

THE HIGH COURT

[2013 No. 6974 P]

BETWEEN

JOHN PHILIP QUEARNEY

PLAINTIFF

AND

ALLIED IRISH BANKS PLC.

DEFENDANT

Judgment of Mr. Justice McDermott delivered on the 18th day of December, 2015.

1. By plenary summons dated 8th July, 2013 the plaintiff claims relief for "gross negligence and misrepresentation" by the defendant, its servants or agents. In the General Indorsement of Claim the plaintiff seeks damages for €1 million and a declaration that certain mortgages held by the defendant on property owned by the plaintiff are null and void.

2. An Appearance was entered on the 15th July, 2013.

3. A statement of claim was delivered on the 5th March, 2014. The plaintiff initiated these proceedings and conducted them without legal representation.

4. The statement of claim runs to thirty-two pages. The prayer for relief claims damages, the removal of a receiver appointed by the defendant and the return of all income collected by the receiver from various properties. It also seeks an order setting aside a judgment of the High Court of the 4th September, 2013 (Laffoy J.). It seeks rescission of a loan agreement between the plaintiff and the defendant and an order that the mortgage deeds of all properties secured by the defendants be returned to the plaintiff. In paragraph 1, the plaintiff repeats the claims as set out in the Indorsement of Claim on the plenary summons and claims "in particular for loss and damage suffered by the plaintiff by reason of misrepresentation, deceit, negligence, breach of fiduciary duty, economic loss, loss of consortium, breach of contract and privity of contract, breach of statutory duty and breach of the Constitution" by the defendant.

5. A full defence was delivered on the 24th July, 2014. A notice for trial was served. The plaintiff has also issued a motion seeking an order for discovery and for the delivery of interrogatories which has been adjourned until the determination of the issues in this motion.

6. The defendant by Notice of Motion dated the 20th February, 2015, seeks an order striking out these proceedings pursuant to order 19 rule 28 of the Rules of the Superior Courts on the grounds that they disclose no reasonable cause of action or are otherwise frivolous, and/or vexatious and are bound to fail, or on the basis that they constitute an abuse of process. Alternatively, the defendant seeks an order striking out the claim insofar as it relates to deceit and misrepresentation pursuant to order 19 rule 5(2) because the plaintiff has failed to plead particulars as required. The defendant also submits that, in the alternative, the Court should strike out those elements of the claim relating to "reckless lending, excessive securitisation and the creation of a false boom and bust situation" pursuant to order 19 rule 27 as such a cause of action is not known to the law.

Background

7. The facts underpinning the plaintiff's claim arise from a course of dealing between the plaintiff and Money Corp. Ltd. a company involved in procuring residential and commercial mortgages and providing advice on life insurance and pensions. Money Corp. Ltd. was a customer of the defendant and opened a sterling bank account number 28960332 with it in January 2001. As set out in the statement of claim, the plaintiff engaged the services of Money Corp. Ltd. to secure an equity release loan on a property at 13 North King Street, Dublin 7 to enable him to make an investment and purchase ten apartments in Dublin. This transaction did not proceed. However, the loan was agreed in principle and the plaintiff sought an alternative investment. He was advised on investment development opportunities in Manchester and Birmingham, England by Money Corp. Ltd. He paid the company two sums as deposits on the 6th August, 2004; one of £140,000 (UK) in respect of five apartments in Birmingham and a second for £150,000 (UK) in respect of ten apartments in Manchester. It is clear on the evidence set out in the affidavits that two sterling bank drafts drawn on the National Irish Bank and dated 30th July, 2004 both payable to Money Corp. Ltd. were paid into the sterling account of Money Corp. Ltd. at AIB International Banking Services, Ashford House, PO Box 518, Tara Street, Dublin 2 on the 6th August. By the 12th August, following a number of draw-downs from the account, the balance had been reduced to £27,608.00 (UK). The drafts were purchased on behalf of the plaintiff by his solicitors using the proceeds of a loan from Ulster Bank and Permanent TSB which was secured by a mortgage on 13 North King Street. The money was not applied by Money Corp. Ltd., as agreed, as deposits on the apartments in England.

