has now issued these further proceedings before this Court.

9. These proceedings were issued within weeks of the Isaac Wunder Order with the aim of challenging, once again, the sale of her former farm, but in this instance she issued proceedings, not against ACC or the Receiver, but against, *inter alia*, the fifth-named defendant, Ballenline Limited, a company which purchased the farm from the Receiver. After issuing these proceedings against Ballenline Limited, Mrs. Smith obtained an *ex parte* injunction from Barrett J. during a vacation sitting of the High Court preventing Ballenline Limited from trespassing on the farm it had just purchased.

Isaac Wunder Order granted against Mrs. Smith

10. Part of the background to the Isaac Wunder Order is that the High Court (Gilligan J.) gave a perpetual injunction on the 1st December, 2015, against Mrs. Smith from ever trespassing on the farm again in light of her previous attempts to regain possession of her former farm. The wording of the Isaac Wunder Order issued by this Court against her under the terms of the judgment of 21st July, 2017, is as follows:

"(A) that the plaintiff [Mrs Smith] be restrained, from issuing or causing to be issued any further proceedings (in whatever Court or forum) against ACC Loan Management Designated Activity Company (or ACC Loan Management Limited), Shane McCarthy, KPMG, or any of their servants or agents concerning, relating to or touching upon:

1. The lands comprised in Folios LS5608, LS5548, LS30277F and LS28061F of the Register of County Laois [the farm];
2. A facility letter dated 8 November 2007 in the amount of €1,296,000 made between June Smith and James Smith of the one part and ACC Bank Plc (as ACC Loan Management DAC was then known) of the other part;
3. A facility letter dated 8 November 2007 in the amount of €800,000 made between June Smith and James Smith of the one part and ACC Bank Plc (as ACC Loan Management DAC was then known) of the other part.

without the prior leave of the High Court, the proposed Defendants to any such proceedings having been put on notice of any application for such leave.

(B) that if any such proceedings are issued or caused to be issued by the Plaintiff without leave of the High Court, the First Named Defendants is not required to appear or to take any steps in relation thereto and that any proceedings so taken shall be treated as void and of no effect."

11. It is relevant to note that the wording of the perfected order does not refer to the President of the High Court, nor does it prohibit per se, proceedings being issued in relation to the farm against a party other than ACC or the Receiver. However, the clear intent of the Isaac Wunder order in light of the history of litigation by Mrs. Smith regarding her former farm, is to prevent her from litigating ever again in relation to the farm. Of even more significance is the fact that Mrs. Smith interpreted the Isaac Wunder Order as preventing her from litigating against anyone in relation to the farm.

12. This is clear because this Court obtained a copy of the transcript of the hearing before Barrett J. It did so because of this Court's concern as to how Mrs. Smith could get an injunction against the owner of the farm from trespassing on its own farm, when she was subject to an Isaac Wunder Order regarding the farm and a perpetual injunction from trespassing on the farm and had no interest in the farm. On the 11th October, 2017, this transcript was provided to Mrs. Smith (and the defendants to those proceedings) for any submissions they would like to make thereon. At this juncture, it is simply relevant to note that in those submissions, Mrs. Smith outlined her understanding of the effect of the Isaac Wunder Order against her as follows:

"Yep. Thanks, Judge. First I'd like to thank you for the copy of the DAR in relation to the proceedings before Mr. Justice Barrett. I've examined the DAR transcript and I don't dispute any of its content. In relation to the issue of the Isaac Wunder order which you imposed in July, it was Mr. Justice Barrett who raised the issue and as we see confirmed in the DAR, I provided the answer 'ACC Bank has one'. Judge, I've read your order of the 21st July, and I accept that the Isaac Wunder order extends to the folios of the lands. I found myself in the situation before I approached Mr. Justice Barrett where the defendants had on the 1st September, taken over the lands. **As I understand, I would have to approach the President of the High court for permission to take an action, with great respect Judge, I was in a dire straits situation. The Court of Appeal was on vacation so therefore my only option was to attend before Mr. Justice Barrett who happened to be the duty judge on the day** (emphasis added). I had held a belief from your judgment on the 21st in the matters where you stated there was a possibility of your order being of no effect in the event of the proceedings scheduled for the 16th October being successful, that all parties would heed your reasoning and refrain from action, which took place, which made it necessary for me to attend court. Clearly, I was incorrect to hold this belief as the subsequent action confirms. With respect, there were two clear reasons for these events as occurred. Firstly Judge, your determination raised at least the possibility that the orders might be set aside, and secondly all parties were aware of the motion which was before the Court of Appeal."

