[2019] IEHC 480

THE HIGH COURT

2017 No. 8012 P.

BETWEEN

BEN (OTHERWISE BERNARD) GILROY

PLAINTIFF

AND

CLAIRE CALLANAN

ALLIED IRISH BANKS PLC

BEAUCHAMPS SOLICITORS

PHILIP BUTLER

SARAH McLAUGHLIN

ROBERT BERGIN

DEFENDANTS

JUDGMENT of Mr. Justice Hunt delivered on the 11th day of January, 2019

The plaintiff's claim

1. The plaintiff in this case is a self-represented litigant. He issued a plenary summons against the defendants on the 5th September, 2017. The general indorsement of claim contains 12 paragraphs. The plaintiff's complaints against all of the defendants originate in the assertion pleaded in paragraph 2. The plaintiff claims that the first-named defendant, who is a practicing solicitor and partner in the third-named defendant firm, wrongly and without proper authority joined the plaintiff as a defendant to proceedings between *Allied Irish Banks Plc v. Seamus McQuaid*, Record No. 2016/1920S and COM CT 2016/133, months after the trial of that action. I will refer to this as "the McQuaid litigation". In addition, paragraph 5 alleges that the first-named defendant acted in the McQuaid litigation on the instructions of the fourth-named defendant *"knowing no such authority to bind the party to bring such an application existed, thus being a tortious act and did abuse and flagrantly violated "his rights"."*

2. In the McQuaid litigation, the plaintiff bank was represented by the third-named defendant firm. It appears that the first-named defendant solicitor was primarily responsible for the conduct of that litigation by that firm on behalf of the plaintiff bank. The fourth-named defendant is an employee of that bank, and the fifth and sixth named defendants are sued as company secretaries of the bank.

3. The plaintiff's complaint against second-named defendant bank is based in paragraph 3 of the indorsement of claim. It is asserted that the second-named defendant *"did egregiously trespass against the plaintiff and his rights, or in the alternative sat by and allowed an employee, with no authority, egregiously trespass against the plaintiff and his rights, in the name of Allied Irish Banks plc.,…."* The face of the summons shows that in respect of these complaints, the plaintiff elected to sue *"Allied Irish Banks plc of Bank Centre, Ballsbridge, Dublin 4".*

4. The plaintiff's claim against the fourth-named defendant is based in paragraph 5 of the indorsement of claim. This alleges that *"The fourth named defendant did instruct the first and third named defendants to take committal proceedings against the plaintiff in* (the McQuaid litigation). *He did so in the name of the second named defendant, without any authority to bind the second named defendant to his actions*." Paragraph 6 of the indorsement of claim contains a further allegation against the fourth-named defendant, namely that *"the fourth named defendant did ground such an application, by way of affidavit, the said committal proceedings, without any proper authority being a tortious act, …".*

5. The claim against the third-named defendant is set out at paragraph 4 of the indorsement of claim. This asserts that *"the third named defendants did permit a partner in their firm, namely the first named defendant, egregiously trespass against the plaintiff, causing him harm, loss of reputation and good name and ultimately defamed him and flagrantly violated his rights without any proper authority or instructions from their clients, did join the plaintiff as a defendant to "the action"* (the McQuaid litigation) *same being a tortious act".* In addition, paragraph 5 alleges that this defendant acted on the instructions of the fourth-named defendant *"knowing no such authority to bind the party to bring such an application existed, thus being a tortious act and did abuse and flagrantly violated "his rights"."*

6. The case against the fifth and sixth named defendants is set out at paragraphs 8 to 10 of the indorsement of claim. Paragraph 8 asserts that at all material times, the fifth and sixth named defendants *"were acting as company secretaries for the second named defendant. Some of their duties would and must include the recording of the minutes of the AGM's and other general meetings and board meetings, and maintaining the company's minute books."*

7. Paragraph 9 claims that these defendants *"knew or in the alternative ought to have known, that the instructions to attach the plaintiff as a defendant to "the action", were not properly approved by the board, if approved at all, but were in fact instituted by rogue employees and/or rogue solicitors. Such action did abuse and flagrantly violated the plaintiff's rights."*