8. In 2006 the plaintiff and a co-plaintiff brought summary proceedings in the High Court against Money Corp. Ltd. and obtained judgment in the amount of €431,000.00 on the 24th July, 2008. The plaintiff has been unable to secure satisfaction of these judgments despite attempts to do so. No explanation has been furnished to the plaintiff by the directors of Money Corp. Ltd. as to why these funds were not appropriated towards the deposits on the apartments in Birmingham and Manchester. However, the plaintiff states that he was told by a director of Money Corp. Ltd. that this money had not been paid into the company's account. I am satisfied on the evidence that this is incorrect as appears from the statement of account exhibited in the affidavits submitted by the plaintiff and the defendant.

Loan Transfer

9. In 2006 the plaintiff decided to transfer loans which had been obtained through Money Corp. Ltd. from Ulster Bank and Permanent TSB to the defendant. He wished to cut all ties with Money Corp. Ltd. He approached his own bank branch, Allied Irish Banks Plc. in Capel Street, Dublin 7 and the defendant agreed to facilitate the switching of the loans.

10. The plaintiff claims that he expressly inquired of the bank official with whom he was dealing at that time whether the bank

operated accounts on behalf of Money Corp. Ltd. He states that he would not have entered new loan agreements with the defendant had he known that Money Corp. Ltd. held accounts with it. He states that he was informed by the official that Money Corp. Ltd. did not hold accounts with the defendant and on that basis entered the new agreement. He claims that this was a misrepresentation which caused the plaintiff to act to his detriment in entering the new agreements as a result of which he claims to have suffered loss. It is unclear from the pleadings how the plaintiff hopes to establish a loss arising out of any such misrepresentation or mistaken information since he obtained the full benefit of the loan agreement and drew down the monies which he has not repaid.

11. The Plaintiff also complains that in 2006/2007 he was unaware that Money Corp Ltd., had banking facilities with the Defendant including the sterling account through which his funds had been lodged and withdrawn. He maintains that not only was the defendant fully aware of his reluctance to deal with any bank that dealt with Money Corp Ltd., but also that he was suing it for the deposit monies, and hoped to repay the new loans from money obtained on foot of any judgment against the company. He claims that the defendant was at all times in possession of information concerning the operation of the sterling account and the relationship between Money Corp Ltd., (a regulated entity in Ireland) and Money Corp Holdings Ltd., (an unregulated U.K. based company) which it knew was vital to his successful recovery of the deposit money in those proceedings. He claims that the bank owed him a duty to search their records carefully when it was aware that he would not enter any loan contract if Money Corp Ltd., was also a customer: instead the bank misrepresented the position and informed him that it was not a customer. Furthermore, he contends that the bank also failed to inform him that the deposit money had passed through the sterling account when it knew that he was alleging fraud in respect of that transaction. He alleges that the bank thereby concealed the details of what it knew or ought to have known of that transaction and how the account was wrongfully controlled by Money Corp Holdings Ltd., and acted negligently and in breach of a duty owed to him as a customer. This negligence and breach of duty was aggravated when the bank later failed to give him full details of that transaction and others when he discovered that the sterling account was operated through the bank and requested details in order to enforce judgment against the company. This was allegedly compounded by the bank furnishing wrong or misleading information about the account to the Master of the High Court when the Plaintiff sought to enforce the judgment obtained.

12. The plaintiff obtained loans from the defendant totalling €1.809 million in 2006 and 2007 secured on a number of properties:

- (a) 41 Mount Symon Green, Clonsilla, Dublin 15;
- (b) 13 North King Street, Dublin;
- (c) 42 Mount Symon Green, Clonsilla, Dublin 15;
- (d) Apartment 105, Erris Square, Waterville, Blanchardstown, Dublin 15;
- (e) Apartment 111, Erris Square, Waterville, Blanchardstown, Dublin 15;
- (f) Apartment 112, Erris Square, Waterville, Blanchardstown, Dublin 15.

Five of these properties are referred to in the statement of claim.

13. The mortgage accounts in respect of these properties fell into arrears and the defendant made demand for payment in accordance with the terms of the contracts. On the 10th July, 2013 the defendant appointed joint receivers Declan Taite and Sharon Barrett to each of the properties. The amounts demanded in respect of the six properties, when aggregated, exceeds €1.74 million. The defendant is one of two or more joint owners of each of these properties.