Beggars even further belief that she would ignore Isaac Wunder Order

13. Therefore, Mrs. Smith understood that she was under a court order which prevented her from ever issuing proceedings without the consent of the court but she deliberately chose to ignore that court order because she says she was in 'dire straits'. To use the same language as was used in the judgment of the 21st July, 2017, it beggars even further belief that, after that judgment and the Isaac Wunder Order of that date and against the background of all the other judgments and orders regarding the farm, Mrs. Smith would consciously and deliberately ignore an order of the High Court.

14. However, perhaps one should not be so surprised, since in that judgment of the 21st July, 2017, this Court noted that Mrs. Smith

would stop at nothing in her quest to regain her property. This Court also noted at that time that she treated the whole matter of issuing proceedings, in which she was being assisted by her McKenzie Friend, Mr. William Murphy, as some kind of cat and mouse game. So it is unfortunately no great surprise that she and Mr. Murphy (who is assisting her again before this Court), take no notice of what this, or any other court, says.

15. It is clear therefore, from her own evidence to this Court, that Mrs. Smith decided after the Isaac Wunder Order to effectively ignore that Order (as she understood it). With the assistance of Mr. Murphy (who was in court with her before Barrett J. and who continues to assist her), she decided to continue the cat and mouse game of litigation regarding the farm, by issuing these proceedings in September, 2017.

Mrs. Smith's claim once again that she owns the farm

16. The plenary summons was issued by Mrs. Smith on the 7th September, 2017, against *inter alia*, Ballenline Limited regarding the ownership of the farm. This plenary summons claims that Ballenline Limited, the new owners of the farm, were trespassing on the farm. In these proceedings, Mrs. Smith seeks the assistance of the Court for the protection of what she calls '*her property*'. This is despite the fact that the previous High Court and Court of Appeal litigation (referred to in this Court's judgment of 21st July, 2017) had established that all her previous challenges to ACC and the Receiver's title to the farm were not only without merit, but also amounted to an abuse of process. This multiplicity of claims involve a serious waste of taxpayers' money, a waste of scarce court resources (causing delay to genuine litigants) while also wasting the time and money of innocent third parties. .

Injunction sought *ex parte* during vacation sittings

17. Having issued the proceedings, Mrs. Smith then sought an injunction from the High Court seeking to prevent Ballenline Limited from trespassing on its own property. It is to be noted that this injunction was sought during the vacation sittings in September from a judge with no familiarity with Mrs. Smith's previous proceedings (Kelly, P., Gilligan J., O'Regan J. and Twomey J. being the High Court judges who had dealt with the litigation to date). Barrett J. heard only Mrs. Smith's version of events, since she chose to bring the matter not only during the vacation sittings, but also *ex parte*. These injunctive proceedings were duly heard before Barrett J. on the 8th of September, 2017, and based on the evidence provided to him by Mrs. Smith, who was assisted by Mr. Murphy at that hearing, Barrett J. granted the injunction returnable to the 3rd October, 2017.

18. Thus, Mrs. Smith, who has no ownership rights to the farm and who has unsuccessfully challenged the title of ACC and the Receiver to sell the farm on so many occasions, that she was subjected to an Isaac Wunder order, managed to obtain an injunction against Ballantine Limited, preventing it from trespassing on its own farm. Although not a major issue in the overall context of this Court's judgment, it is to be noted that, although the proceedings were issued against Ballenline Limited, the injunction which Mrs. Smith sought in her Notice of Motion before Barrett J. was against Ballantine Limited, which is the incorrect name of the owner of the farm and is in fact a separate and unconnected company. In the same vein, it is to be noted that the folio numbers for the farm which were specified in the plaintiff's Notice of Motion and the resulting order were also inaccurate.

19. It seemed clear to this Court that an injunction prohibiting Ballenline Limited from trespassing on the farm could only have been granted by the High Court on the application of Mrs. Smith if it was not brought to Barrett J.'s attention by Mrs. Smith in making the application that:

- Ballenline Limited was in fact the owner of the farm;
- the person seeking the injunction, Mrs. Smith, had no ownership interest in the farm; and,
- the person seeking the injunction was herself subject to a perpetual injunction dating from 1st December, 2015, from Gilligan J, which restrained her '*permanently from trespassing upon, entering upon or otherwise attending*' the farm.