8. Paragraph 10 alleges in the alternative that if the actions of these defendants were, in fact, approved by the board of the second-named defendant bank, then the instructions to join the plaintiff to the above-recited proceedings *"should have been an initiated by registered persons in the company registration office as required by law. In any event the said proceedings to attach the plaintiff months after the trial of the action "was a tortious act" which flagrantly violated his rights, and then resulted in an egregious trespass against the plaintiff causing him harm, loss of reputation and good name and ultimately defamed and endangered him."*

9. Paragraph 7, 11 and 12 of the indorsement of claim apply to all of the defendants. Paragraph 7 claims that *"all defendants knew or in the alternative ought to have known that the applications brought against the plaintiff, were brought without any proper authority to bind the second named defendant to such action, as required by statute and European law."* Paragraph 11 asserts that *"irrespective who initiated (sic) the ill-founded joining of the plaintiff to "the action", all defendants knew or in the alternative ought to have known, that any proceedings to attach a defendant months after the trial of "the action" was a tortious and grossly negligent act which did abuse and flagrantly violated "his rights"*." The latter allegation is repeated in paragraph 12 in relation to *"a further application to the jail the plaintiff".*

10. Based on the foregoing matters, the relief claimed in the plenary summons against all defendants is set out as follows:-

> *"(a) Damages for trespass, trespass on the case and wrongful actions damages which are continuing and accruing*
>
> *(b) Damages for loss of reputation and good name damages which are continuing and accruing*
>
> *(c) Damages for negligence and malfeasance damages which are continuing and accruing*
>
> *(d) Damages for stress and anxiety damages which are continuing and accruing*
>
> *(e) Damages for tort (negligence) damages which are continuing and accruing*
>
> *(f) Damages for abusing and violating the rights of the plaintiff, which are continuing and accruing.*
>
> *(g) Punitive damages*
>
> *(h) Actual damages which are continuing and accruing.*
>
> *(i) Costs*
>
> *(j) And any such other order as the court deems fit."*

Background

11. It is readily apparent from a perusal of the general indorsement of claim that this plenary summons was issued as part of a broader context of previous interaction between the plaintiff and the defendants sued by him in these proceedings. That context is comprehensively set out and explained in the approved judgment of Haughton J. delivered on the 10th September, 2018 in the McQuaid litigation referred to above. I gratefully rely upon and accept the detailed history as recited at paragraphs 1 to 67 of that judgment. It is sufficient for present purposes to note that the various controversies resolved by the orders issued by Haughton J. on foot of his judgment and findings have their foundation in the decision by the plaintiff to interpose himself in the McQuaid litigation, after Haughton J. had entered summary judgment in favour of the bank against Mr. McQuaid on the 6th February, 2017 in the sum of €3,256,217.49, together with interest pursuant to statute from the date of judgment, and costs. Haughton J. granted a stay on execution of the judgment for a period of twelve months with liberty to the plaintiff to apply, and that judgment and order was not appealed. The stay was lifted by Haughton J. on the 28th April, 2017, when Mr. McQuaid refused to provide undertakings in respect of the preservation of his assets. At that point, the plaintiff assisted Mr. McQuaid in the McQuaid litigation as a "McKenzie friend".

12. Thereafter, the plaintiff and Mr. McQuaid participated in a scheme to transfer certain properties out of the reach of the bank and an associated mortgage bank, by the execution of voluntary transfers to a trust known as "*The Morrigan Trust*". This entity was established by the plaintiff and another person. It was administered by a company of which the plaintiff was a director, namely *"the Morrigan Private Settlement Trust Operations Limited"*. Understandably, this development provoked the issue of proceedings by the banks seeking urgent injunctive relief against the plaintiff and other relevant parties. In that context, the plaintiff was joined as a defendant by order of McGovern J. on the 30th May, 2017, and was required to disclose on affidavit all assets, legal or equitable, in which Mr. McQuaid had any interest and which the plaintiff had at any time received, controlled or managed. On the 19th June, 2017, the plaintiff undertook to McGovern J. to disclose certain matters as recorded in the order of McGovern J. of that date. It appears from the order that the plaintiff undertook to comply with the earlier order of the 30th May, 2017 within ten days.