Receivership

14. The receivers sought relief by way of plenary summons issued on the 14th August, 2013 restraining Mr. Quearney from interfering with them when exercising their rights and discharging their obligations as joint receivers over the properties in separate proceedings entitled "The High Court, Between Declan Taite and Sharon Barrett, Plaintiffs and John Philip Quearney, Defendant [Record No. 2013 No. 8682P]". In those proceedings the defendant challenged the validity of the appointment of the receivers. Laffoy J. in delivering judgment [2013] IEHC 405 (unreported, High Court 4th September, 2013), while noting that it was an interlocutory application, nevertheless concluded on the evidence adduced, which was not controverted, that:

"The banks were entitled to enforce the security in relation to each of the six properties by the appointment of a receiver when the deeds of appointment were executed on 10th July, 2013. None of the arguments advanced by the defendant in response to the application casts doubt on the validity of such appointments. Moreover, the defendant has not cast any real doubt on the entitlement of the plaintiffs to perform their functions as such joint receivers in a manner in which they propose to do so, which is in accordance with the provisions of the Mortgage Deed in respect of each of the properties executed by the mortgagors."

The learned judge granted the injunction.

15. The learned judge was informed that the plenary summons in this case had been issued on the 8th July, 2013 and made the following observations:

"12. The defendant's complaint against Allied Irish Banks Plc., as I understand it, arises from the fact that, while the two bank drafts furnished by the defendant to the company, which were dated 30th July, 2004, were lodged to a sterling current account in the name of the company with Allied Irish Banks Plc. on 3rd August, 2004, another company ... connected to the company by reason of common directors, had control over the sterling account or its operations and the money lodged to the sterling current account was treated as its money in its financial statements. At the material time, the company and the other company had different auditors. The wrongdoing which the defendant alleges against Allied Irish Banks Plc. is that it gave details of the sterling account in the company's name to the auditors of the other company. Obviously, it would be wholly inappropriate for this Court to express any view on whether the defendant had a good cause of action against Allied Irish Banks Plc. on the basis of the foregoing, and, in any event, it is utterly impossible to form any view on that issue. However, even if the defendant has a good cause of action and, in due course, recovers damages from Allied Irish Banks Plc. which could be set off against his indebtedness to the Banks, as things now stand, having regard to the factual basis of his dispute with Allied Irish Banks Plc. as set out in his replying affidavit, there appears to be no connection between the wrong the defendant, as plaintiff in the Plenary Proceedings, alleges against Allied Irish Banks Plc. and his alleged consequential loss, on the one hand, and the entitlement of the Banks to enforce their security on the six properties which with the Court is concerned by the appointment of the plaintiffs as receivers on the other hand."

The Statement of Claim

16. The plaintiff delivered the extensive statement of claim some six months later on the 5th March, 2014.

17. In the statement of claim it was alleged that the plaintiff:

"would have brought to their (the Bank's) attention that there may have been a conflict of interest as Money Corp. Ltd. was also one of their customers and this was not disclosed to the Plaintiff, it would also have brought to their attention that through their own negligence they had allowed the illegal transfer and use of the Money Corp. Ltd. Sterling Account – current account number 2860332. AIB had been made aware of the deception by the directors of Money Corp. Ltd. and the use of this account to launder the money obtained by deception and transfer that money to the UK".

18. One of the grievances set out in the statement of claim concerned the application of funds paid into the sterling account of Money Corp. Ltd. in August 2004. It was clearly not used for the purpose of the payment of deposits in respect of the apartments in England. There is no evidence to suggest that its removal from the account was effected otherwise than in accordance with the mandate then applicable to the account, nor is there any evidence that the bank was or ought to have been aware that the money which was lodged for the purpose of the payment of deposits was transferred out of the account and used for another purpose. There is no doubt that a cause of action arose against Money Corp. Ltd., whether on the basis of breach of contract, or deceit by the company or its directors but it is difficult to ascertain a precise basis for the plaintiff's claim against the bank.

19. The plaintiff contends that it dealt with Money Corp. Ltd. as a mortgage intermediary under section 116 of the Consumer Credit Act 1995. This authorisation was revoked in 2009. However, the plaintiff contends that though the sterling account was opened by the directors of Money Corp. Ltd. it came under the control and use of the directors and shareholders of Money Corp. Holdings Ltd., with which it had a close connection.