Mrs. Smith misled Barrett J in order to obtain injunction

20. At this juncture, it is relevant to set out in full the transcript of the hearing before Barrett J., since it confirms, *inter alia*, this Court's belief that none of these matters had been brought to the attention of Barrett J:

"REGISTRAR: Smith v Ireland and Others.

MS. SMITH: Good morning, Judge, I have to make this emergency application to preserve my basic human right. I am June Smith.

MR. JUSTICE BARRETT: Is there an Isaac Wunder against you?

MS. SMITH: There is against ACC.

MR. JUSTICE BARRETT: Against you as against bringing any proceedings against ACC; is that it?

MS. SMITH: Yes.

MR. JUSTICE BARRETT: Fire ahead then.

MS. SMITH: I am trying to prevent a premature attack on my property which took place on Friday last. The attack included the breaking of hedgerows with heavy machinery. I accept that there are ongoing contentious issues and prolonged litigation in relation to folios, the subject of the interim relief sought. However the litigation has not reached finality and the Fifth Named Defendant on the directions of the Sixth and Seventh Named Defendants are aware of the upcoming matters placed before the courts for determination. Judge, as you can see I have prepared a pleadings book and there is sworn evidence in my grounding affidavit supported by a tabbed reference exhibit book. If you wish you can have a look at those and come back to me at a later stage if you want. For reasons you will become aware of in the documents presented I merely seek interim assistance from the Court. I have been provided with a hearing date for a motion referred in my affidavit on the 16th October 2017. I am going to rely on extracts from two authorities and the first authority is the reasoning applied in relation to a provision for an undertaking in damages in *Bainne Aláinn v Glanbia* where Mr. Justice Barrett's determining authority can in some circumstances provide scope to the court to relieve a party from such an undertaking for damages when stated. In relation to recent decisions in the court of *Whelan Frozen Foods Ltd. v*

Dunnes Stores, McMenamin J. mentioned a number of criteria relevant to the issue of whether or not to grant an interlocutory injunction which could also be relied upon to justify not requiring an undertaking as to damages in appropriate cases. These are:

1. The general rule that a court should where possible strive to maintain the status quo between the parties and;
2. The relevant financial standing of the parties.
3. The balance of the risk of doing an injustice.

The Court does not want to suggest in the foregoing that an undertaking as to damages should never be required where interlocutory injunction is to be granted. The consensus in the case law to date has been that such an undertaking ought typically to be required however just because something is typically done does not mean that it must always be done. It is almost impossible, if indeed it is possible at all, to make any general rule of law, but that it may fail in some cases. Just as the general may lean into the particular so the law must be applied in context. In the right circumstances there is adequate basis afforded to existing law and precedent whereby in conformity with that law and precedent an interlocutory injunction could be granted without an undertaking as to damages being required. In this way the Courts ensure that the level of influence of the law invariably pertains and that equitable relief is not unfairly denied to those whom the fates have perhaps treated inequitably.

The Court is asked to adopt this reasoning and to apply it to the within circumstances. Thus it will ensure the equitable reliefs sought are not unfairly denied to the Appellant whom the fates have perhaps treated me as so eloquently described.

Judge, my affidavit outlines my inability to provide an undertaking for damages in my current circumstances. It would be wholly dishonest of me to offer an undertaking to obtain the benefit of the Court's discretion under such circumstances. Judge, I also ask the Court to consider the upcoming Grand Chamber extract from the authority of Rousk v Sweden 2013 that I referenced in my yet to be determined motion before the Court of Appeal. I include in the submission in my exhibits. This authority stresses the need to consider allowing proceedings reach finality prior to the deprivation of possessions at paragraph 139. I can read that paragraph for you.

"Turning to the present case, the Court reiterates its findings above under Article 1 of Protocol No. 1 to the Convention in relation to the various domestic proceedings and stresses that none of those proceedings were finally adjudicated before the sale at public auction and the ensuing eviction of the applicant from his home took place. While this may have been in the interest of efficient enforcement proceedings, the Court is not convinced that the applicant's interests were adequately protected in view of this most extreme form of interference with his right to respect for his home (...) Furthermore, it knew that the applicant's appeal against the writ of execution was still pending before the Court of Appeal and that his appeal against the actual sale of the property was pending before District Court. Although the District Court rejected the appeal on 15 October 2003, a week before the actual eviction took place, the Court notes that this decision did not become final since the applicant appealed against it to the Court of Appeal within the statutory time limit. Thus, the Court considers that, in order to ensure that the remedies and procedural safeguards existing in domestic law were in fact available and sufficient, not only in theory but also in practice, the eviction should have been postponed until the underlying contentious issues had been resolved."