13. Unfortunately, events subsequent to the 19th June, 2017 resulted in the issue of a further notice of motion by Allied Irish Banks plc on the 10th July, 2017 seeking, *inter alia*, the attachment and committal of the plaintiff. This resulted in the plaintiff submitting to the High Court an affidavit sworn by him on the 27th June, 2017. The contents of this affidavit led to the plaintiff pleading guilty to a criminal contempt on the 25th July, 2017. McGovern J. extended credit to the plaintiff for the fact that he had admitted the commission of criminal contempt, and had unreservedly apologised to the court for the contents of that affidavit and for his behaviour. McGovern J. considered that community service was an appropriate alternative to the term of imprisonment that would otherwise have been justified in the absence of mitigating factors. On the 6th October, 2017 McGovern J. ordered that in lieu of a sentence of three months' imprisonment, the plaintiff perform 80 hours community service, and in default thereof be committed to prison for a period of three months.

14. The plenary summons in these proceedings was, as already noted, issued on the 5th September, 2017, against the background outlined above. On the same date, the plaintiff wrote to the first-named defendant, including therein terms that were both offensive and disturbing. This was followed by an email from the plaintiff to the third-named defendant firm on the 11th October, 2017, wherein he appeared to resile from the apology furnished to McGovern J. in respect of his admitted contempt of court. A letter from the plaintiff to the third-named defendant firm concluded with the following overt threat:-

> *"P.S. Please note that anybody and I mean anybody causes me any further harm or makes any attempts to imprison me they had better be very well insured."*

15. In the light of these developments, McGovern J. considered that there was a further issue of criminal contempt: see paragraph 30 of the judgment of Haughton J. Subsequent events culminated in McGovern J. hearing and determining a second criminal contempt charge on the 21st October, 2018. Once more, the plaintiff was found guilty of criminal contempt: see paragraph 43 of the judgment of Haughton J. McGovern J. measured the appropriate punishment for the second contempt of court as 28 days imprisonment. However, he received another apology in open court as mitigation, this time from the plaintiff to the first-named defendant. He also received undertakings from the plaintiff as to his future conduct of the proceedings. McGovern J. suspended the proposed term of imprisonment on the basis that the plaintiff would comply with his undertakings, and would complete the previous community service

order by the 10th of May 2019.

16. The plaintiff appealed to both the Court of Appeal and the Supreme Court from the joinder order made by McGovern J. on the 30th May, 2017. An extension of time to appeal that order was refused by the Court of Appeal on the 26th February, 2018, on the basis that the plaintiff had failed to establish an arguable case that the High Court did not have inherent jurisdiction to join him as a party to the proceedings for the purposes of the enforcement by the court of its own order. In this instance, the order to be enforced was the grant of summary judgment by Haughton J. in the McQuaid litigation. On the 29th June, 2018, the Supreme Court refused an application to admit an appeal from the decision of the Court of Appeal, also determining that the plaintiff had not made out an arguable case, and was therefore not entitled to an order extending the time within which to appeal. Leave to appeal to the Supreme Court was therefore refused.

17. I do not propose to dwell on any of the subsequent developments set out thereafter in the judgment of Haughton J. It is sufficient to say that Haughton J. deemed that the totality of the conduct of the plaintiff required the making of the various orders set out at paragraph 158 of his judgment. I have referred to portions of the judgment of Haughton J. only insofar as I believe that some aspects of the background to the issue of the plaintiff's plenary summons in September 2017 are relevant to the merits of the applications made by the defendant for dismissal of the instant proceedings.

This application

18. The first and third named defendants seek the following orders:-

> *(1) An Order dismissing the Plaintiff's claim as frivolous, vexatious and/or disclosing no cause of action, pursuant to Order 19, Rule 28 RSC and/or pursuant to the inherent jurisdiction of the High Court as being unsustainable and/or bound to fail.*
>
> *(2) An Order dismissing the Plaintiff's claim as being unnecessary, scandalous or as tending to embarrass or delay pursuant to Order 19, Rule 27 RSC.*
>
> *(3) An Order dismissing the Plaintiff's claim as an abuse of process pursuant to the inherent jurisdiction of the High Court.*
>
> *(4) An Order restraining the Plaintiff from issuing further proceedings against the first or third named Defendant, save with the prior permission of the High Court.*
>
> *(e) An Order restraining the plaintiff from participating and assisting or otherwise engaging in litigation whether in the capacity of "McKenzie Friend" or otherwise.*