20. It is claimed that the defendant allowed the sterling account to be used by the directors of Money Corp. Holdings Ltd. to deceive the plaintiff into believing that when dealing with Money Corp. Ltd. which was operating under statutory authorisation, it could have confidence that this was an Irish company and a duly licensed and regulated financial intermediary, when in fact it was operated and controlled by Money Corp. Holdings Ltd. an unregulated United Kingdom company. The companies had common directors. The plaintiff's claim appears to be that the defendant bank wrongfully permitted or allowed the external United Kingdom company to control and operate the sterling account held in the name of Money Corp. Ltd. It is said that the account could only have come under the control and use of directors and shareholders in Money Corp. Holdings Ltd.

"... with some sort of agreement or understanding having been made with a person or persons known from the company Money Corp. Ltd. with person or persons unknown from the company Money Corp. Holdings Ltd. and person or persons unknown from A.I.B."

The account to which the monies were lodged was opened by the directors of Money Corp. Ltd. However, the plaintiff contends that no transaction on this account was ever recorded in any books of the company.

Evidence of Bank's Knowledge?

21. The plaintiff relies on the dealings between the bank and Oliver Freaney & Company, auditors of Money Corp. Holdings Ltd. as evidence of the bank's knowledge of interference in the Money Corp. Ltd. account by Money Corp. Holdings Ltd.

22. When acting as auditors for Money Corp. Holdings Ltd., for the years 2002 to 2004 Oliver Freaney & Company requested certificates of balance for bank accounts in the name of that company held at the defendant's bank. The bank, in response to this request, furnished details of the sterling account to the auditors. Of course, that account was in the name of Money Corp. Ltd.

23. A complaint was made by Mr. Quearney to the Chartered Accountants Regulatory Board (CARB) concerning the treatment by the auditors of the sterling account. It was alleged that the auditors acted improperly in preparing the financial statements of Money Corp. Holdings Ltd. for the audit years ending 31st December, 2002 and 2003 in that the sterling bank account in the name of Money Corp. Ltd. was incorrectly reflected in the books of account and financial statements of Money Corp. Holdings Ltd. for those years. This resulted in the preparation of draft financial statements for Money Corp. Holdings Ltd. for 2004 which incorrectly reflected the bank account of Money Corp. Ltd. It was further alleged that the auditors had failed to identify and take appropriate action to ensure that both Money Corp. Holdings Ltd. and Money Corp. Ltd. maintained proper books of account throughout the accounting years 2002 to 2004.

24. The auditors in their response to this complaint noted that the two companies, though not formally connected as part of a Group Company, had common directors. Oliver Freaney & Co., never acted as auditors for Money Corp. Ltd., and gave the following explanation:

"The bank account in question was included in the company's books and records as being a MHL (Money Corp. Holdings Ltd.) bank account and all transactions therein were posted by the directors in the accounts of MHL. It is important to state that this was the only bank account operated by MHL during 2003. Indeed our audit testing indicated that the transactions in this bank account all relate to MHL business. MHL had engaged the services of a qualified chartered accountant ... to maintain the books and records of this company. MHL also used TAS books to record the transactions of the company. ... The number assigned to this bank account within the nominal ledger matched the number of the account as per the bank statements. ...

3.3 As part of our audit procedures, our client authorised bank confirmation letter was sent to the company bankers Allied Irish Banks. We have appended for your attention the documents sent to and received back from AIB in this regard:

- Copy of Oliver Freaney & Company cover letter dated 5th August, 2004 addressed to Allied Irish Bank in the name of MHL.
- Copy of reply letter from Allied Irish Bank addressed to Oliver Freaney & Company in the name of ML(Money Corp Ltd.) together with the completed bank inquiry letter in the name of MHL.

The cover letter which accompanied this request made reference to MHL and although the first page of the inquiry letter did not contain the name of our client, the second page clearly makes reference to MHL. The bank inquiry letter was signed by John Mooney who is a director of MHL. In responding to our request the bank completed the confirmation by attaching their own cover letter in which they specified ML. The completed confirmation in section 1 makes reference to an attached certificate of confirmation from the bank. The attached certificate is however in the name of ML and confirms closing balance and incurred interest in respect of the only bank account included by the company in the books and records of MHL. The bank has previously confirmed to Garland McDonnell (auditors to ML) that they had misplaced the mandate to open this account. However, the bank have confirmed that as per a mandate dated 6th June, 2002 the signatories on this account were assigned from the directors of ML to the directors of MHL.