Judge, I ask you to consider this extract in making the determination in this matter and I beg the Court's assistance in granting the interim orders.

MR. JUSTICE BARRETT: All right. Thank you very much. I was reading the affidavit there while you were talking. You have an appeal pending before the Court of Appeal?

MS. SMITH: Yes.

MR. JUSTICE BARRETT: And your complaint is that, notwithstanding that that appeal is pending before the Court of Appeal, they are taking action on foot of the High Court judgment; is that it?

MS. SMITH: That is it, yes.

MR. JUSTICE BARRETT: Very good. Well, thank you for clarifying that. That being the case what I will do is I will grant the two interim orders that are being sought. I will reserve the issue of costs and you will then need to serve the other side obviously with notice of these proceedings. I will put the matter in for mention on the 3rd October before the Chancery Judge, whoever the Chancery Judge is on that day. [Confers with Registrar] So I am not going to seek an undertaking for damages at this stage because I am basically bouncing it to the 3rd October. You are going to have to serve your notice of motion. You are going to have to come in on the 3rd October and you will have to deal with the Chancery Judge at that stage. Very good, thank you very much.

THE HEARING CONCLUDED"

Blatant lies by Mrs. Smith to Barrett J.

21. Quite apart from the fact that Mrs. Smith should never have instituted the proceedings based on her own interpretation of the Isaac Wunder Order and also the fact that this transcript shows that Mrs. Smith misled Barrett J. by *omission* of relevant facts, as already noted, the transcript also illustrates that Mrs. Smith misled Barrett J. by *misrepresentation* of other facts. In particular, she relied, in seeking the injunction against Ballenline Limited, on the fact that there is a Court of Appeal hearing which will alter Ballenline's possessory rights to the farm. However, the Court of Appeal hearing is dealing with an appeal of the removal of a *lis pendens* which had been registered by Mrs. Smith as part of her unsuccessful litigation against ACC and the Receiver and also with the matter of the costs of her unsuccessful litigation against ACC and the Receiver. It has nothing to do with the ownership of the farm, which has been finally settled, yet Mrs. Smith led Barrett J. to believe that that not only was the farm 'my property' which is a patent lie, but also that the future hearing in the Court of Appeal in somehow impacted on the rights of a third party purchaser of the

farm (Ballenline Limited) to occupy its own land. Even if Mrs. Smith were to be successful in her appeal on the *lis pendens* issue, her recourse will be in damages against ACC and/or the Receiver. Ballenline has no connection whatsoever with this Court of Appeal hearing. Nothing could be further from the truth than to imply, as Mrs. Smith did in this hearing, that the appeal impacted on the possessory rights of Ballenline Limited. In this respect, and as is clear from the transcript, Mrs. Smith, who was being assisted at that hearing by Mr. Murphy, clearly misled the High Court in order to obtain a completely unjustified injunction.

22. She also misled Barrett J. by stating that the fifth, sixth and seventh named defendants in the proceedings before this Court and before Barrett J. were aware of the Court of Appeal hearing. Again nothing could be further from the truth, since they were not aware, nor should they have been aware of the proceedings, since they were not even parties to the Court of Appeal proceedings. It must be remembered that in misleading Barrett J. in this manner, Mrs. Smith did so in the belief that she was deliberately disobeying a court order (the Isaac Wunder Order).

Mrs. Smith takes the law into her own hands

23. However, the misconduct of Mrs. Smith did not stop there. This is because having obtained the Order from Barrett J., she seems to have believed that, although she had no ownership interest in the farm, she was somehow entitled to enforce a Court order against a third party, as if she was an arm of the State or had some ownership interest in the farm. This is because in her affidavit for this hearing she avers that on the 12th September, 2017:

"I say that efforts were made on foot of [Barrett J.'s] Order to execute entry on the property with a rock breaking machine to remove a gate and wall constructed for Ballenline Limited (*sic*)..."