19. The second-named defendant seeks the following orders:-

> *(1) An Order dismissing the Plaintiff's claim as frivolous, vexatious and/or disclosing no cause of action, pursuant to Order 19, Rule 28 RSC and/or pursuant to the inherent jurisdiction of the High Court as being unsustainable and/or bound to fail.*
>
> *(2) An Order dismissing the Plaintiff's claim as being unnecessary, scandalous or as tending to embarrass or delay pursuant to Order 19, Rule 27 RSC.*
>
> *(3) An Order dismissing the Plaintiff's claim as an abuse of process pursuant to the inherent jurisdiction of the High Court.*
>
> *(4) An Order restraining the Plaintiff from issuing further proceedings against the second-named Defendant or any employee or officer of Allied Irish Banks plc, save with the prior permission of the High Court.*
>
> *(5) An Order restraining the plaintiff from participating and assisting or otherwise engaging in litigation against the second-named Defendant, whether in the capacity of "McKenzie Friend" or otherwise.*

20. The fourth, fifth and sixth-named defendants seek the following orders:-

> *(1) An Order dismissing the Plaintiff's claim as disclosing no cause of action and being frivolous, vexatious pursuant to Order 19, Rule 27 of the Superior Court Rules.*
>
> *(2) An Order dismissing the Plaintiff's claim as frivolous, vexatious and/or disclosing no cause of action, pursuant to Order 19, Rule 28 of the Rules of the Superior Courts.*
>
> *(3) An Order dismissing the Plaintiff's claim as an abuse of process pursuant to the inherent jurisdiction of the High Court.*
>
> *(4) An order dismissing the Plaintiff's claim as frivolous, vexatious and an abuse of process pursuant to the inherent jurisdiction of the Court.*

21. Mr. Lyndon McCann S.C. appeared on behalf of the first and third-named defendants. He referred to various aspects of the history of these proceedings, the relevant parts of which are set out above. He then analysed the contents of the indorsement of claim on the plenary summons issued by the plaintiff. In essence, he submitted that these proceedings amounted to a collateral attack on the final orders made in the previous proceedings, and as such were plainly an abuse of the process of this Court. He submitted that it is not now open to the plaintiff to challenge either his joinder as a defendant to the proceedings between the bank and Mr. McQuaid, or the subsequent enquiries as to whether or not he had committed criminal contempts of court. He pointed to the fact that the plaintiff had, in fact, admitted one instance of criminal contempt during the proceedings before McGovern J.

22. Mr. McCann relied upon the decision of the Supreme Court (per Keane J., as he then was) in *Moffitt v. Bank of Ireland* (1999). This judgment establishes the principle that even if a solicitor arranges for the swearing of an affidavit that subsequently turned out to be false, this affords no cause of action whatever against the solicitor, where the solicitor simply acted upon his instructions. Such instructions may be correct or may be incorrect, but the solicitor is nonetheless obliged to act upon them. If the instructions turn out to be false, then a cause of action may arise against the solicitor's client. Mr. McCann also referred to *Barry v. Buckley* [1981] I.R.

306 and *Lopes v. Minister for Justice, Equality and Law Reform* [2014] IESC 21.

23. On behalf of Allied Irish Banks plc, Mr. Paul Fogarty effectively adopted Mr. McCann's arguments, and added that the current proceedings were based on orders made in the previous court proceedings, all of which were either not appealed, or unsuccessfully appealed. He relied upon the application of the doctrine of res judicata and on the plaintiff's admission that he was guilty of criminal contempt in the course of those previous proceedings. He also referred to the application of the rule in *Henderson v. Henderson,* as referred to and explained by the Supreme Court (per Murray C.J.) in *Re Vantive Holdings* [2010] 2 I.R. 118.

24. On behalf of the fourth, fifth and sixth-named defendants, Ms. Gemma Carroll also adopted the submissions of Mr. McCann and Mr. Fogarty. She placed additional emphasis on the applicability of the doctrine of estoppel to the claims of the plaintiff in these proceedings, submitting that they were precluded by operation of the judgments in previous litigation between the same parties. She argued that the current proceedings amounted to a further challenge to findings already made in previous litigation between the same parties.