3.4. Conclusion Reached

Based on the above we considered that substance over form should prevail in this instance and formed the opinion that the bank account was in reality that of MHL despite the fact that the bank statements were in the name of ML. In fact it was our opinion that to exclude this particular bank account from the financial statements of MHL would have resulted in those financial statements being misleading."

25. The accountant who dealt with the matter submitted to a consent order by CARB which embodied a finding that he acted in breach of the Institute's Ethical Guide for Members' Fundamental Principles in that (inter alia) the client company's audited accounts failed to reflect the correct or complete accounting treatment for the transactions and balances recorded in the bank account of another company for the audit years December 2002 and 2003. A sanction of severe reprimand was applied and a fine of €5,000.00 and costs of €3,000.00 were deemed appropriate as a penalty. In arriving at this decision CARB concluded that it was clear from the documentation that the bank account did not belong to the company i.e. Money Corp Holding Ltd., and that the methodology adopted for recording transactions and balances was inaccurate and incomplete.

26. It is said therefore that the money the plaintiff lodged to the Money Corp. Ltd. sterling account was wrongly accounted for in the books of Money Corp. Holdings Ltd. in its financial statements.

27. The defendant bank states that following an investigation it has been unable to locate the documents grounding the application made by Oliver Freaney & Company for accounts in the name of Money Corp. Holdings Ltd. or verify that such a request was made or response furnished. It is simply noted in the affidavit of Ms. Kelly on behalf of the bank that though the request was made in the name of Money Corp. Holdings Ltd., a response was made in the name of Money Corp. Ltd. The Court was informed that this was an error. Though these details may have been furnished, it is pointed out that the matter was never raised as an issue with the defendant by the auditor, Money Corp. Ltd. or Money Corp. Holdings Ltd. She notes that John Mooney (the signatory of the letter of request to the defendant from MHL in the course of the audit) and Mark Dowling were common shareholders and directors in each company at all times. Both were signatories on the Money Corp Ltd. account. Though the auditors concluded that the bank account was in reality that of Money Corp Holdings Ltd., despite the fact that the bank statement was in the name of Money Corp Ltd., there is no indication that the bank took the same or any view notwithstanding its reply. It is clear from the auditor's response that their conclusion derived from a close examination of the books and accounts of Money Corp. Holdings Ltd., and the correlation between the entries in the account and transactions carried out by that company. The plaintiff seeks to ascribe to the defendant knowledge, or constructive knowledge, of control exercised by Money Corp Holdings Ltd. over the Money Corp Ltd. sterling account and its affairs, based on the evidence that in response to the request for a copy of Money Corp Holdings Ltd.'s accounts with the bank, it sent the accountants a statement of the sterling account.

28. There is no evidence that the Bank had any such detailed knowledge or made any further inquiries before furnishing details of the Money Corp. Ltd. account. Though it was submitted that a simple error was made in sending the details of that account in respect of a request for the accounts of Money Corp Holdings Ltd., which had a somewhat similar name and common directors who were signatories on the account, there is no averment that this is what happened. The Court in this application is invited to infer that this is what occurred. I am satisfied, on the affidavits submitted, that the bank was used as a vehicle for the lodgement of two sterling drafts drawn in favour of Money Corp Ltd, the proceeds of which were drawn down within a matter of days. There is no evidence that the bank had any direct notice of the provenance of the drafts or the purpose for which they were lodged or why the funds were withdrawn. It is also clear from the plaintiff's affidavit that John Mooney withdrew the funds with which he purchased two bank drafts payable to him.

29. The plaintiff also relies upon the correspondence between CARB and Garland McDonald & Company who were auditors to Money Corp. Ltd in the course of the investigation into the complaint against Oliver Freaney & Company. In a submission dated 23rd February, 2009 Garland McDonald & Company acknowledged that they audited the accounts of Money Corp. Ltd. in respect of the years ending December 2003 and 2004. They wrote to Allied Irish Banks Plc. branch at Artane seeking statements of accounts held by the company. A letter dated 27th August, 2007 sought information from the defendant "relating to accounts at your branch" in respect of Money Corp. Ltd. as of the close of business on 31st December, 2003. The branch furnished details of a current account but did not supply a statement in respect of the sterling account. This was accepted in Ms. Kelly's affidavit but she points out that the request only related to accounts held at the defendant's Artane branch. She states that:

"Upon investigation, it has been established that the Sterling Account is not indicated in the Account Profile List that the branch have sight of and would normally view on receipt of an auditor's request for information."