24. In her evidence before this Court, Mrs. Smith confirmed that a neighbour of hers used a bulldozer type vehicle known as a 'Hi-Mac Rock Breaker' to seek to enter the property on the 12th September, 2017, even though Barrett J.'s Order did not give her, or her neighbours present on that date, any such right. The Order simply prohibited a company called Ballantine Limited from trespassing on the farm and gave no unconnected third party such as Mrs. Smith or her supporters the right to 'execute entry on the property', as she terms it. If ever there was an instance of someone 'taking the law into their own hands', this was such an instance. Thus, what had been up to this stage a cat and mouse game of litigation by Mrs Smith regarding her former farm, descended on the 12th September, 2017, into physical trespass and destruction of property requiring the involvement of gardaí. Not only was Mrs. Smith present, but also her McKenzie Friend Mr. Murphy, was present at the farm for these unsavoury incidents.

25. It was no surprise that within days, on the 15th September, 2017, Ballenline Limited would come before this Court to seek a stay on the *ex parte* order of Barrett J. and this Court had little hesitation in concluding then that Mrs. Smith must not have disclosed all relevant facts to Barrett J. as she is required to do when seeking *ex parte* relief and so it put a stay on Barrett J.'s Order returnable to the 3rd October, 2017.

Motion by Mrs. Smith challenging her former solicitor once again

26. Also returnable to the 3rd October, 2017, was a second motion issued by Mrs. Smith and dated 29th September, 2017. This was a motion to, *inter alia*, set aside this Court's stay on Barrett J.'s order and a motion to join Mr. Michael Collins, solicitor, as a defendant to the proceedings and seeking declarations that he breached his duty as a solicitor in his involvement in acting for Ballenline Limited in the purchase of the farm and preventing him from continuing to act in the registration of the Deed of Transfer of the farm in favour of Ballenline Limited.

Collateral attack by Mrs. Smith on previous judgments

27. It is clear that the essence of the plenary summons, and the two motions issued pursuant to that plenary summons which are before this Court, is an attempt by Mrs. Smith to thwart Ballenline Limited from exercising its ownership rights to the farm. In doing so, Mrs. Smith seeks to cast aspersions on the professional reputation of Mr. Collins, who was her solicitor for the acquisition of the farm with the help of a loan from ACC. This is notwithstanding the fact that the whole purpose of the previous unsuccessful litigation from 2012 to 2017 was to challenge the right of ACC and the Receiver to sell the farm (which it duly did to Ballenline Limited) and in particular that as part of that challenge there was an unsuccessful challenge to Mr. Collins' reputation. That challenge was in part a claim by Mrs. Smith that a condition precedent to the drawdown of her €2 million loan from ACC, namely a letter from Mr. Collins, was written without her authority. That challenged letter was one which confirmed that contracts for the sale of other lands owned by Mrs. Smith and her husband for €1 million were in place. To quote the judgment of Hogan J. in the Court of Appeal hearing in *Smith v. McCarthy & Others* [2017] IECA 168 at paragraph 22:

"So far as the claim against Mr. Collins was concerned, I find myself in agreement with the conclusions of Gilligan J. The claim to the effect that the letter of November 26, 2007 was unauthorised amounts to a collateral attack on the earlier ruling of Kelly J. in February 2012 and, absent any further explanation, this issue cannot be re-litigated under a different guise in these proceedings. It is, moreover, clear in any event that the plaintiff was most anxious to drawdown the loan proceeds and it therefore cannot realistically be alleged that she was not aware of the contents of the letter of November 26, 2007. She either knew or must have known that under the express terms of the loan offer a certificate to this effect from her solicitor was a condition precedent to that drawdown, so that in these circumstances her drawn down of the funds must be taken to amount to a tacit acceptance that her solicitor had certified to this effect."

28. The claim by Mrs. Smith in her Notice of Motion before this Court that she is entitled to an order preventing Mr. Collins from acting for Ballenline Limited in the purchase of the property from the Receiver is similarly without any basis, since the fact that a solicitor acted for a previous owner of a farm (Mrs. Smith), does not prevent him or her from acting for a future owner of the farm (Ballenline Limited), when it purchases it from someone other than that previous owner (the Receiver). This claim, to adopt the wording of Hogan J., amounts to a collateral attack by Mrs. Smith on the earlier rulings of the High Court regarding this farm, but in this case it is not just the earlier ruling of Kelly J., but also the rulings of O'Regan J., Gilligan J., the Court of Appeal and this Court, in an effort once again to seek to thwart the sale to, or the use of the farm by anyone other than Mrs. Smith

29. This Court has already determined, on the 21st July, 2017, that Mrs. Smith's litigation against ACC Bank and the Receiver involved an 'abuse of process upon abuse of process'. It therefore seems clear that Mrs. Smith's decision to litigate, against these new defendants, essentially the same issue, namely her desire to prevent the sale of the farm by the Receiver and her claim that Mr. Collins was to blame for her taking on the loan and so he should not be involved in the purchase by Ballenline Limited of the farm, is an 'abuse of process' upon what has already been determined to be an 'abuse of process upon abuse of process.'