25. Mr. Gilroy's submissions began with a query to Mr. Fogarty as to the "*CRO registration number of the alleged bank that he believes he is representing here today*". Mr. Fogarty responded that he appeared for the party that the plaintiff had elected to sue in his plenary summons. In that regard, as noted above, the plaintiff nominated "*Allied Irish Banks plc*" as the second named defendant. The plaintiff went on to explain this query by asserting that there were a lot of companies associated with AIB plc, some of which did not hold banking licences. He stated that this was "*a huge part of my case where the instruction came from. That is why I am claiming that the proper authority was not here*". He went on to allege that "*in the last court, I was denied due process*". He continued his submission on the theme that the insertion of a comma or some other minor alteration into "*Allied Irish Banks plc*" might have the result that he was dealing with and suing an entirely different entity. He laid particular emphasis on the fact that somebody acting on behalf of the fourth, fifth and sixth-named defendants had apparently inserted a comma into the name of that bank in the course of the proceedings before Haughton J.

26. As I understand his submission, one of the potential consequences of this action was that he was now suing an unlicensed bank. He produced a company's registration office printout illustrating that there were "*different companies with Allied Irish Banks plc*". He submitted that issues relating to the identity of this defendant and whether or not it held a banking licence could only be decided through discovery and cross-examination. The plaintiff opened the cases of *McDonnell v. Ireland & Ors* [1998] 1 I.R. 134 at 156, *Meskell v CIE* [1973] I.R. 121, *Sun Fat Chan v. Osseous Limited* [1992] 1 I.R. 425, *Barry v. Buckley, Kiely v. Minister for Social Welfare* [1977] 1 I.R. 267, *Grant v. Roche Products* [2008] 4 I.R. 679 and *JSC BTA Bank v. Mukhtar Ablyazof & Ors* [2011] EWHC 11 36 Comm.

27. The plaintiff submitted that he was at least entitled to put in a statement of claim laying out his various complaints about the defendants. He repeated his complaint about being pursued by "*a bank with no licence*" or, alternatively, "*a licensed bank that didn't have standing*". These matters appear to me to be the primary complaints that the plaintiff wishes to pursue in his proceedings at this time.

Order 19, Rule 28

28. As indicated by Clarke J. at p. 308 of the judgment of the Supreme Court in *Lopes v. Minister for Justice* [2014] 2 I.R. 301, in considering an application of this type, the first resort is to "*established procedural law including the rules of the relevant court*". Clarke J. noted that "*the purpose of any asserted inherent jurisdiction must, therefore, necessarily, involve a situation where the court enjoys that inherent jurisdiction to supplement procedural law in cases not covered, or adequately covered, by procedural law itself".*

29. The application under Order 19, Rule 28 is designed to deal with a case where, assuming that the facts are as asserted in the pleadings, however unlikely such assertions might appear to be, the case is nonetheless frivolous or vexatious. By contrast, a dismiss under the inherent jurisdiction arises where it can be established that there is no credible basis for the suggestion that the facts are as asserted in the pleadings, with the consequence that the proceedings are bound to fail on the merits.

30. In this context, the term "*frivolous and vexatious*" simply means that because it has been established that the plaintiffs have no reasonable chance of succeeding, it is frivolous and vexatious for them to bring or maintain such proceedings which have no or no reasonable chance or prospect of success.

Discussion

31. Having considered the affidavits opened in the course of the hearing and the oral and written legal submissions made by each party, having regard to the background and circumstances leading to the issue of the plenary summons under discussion in this application, I am satisfied that for the reasons advanced by counsel on behalf of the various defendants that these proceedings must be dismissed in the case of each defendant on the basis of the provisions of Order 19, Rule 28.

32. Having examined the plaintiff's pleadings in the context in which they were issued, and assuming that any factual assertions are resolved in his favour, I am nonetheless satisfied that his claims are frivolous and vexatious in the sense set out above, and are bound to fail. The starting point for this conclusion is that the plaintiff issued these proceedings five days before Haughton J. delivered his judgment in the Commercial Court proceedings refereed to above. That judgment clearly determined that Ms. Callanan and Beauchamps did not act on an independent basis in their application to join the plaintiff to the proceedings between the bank and Mr. McQuaid. It plainly also establishes that both Ms. Callanan and Beauchamps acted with the authority and the instructions of Allied Irish Banks plc, acting through the agency of Mr. Butler: see the finding of fact set out at paragraphs 113 and 114 of the judgment, which contain the clear finding that Mr. Butler acted within the scope of his authority as an employee of the bank in instructing them to join Mr. Gilroy to the McQuaid litigation.