She notes that the non-provision of the sterling account was not queried by the auditor or the company. She avers that the defendant never refused to provide details of the account to the auditors nor does the plaintiff allege that the bank was specifically requested for details of that account. Ms. Kelly also states that the defendant was unaware at the time of the transfer of the loans from Ulster Bank and Permanent TSB of the manner in which the sterling account was dealt with by Money Corp. Holdings Ltd. and Oliver Freaney & Company since that only came to light after the CARB investigation, the report of which was published in 2011. Furthermore the request to the Artane branch was made three years after the lodgement of the two bank drafts.

30. Garland McDonald & Company noted in their submission that a supplemental mandate providing for three signatories for the sterling account was submitted to the bank on the 6th June, 2002. The three signatories were Mr. Mark Dowling (managing director), John Mooney (director) and Gerry Byrne (associate director). Messrs. Dowling and Mooney were directors of Money Corp Ltd., and Money Corp Holdings Ltd., and Mr. Byrne was company secretary of the latter but was not a director of the former. Garland McDonald & Company concluded that the sterling account "was adopted" by Money Corp Holdings Ltd and effectively operated as its account during this period as per the conclusions reached by Oliver Freaney & Company.

Rules of Court

31. The Rules of the Superior Court relevant to these proceedings are:

"Order 4 Rule 1: An indorsement of claim shall be made on every originating summons before it is issued ...

Rule 2: The indorsement of claim on a plenary summons shall be entitled "GENERAL INDORSEMENT OF CLAIM" and there shall be an indorsement of the relief claimed and the grounds thereof expressed in general terms ...

Order 19 Rule 5(2)

In all cases alleging misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be set out in the pleadings. ..."

As will be seen I am satisfied that the pleadings are seriously deficient and fail to comply with this provision.

Order 19 Rule 27

The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client.

Order 19 Rule 28

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

The limitations of this rule were considered in *Aer Rianta Cp. -v- Ryanair Ltd* [2004]1 I.R. 506 and consequently the motion in this case is governed by Order 19 Rule 27 and the inherent jurisdiction of the court in respect of the control of court proceedings and prevention of abuse of process. The pleadings are prolix and unnecessary to a significant degree and are such as to prejudice, embarrass and delay the fair trial of the action to the extent and for the reasons set out below.

Order 20 Rule 6

"Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement on the summons."

Negligence, breach of duty and contract

32. The plaintiff claims that the bank knew or ought to have known that the sterling account was under the control of Money Corp Holdings Ltd., not only at the time of the earlier 2004 transactions but also when the new loans were negotiated with the bank in 2006-2007. In 2002 a supplemental mandate was completed. In or about 2006 the plaintiff wished to change his loans and had commenced legal proceedings against Money Corp. Ltd. The loans were renegotiated during the course of those proceedings which culminated in a judgment on 24th July, 2008 against Money Corp. Ltd. The plaintiff claims that the bank was aware that he hoped to pay down the loans if and when he secured a return of the deposit money at the conclusion of the proceedings against the company. Following judgment Mr. John Mooney was examined before the Master of the High Court in December 2009 in the course of which it emerged that substantial assets were dissipated by Money Corp Ltd., and/ or John Mooney during the course of the proceedings. The plaintiff claims that had the bank disclosed its knowledge of control of the sterling account by Money Corp Holdings Ltd., he would have moved to seek orders restraining the disposal of these assets in order to secure them for the purpose of the enforcement of any judgment which he might obtain.