30. In relation to the claims against Mr. Collins now, it is relevant to note how Gilligan J. described the previous claims against Mr. Collins regarding the suggestion that he had issued the letter to ACC without Mrs. Smith's instruction. This is based on a transcript from the DAR of his *ex tempore* judgment of 18th April, 2016:

"I think it is very unfortunate that such serious allegations were levelled against Mr. Collins, particularly the allegation of fraud. Had Ms Jane Smith gone to a person who was legally qualified she would have been advised that it is unethical to maintain a claim for fraud against a professional party unless there is some basis by way of expert evidence or independent evidence to back up such a claim and no such evidence has been referred to or has been forthcoming in this matter, in effect to allege fraud against Mr. Collins is a slur on his professional practice and his character. As I say having regard to the view I have arrived at it is most unfortunate that these allegations were ventilated. In any event I am quite satisfied for the reasons I have indicated there is no case for Mr. Collins to answer and I am also satisfied the proceedings are an abuse of process..."

31. Despite these previous scandalous allegations against Mr. Collins, Mrs. Smith continues to use this Court to pursue these allegations against him, since at paragraph 10 of her affidavit of the 29th September, 2017, for the proceedings before this Court, she avers:

"I say that the High Court and the Court of Appeal have rejected my claims and take the view that I had notice of the letter in question or must have known it was presented to the ACC bank due to a need for finance in the purchase of the [farm]. I say that I retain my position as regards the notice of the letter."

32. As with the previous unsubstantiated allegations against Mr. Collins dealt with by Gilligan J., Mrs. Smith is once again pursuing similar unsubstantiated allegations against Mr. Collins in pursuit of her obsession with thwarting the sale or use of what she still regards as 'her property'. Now that ACC and the Receiver have managed to escape from being Mrs. Smith's litigation targets, Mr. Collins' professional reputation and Ballenline Limited are the current targets who are suffering collateral damage in Mrs. Smith's unending quest, with the assistance of Mr. Murphy, to regain the farm.

33. It is also relevant to note that Mrs. Smith has no financial incentive to stop bringing hopeless litigation and inflicting financial loss on innocent third parties and the taxpayer (in the case of the State defendants), since she has averred in her affidavit that she has no financial resources. This means costs orders against her are meaningless. Without any financial disincentive for her to take hopeless litigation (and mislead High Court judges in the process), the only other way to stop Mrs. Smith from wasting public and private money is by court order.

Conclusion regarding Mrs. Smith

34. For the reasons set out above, this Court refuses the relief sought by Mrs. Smith in both her motions. The bringing of these motions amounts to an abuse of process. In order to ensure that Mrs. Smith, and anyone connected to her, do not seek to litigate her grievance over the loss of her farm ever again, this Court will also issue an expanded Isaac Wunder Order against her. It will specify that only the President of the High Court can provide consent to the issue of proceedings, to avoid a situation where Mrs. Smith seeks to obtain consent from a High Court judge who might not be familiar with the history of dispute. It will also specify that the Central Office is notified of the making of this Order and that the restriction applies to proceedings relating to the farm and it is not limited to named defendants:

Mrs. June Smith, and anyone connected with her with notice of this Order and anyone acting in concert with her, be restrained forthwith from issuing or causing to be issued any motions, applications or proceedings of any type (in whatever Court or forum) against any party relating in any way to or touching upon the lands comprised in Folios LS5608, LS5548, LS30277F and LS28061F of the Register of County Laois, without the prior leave of the President of the High Court, the proposed defendants to any such proceedings having been put on notice of any application for such leave.

If any such proceedings are issued or caused to be issued by Mrs. Smith without leave of the President of High Court, the defendants are not required to appear or to take any steps in relation thereto and any proceedings so taken shall be treated as void and of no effect.

The Central Office of the High Court is to be notified of the making of this Order.

In light of the right of every citizen to have access to the courts, it is important to note that this Order does not remove that right, but rather requires Mrs. Smith to seek the consent of the President of the High Court before she litigates ever again regarding the farm.