33. Consequently, the relief claimed at paragraph 5 of the indorsement of claim is no longer open to the plaintiff. In so far as there could ever have been a stateable claim in this respect, it has now been determined finally and unequivocally. The same observation applies to the allegation set out at paragraph 6 in relation to the subsequent committal application. I have seen nothing in the affidavit evidence in this case to displace the obvious and clear findings of Haughton J. in relation to the propriety of the joinder and committal applications made by the bank in view of the plaintiff's persistent and wrongful interference with the litigation between Allied Irish Banks plc and Mr. McQuaid. The claim made at paragraph 7 based on statute and European law is also unsustainable, for the reasons enunciated by Haughton J. at paragraphs 108 to 121 of his judgment. I agree with those observations, and for that reason hold that the claim set out in that paragraph of the summons must also fail.

34. The bank was fully entitled to act through the various employees who issued instructions on behalf of the bank to the bank's legal advisors to deal with the plaintiff's activities. He clearly colluded with Mr. McQuaid to frustrate legitimate steps taken by the bank to

recover the considerable amount of money owed to it by Mr. McQuaid. The bank obtained various orders, some of which were unsuccessfully appealed by the plaintiff, and all of which are now final and binding. I am satisfied that the bank, it's employees and it's solicitors were fully entitled to act as they did in taking all and any necessary steps required to obtain these orders.

35. The proper forum for any objections that the plaintiff had in relation to such matters was during the various hearings prior to these orders being made, or on appeal thereafter. It is not open to the plaintiff to re-litigate matters previously decided in those proceeding, or which might have been brought forward by him for decision within that context. He cannot now contest the propriety of these actions, which has been further confirmed by the findings of the Court of Appeal, and by the refusal of leave to appeal the relevant orders by the Supreme Court. No further route to challenge these orders or the process by which they were obtained is open to the plaintiff. This precludes the grant of relief based on paragraphs 11 and 12, which are based on assertions concerning the timing of the joinder application, and the making of the contempt allegation.

36. The plaintiff appeared before the High Court after he was properly joined to the McQuaid litigation on the application of the bank, after the plaintiff decided to meddle in the ongoing issues between the bank and Mr. McQuaid. In the course of that appearance, he twice committed criminal contempts of court, the first of which was admitted by him in open court. Having taken steps on each occasion to mitigate his position as a contemnor, he avoided the actual imposition of a prison sentence. All matters pertaining to the plaintiff's contempts of court have also been finally determined by order of a competent court, and may not now be the subject of further litigation.

37. It also follows that the claims against the fifth and sixth-named defendants are equally unstateable in these circumstances. It has not been denied by them that, as alleged by the plaintiff, they were employed by Allied Irish Banks plc in the capacity pleaded in paragraph 8. There is not a scintilla of evidence to suggest that the proceedings brought by the bank against the plaintiff were brought by "*rogue employees or solicitors*" as is now alleged in paragraph 9. I am satisfied that this is simply a spurious and invented assertion made by the plaintiff as the previous proceedings were coming to a close in order to continue by other means his campaign against the second-named defendant bank. There is no factual basis upon which the relief sought at paragraphs 8 and 9 could be granted against these defendants. Equally, for the reasons explained by Haughton J., there was no requirement that the fourth-named defendant or anybody else should have been "*registered persons in the Company Registration Office as required by law*" in connection with the previous proceedings, and the claim in paragraph 10 in that regard must also fail.

38. On the contrary, all of the affidavit evidence led in both this and the previous litigation establishes that these defendants acted properly on behalf of their employer in instructing the bank's solicitors to deal with the plaintiff's various activities in and around the McQuaid litigation. Consequently, I find the claims against the first and third-named defendants are completely unstateable. I am satisfied that the affidavit evidence establishes that the solicitors retained by the bank simply followed their instructions in pursuing the plaintiff, and that they were fully entitled so do in the light of his previous conduct. As the orders obtained by them are final and binding, there is no conceivable basis upon which the plaintiff could obtain the relief sought in paragraphs 2 and 4 of the indorsement of claim. Indeed, the plaintiff appears to accept by paragraph 5 that these defendants were instructed by Mr. Butler, a fact not denied by any of those defendants. In those circumstances, as there was no impropriety on the part of Mr. Butler, no wrongdoing can arise on the part of the solicitors instructed by him, for the reasons set out in the *Moffitt* decision referred to by Mr. McCann.