33. The core of the plaintiff's claim is that the defendant wrongfully allowed the directors of Money Corp Holdings Ltd., to fraudulently operate the sterling account of Money Corp Ltd. The money paid for deposits was misappropriated because of the wrongful exercise of control by Money Corp Holdings Ltd., over the account of Money Corp Ltd., and its business, as an authorised intermediary. It is said that the bank both facilitated this and failed to report it to the relevant authorities or to the plaintiff. It is claimed that the bank was under a duty to the plaintiff to disclose the wrongful operation of the account to him. It is also claimed that when seeking to negotiate his loans with the bank, the Plaintiff expressly stated that he wished to cut all ties with Money Corp Ltd. It was a condition precedent to his entering loan contracts with the bank that Money Corp Ltd was not a customer of Allied Irish Banks plc. The bank informed him that the company was not a customer which was incorrect. Furthermore, the bank knew that Money Corp Ltd was being sued by the plaintiff when he was rearranging his loans with them. However, it failed when asked, to disclose the fact that Money Corp Ltd. was a customer of the bank or the improper use and control of the sterling account by Money Corp Holdings Ltd., about which it knew or ought to have known. The plaintiff's claim is that the defendant was negligent and in breach of duty in failing to act on the knowledge which it had, concerning the operation of the sterling account and in failing to investigate adequately, or at all, the legitimacy of transactions carried out on that account and directed by Money Corp Holdings Ltd. The duty of care relied upon is somewhat analogous to the duty of care owed by a bank when a cheque is payable initially to a third party other than the collecting bank's customer, but is endorsed in favour of the customer in what might be regarded as suspicious circumstances, or circumstances sufficient to put the bank on inquiry as to the propriety of the transaction, or it's potentially fraudulent nature. (See, Breslin, Banking Law, 3rd Edition paragraphs 963-981). The Plaintiff also claims damages for breach of the loan contracts and/or rescission because of the failure to honour the condition precedent to their creation. I am satisfied that there is a sufficient case pleaded in respect of these issues to permit this part of the claim to proceed.

Wide Ranging Nature of the Claim

34. The plaintiff's pleadings extend far beyond the issues set out above and include a much wider range of reliefs. The General Indorsement of Claim states that the plaintiff's claim is for

"Gross negligence and misrepresentation orchestrated by Allied Irish Bank Plc. and its servants or agents".

Paragraphs 1-5 then set out what appear to be particulars of that cause of action including alleged breaches of liquidity laws and

causing the national financial collapse, excessive securitisation in the bank creating a false boom and bust situation which has crippled the country, reckless lending procedures by the bank which is alleged to have ignored its own guidelines, breach of the consumer protection code and a claim that the plaintiff's health and relationships have suffered greatly as a result. This is followed by a claim for €1 million damages and an order declaring "the mortgage is null and void" and "that any liens or charges ... be removed". The only possible causes of action discernable from the plenary summons and statement of claim are grounded on negligence, breach of duty and/or contract. The Plaintiff also claims rescission of the contracts in respect of new loans in 2006/7. Other more generalised claims set out are unsustainable (see *ICS Building Society v. Grant* [2010] IEHC 17). The statement of claim seeks to expand the plaintiff's claim to include damages for deceit, negligence, breach of fiduciary duty, breach of contract, misrepresentation and breach of statutory duty. The claims for loss of consortium and breach of the Constitution are unstateable. The claims for orders setting aside the judgment of Laffoy J. on the 4th September, 2013, and challenging the appointment of the receiver and claims based on paragraphs 2, 3 and 5 of the prayer for relief are also unstateable. The statement of claim is so prolix and contains such disjointed statements of fact and reference to statutory provisions that it is extremely difficult to discover what case is made and what case the defendant is expected to meet in respect of these topics. The purpose of pleadings is to establish the basis upon which any particular relief is claimed and to define the issues between the parties. The claim must fall within a recognisable cause of action. The Court makes all allowance for the fact that the plaintiff is acting on his own behalf and is not legally advised but fairness requires that a statement of claim that is disjointed, mixed up, unparagraphed and unfocused and does not disclose a cause of action by precisely identifying its nature and the facts upon which it is based, should be struck out. The Rules of the Superior Courts regulate pleading because not every grievance amounts to a cause of action no matter how keenly felt or extensively set out.