Conclusions regarding the McKenzie Friend

35. In the judgment of the 21st July, 2017, this Court expressed the view that Mr. Murphy's involvement in the abuse of process upon abuse of process (at that stage) was sufficient to warrant an Isaac Wunder type order being made against him in his role as a McKenzie Friend. However, ACC did not wish to seek such an Order since it would have simply involved the bank in expending more costs if there had been an appeal of that order. It is now clear that, at that time, ACC was on the cusp of selling the farm and so it was no doubt anxious to end their connection with Mrs. Smith and her McKenzie Friend, Mr Murphy and the years of litigation which had no doubt cost it a considerable amount of money and legal costs which it had no hope of ever recovering from Mrs. Smith, even though it won its litigation.

36. However, since that judgment in July we have had a further 'abuse of process' upon the previous '*abuse of process upon abuse of process*', and upon which Mr. Murphy advised. It is clear that this Court's negative views of Mr. Murphy's role in the previous abuse of process has had no impact upon his further involvement in the litigation of this dispute, just as it has had no impact upon Mrs. Smith. This is because after that judgment, Mr. Murphy has continued to assist Mrs. Smith in the proceedings issued against Ballenline Limited and the hearing before Barrett J. Thus, he provided Mrs. Smith with McKenzie Friend assistance when she misled Barrett J. in the belief that she was deliberately disobeying a court order (the Isaac Wunder Order). In all the hearings before this Court, Mr. Murphy has provided active advice to Mrs. Smith regarding her submissions in court and she has confirmed that he assists her with her written submissions. Indeed, although Mrs. Smith gave sworn evidence that she was not paying Mr. Murphy in the hearing of this matter for the judgment of this Court delivered on the 21st July, 2017, it is relevant to note that Mr. Murphy has such a busy 'practice' as a McKenzie Friend (he having advised this Court that he had several other litigants for whom he acted as a McKenzie Friend), that the reason he was late for '*executing entry on*' on the farm on the 12th September, 2017, was because he was delayed in Court acting as a McKenzie Friend for another litigant, in yet another High Court vacation sitting, this time before O'Connor J.

37. It is also relevant to note that in the proceedings before this Court, Mr. Murphy abused his position as a McKenzie Friend, since as is clear from Practice Direction HC72, that role is restricted to taking notes and providing other assistance to a lay litigant. Yet Mr. Murphy interrupted and sought to disagree with counsel for Ballenline Limited while counsel was making submissions to the Court, despite the fact Mr. Murphy has no right of audience in court. In this regard, the role of a McKenzie Friend is described by Macken J. in the case of *R.D. v. McGuinness* [1999] 2 IR 411 at 421 as follows:

"I am satisfied that in so far as this jurisdiction is concerned, all other things being equal and in relation to matters other than the matters of a matrimonial nature or of a nature which the law prescribes should be heard *in camera*, the Supreme Court is satisfied and has decreed that a party who prosecutes proceedings in person is entitled to be accompanied in court by a friend who may take notes on his behalf, quietly make suggestions and assist him generally during the hearing, but who may not act as an advocate."

38. Practice Direction HC72 is consistent with this statement. It states:

"1. Litigants may obtain reasonable assistance from a lay person, sometimes called a McKenzie friend (MF). Litigants assisted by MFs remain litigants in person. MFs have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation. They have no entitlement to payment for their services.

2. In court MFs may:-

- (1) Provide moral support for litigants;
- (2) Take notes;
- (3) Help with case papers, subject to paragraph 6 below;
- (4) Quietly give advice on any aspect of the conduct of the case.

3. MFs may not:-

- (1) Address the court, make oral submissions or examine witnesses. MFs do not have a right of audience or a right to conduct litigation. In exceptional circumstances a court may permit an MF to address the court. Such circumstances will be rare.
- (2) Receive any payment for their services.
- (3) Act as the litigants' agent in relation to the proceedings;
- (4) Manage litigants' cases outside court, for example, by signing court documents.

4. Whilst litigants may receive reasonable assistance from MFs the court retains the power to refuse to permit such assistance. The court may do so where it is satisfied that the interests of justice and fairness do not require the litigant to receive such assistance. Where the court permits a litigant to receive assistance from a MF, it may regulate the manner in which assistance is provided. It may withdraw the permission if of opinion that the administration of justice is being impeded by the MF. If requested by the court a MF must provide his or her name, address and contact details.

5. Only one MF may assist a litigant in court.

6. The attention of litigants and proposed MFs is drawn to the provisions of section 58 of the Solicitors Act 1954 as amended which makes it a criminal offence for an unqualified person, as defined in the Act, to draw or prepare a document relating, *inter alia*, to any legal proceeding either directly or indirectly for or in expectation of any fee, gain or reward.