39. So far as the position of the second-named defendant bank is concerned, I am also satisfied that there is no possible substance in the matters pleaded against the bank in the plenary summons. The relief sought against the bank at paragraph 2 is unsustainable, as there was no underlying wrongdoing by any servant or agent of the bank as pleaded in that paragraph. What remains against the bank are the assertion and allegations made by the plaintiff in the course of the hearing of this application, when he was invited to lay out what he would wish to include if permitted to deliver a Statement of Claim, a document which he has failed to deliver for over a year to date.

40. His various complaints and theories about punctuation or capitalisation of the name of that financial institution carry absolutely no weight in the current context. It must be recalled that that context is that the plaintiff chose to become embroiled in the ongoing dispute between the bank and Mr. McQuaid and he is bound by any consequences of that voluntary course of action. These consequences included court orders to prevent him interfering with the legal process. Instead of letting matters rest there, he elected to issue these proceedings at a time when the proceedings before Haughton J. were coming to a close. I am satisfied that the sole inference to be drawn from this state of affairs is that the plaintiff issued these proceedings in order to leave open a further avenue of collateral challenge to the judgments and orders of McGovern J., and in the event of an unfavourable outcome in the impending judgment of Haughton J.

41. His various complaints as to the identity of the bank defendant might have some possible relevance in circumstances where a previous contractual relationship between the plaintiff and the bank gave rise to a subsequent legal dispute. They have no relevance whatsoever to a dispute which arose solely because the plaintiff unlawfully intervened in a contractual or legal relationship between third parties. As Mr. Fogarty presciently pointed out, the plaintiff sued an entity nominated by him, and that entity appeared in that suit, made no point as to identity, and defended the claim by bringing an application to have the claim dismissed. In either event, I am satisfied that the comma that might or might not appear in the name of this bank is a non-issue at this time, and insofar as it was ever in issue, has already been determined in the course of the proceedings before Haughton J. The time for ventilation of such issues has long since passed. The question of a banking licence is entirely irrelevant to a situation brought about solely by the activities of the plaintiff in this case. That was a matter for the bank customer, Mr. McQuaid, and not for an outside agency such as the plaintiff, who must bear the consequences of his intervention in the earlier litigation.

Conclusion

42. Therefore, I am satisfied that on the basis of the case as pleaded, and assuming proof of all factual matters set out therein, all claims identified in the plenary summons and statement of claim are bound to fail and, therefore, must be dismissed as being "*frivolous and vexatious*" within the legal sense of that term as outlined above. As I am satisfied that the procedural provisions of Order 19, Rule 28 are sufficient to resolve the application in favour of the plaintiff, I do not propose to consider whether to dismiss the proceedings pursuant to the inherent jurisdiction of the court, save to observe that given the background outlined above, I have no doubt that they could also be dismissed in exercise of the inherent jurisdiction to prevent abuse of process in the form of re-litigation of matters already decided in other proceedings, or which could have been brought forward in that context.

43. Finally, in the course of the hearing, the plaintiff also made the point that various affidavits delivered on behalf of the defendants should be struck out of the case because they set out the business address of the deponent and not their "*true abode*" as required by the relevant rule of court. As the deponents in question swore their affidavits for the purposes of their employer or the legal firm representing that employer, I am satisfied that their business address is their "*true abode*" in those circumstances, which have nothing whatever to do with their private capacity or residence. I am bound by, and fully agree with the approach of the Court of Appeal to this point in *Kearney v. Bank of Scotland plc and another* (23 February 2015) and *Allied Irish Banks and others v. Gibney* (9

November 2018). There is no possible or interest or benefit to the plaintiff in knowing the private residence of bank employees or solicitors in a case such as this.

44. There will be an order dismissing the plaintiff's claims against each of the defendants pursuant to the provisions of Order19, Rule 28 RSC on the basis that these claims are frivolous, vexatious and have no reasonable prospect of success.