7. This Practice Direction shall come into force on 1st October, 2017."

39. It is clear therefore that the status of McKenzie Friend is a privilege which is conferred by the court in certain instances at the absolute discretion of the court. Critically the operation of the McKenzie Friend system is one which is subject to the court's view that the administration of justice is not being impeded. In this case, there can be no doubt that not only is the administration of justice being impeded, but there is an abuse of process occurring with the active assistance of the McKenzie Friend. For all of these reasons, and in order to seek to ensure that taxpayers' money is not wasted by vexatious litigation brought with the assistance of Mr. Murphy, and that deserving litigants do not have their hearings delayed by never ending frivolous and vexatious litigation, this Court will make Disqualification Order against Mr. Murphy from acting as a McKenzie Friend.

Disqualification Order against a McKenzie Friend

40. In making such an Order against a McKenzie Friend, rather than a litigant, this Court relies on the same inherent jurisdiction which Keane C.J. stated was the basis for an Isaac Wunder Order in *Riordan v. An Taoiseach* [2001] 3 IR 365 at 370:

"It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation."

41. In making the order in the form of a Disqualification Order, this Court relies on the Supreme Court judgment in *O'Shea v. Butler* [2017] IESC, where MacMenamin J. stated at paragraph 86 that:

"The function of a McKenzie friend is to further the interests of justice. It is to achieve, and achieve only, a level playing field, and to ensure a fair hearing. A McKenzie friend cannot be permitted to act in a manner which defeats the interests of justice. Nor can such a person be permitted to act in a manner which creates a situation where the litigation before a court is actually conducted in a manner which is vexatious, or in breach of the rules of procedure which govern the manner in which advocates may act in court. A judge is entitled to rule and make arrangements such that any breach of

these rulings may be properly sanctioned.

At minimum, this may be done by requesting, and if necessary directing, a McKenzie friend, or other person seeking to act in this way, to desist from interruption. If there are persistent interruptions, contrary to a judge's direction, a judge may properly request persons to remove themselves from a position proximate to the litigant, or take such other measures as are necessary in the interests of fair procedures and justice. This may include disqualifying a person from acting as a McKenzie friend, or asking such person to remove themselves from court altogether. It goes without saying that a judge is entitled to direct any person, persons, or groups of persons, to remove themselves from court, if their presence has the effect of hindering or obstructing the administration of justice under the Constitution. I do not say this has arisen in this case."

42. It is clear from these cases that this Court, not only has the power to disqualify a McKenzie Friend, but that this Court has a duty to disqualify a person from acting as a McKenzie Friend where his or her actions as a McKenzie Friend are defeating the interest of justice, since to quote MacMenamin J., such a person cannot be 'permitted' to so act.

43. This Court concludes that in order to ensure that the process of the court is not abused by repeated, groundless and vexatious litigation, it is appropriate to issue a Disqualification Order in this case. Indeed, this Court would be failing in its duty if it did not disqualify McKenzie Friends from assisting lay litigants, where those McKenzie Friends have previously assisted lay litigants in an abuse of process, which by its very nature defeats the interests of justice. In doing so, this Court seeks to ensure that other citizens' rights of access to the courts (including other lay litigants who are as entitled as Mrs Smith to access the courts) are not reduced by the abuse of court resources by others such as Mrs. Smith assisted by Mr. Murphy. This Court also seeks to ensure that taxpayers' funds are not abused, whether in the form of court resources or the expenditure of lawyers' fees for the State defendants, as in this case, being sued by Mrs. Smith. Accordingly, on its own motion, this Court makes the following Disqualification Order against Mr. Murphy:

"Mr. William Murphy is hereby disqualified with immediate effect from acting as a McKenzie Friend, alone or in concert with any other person, or otherwise providing any assistance or advice to any person (whether or not he has previously assisted for that person) in relation any proceedings in any court or forum, without the consent of the President of the High Court and that in seeking such consent he is required to notify the President of the High Court of the existence of this Order.

The Central Office of the High Court is to be notified of the making of this Order."

44. It is to be noted that, as with the Isaac Wunder Order against Mrs. Smith, this Disqualification Order is not the complete removal of the privilege of acting as a McKenzie Friend for ever or in all situations, but rather a restriction on that privilege, since it is subject to the consent of the President of the High Court.