Deceit and Negligent Misstatement

35. The plaintiff also claims damages for deceit and negligent misstatement. To establish deceit, the plaintiff must prove the making of a representation as to a past or existing fact by the defendant knowingly, without belief in its truth, or reckless or careless as to whether it is true or not. It must be intended by the defendant that the representation should be acted upon by the plaintiff. The plaintiff must have acted upon it and suffered damage as a result. In order to establish an entitlement to damages for negligent misstatement the plaintiff must establish that the bank as an entity possessed of special skill took it upon itself to give information or advice to the plaintiff or allowed information or advice to be passed to another who he knows or ought to know will place reliance upon it. The plaintiff must establish that the bank in making a representation to him failed to exercise due care as a result of which he was induced to act in a particular way and suffered damage as a consequence of the inaccurate representation. The plaintiff must establish that the bank or its official made the statement specifically in connection with a particular transaction or transactions and that the plaintiff would be likely to rely on it for the purpose of deciding whether or not to continue with it or them.

36. The plaintiff was a customer of the defendant at its branch in Capel Street, Dublin in or about 2006 and claims to have banked with the defendant since the early 1990s. He states that he entered discussions with the defendant for the transfer of his loan portfolio with the defendant from Ulster Permanent TSB Bank.

37. Money Corp Ltd. opened its sterling bank account the subject matter of these proceedings in 2001. The lodgement of the two National Irish Bank drafts in respect of the deposits on the apartments in England occurred in August, 2004. It is not specifically claimed that this transaction took place on the basis of any dishonest, fraudulent or negligent representation made by the bank to the plaintiff. Though the relationship of banker and customer is established on the pleadings and the evidence, the statement of claim does not set out the particulars of any representation which might ground a claim for damages for deceit. In addition, there is no averment in respect of that transaction that amounts to a statement which might be regarded as a negligent misstatement.

38. The plaintiff accepts that the two sterling drafts were lodged in London and within a number of days Mr. John Mooney, a director of Money Corp Ltd., and Money Corp Holdings Ltd., purchased two sterling drafts in the amounts of £116,412.30(UK) and £125,000.00(UK) from the sterling account. The supplemental mandate of 2002 clearly entitled him to do so.

39. There is a clear insinuation that the bank or its officials were involved in some sort of behaviour which resulted in the loss to the plaintiff of the proceeds of the two sterling bank drafts. However, on the evidence, the money was lodged and removed in the ordinary course of banking. The claim includes an allegation of a general nature that the bank was complicit in money laundering offences which is something that requires extensive particularisation if it is to be properly pleaded: mere assertions are insufficient. The prime mover in the removal of the proceeds of the drafts from the account was Mr. Mooney. There is no particularised allegation of fraud on the part of the bank but the Court is asked to infer such an allegation from the alleged wrongdoing of Money Corp Holdings Ltd. and its director Mr. Mooney.

40. An allegation tantamount to fraud in a statement of claim must be clearly alleged and it should not be left to the reader to infer the allegation from loosely stated facts. This is particularly so if the outline of facts is mixed up with allegations of statutory infringement and fails to provide a clear chronology from which one might logically infer a connection between one alleged fact and another. The outline of facts in the statement of claim covers events ranging from 2004 through to 2008 but no care is taken to distinguish between those events or to identify specifically the cause of action to which it is said they are relevant.

41. This matter was considered in *Davy v. Garrett* [1878] 7 Ch D 473 in which Thesiger LJ. considered how fraud should be pleaded:

"The plaintiffs say that fraud is intended to be alleged, yet it contains no charge of fraud. ... It may not be necessary in all cases to use the word "fraud" – indeed in one of the most ordinary cases it is not necessary. An allegation that the Defendant made to the Plaintiff representations on which he intended the Plaintiff to act, which representations were untrue, and known to the Defendant to be untrue, is sufficient. The word "fraud" is not used, but two expressions are used pointing at the state of mind of the Defendant – that he intended the representations to be acted upon and that he knew them to be untrue. It appears to me that a Plaintiff is bound to show distinctly that he means to allege fraud. In the present case facts are alleged from which fraud might be inferred, but they are consistent with innocence. They were innocent acts in themselves, and it is not to be presumed that they were done with a fraudulent intention."

42. I am not satisfied that there is any allegation that a representation of fact was made by the bank in respect of the transaction concerning the lodgement of the bank drafts and the withdrawals that took place thereafter. There is nothing to suggest any involvement by the bank in a conspiracy to misappropriate these funds or how the bank might have been involved in a fraud to facilitate a dishonest or wrongful appropriation of these funds by Money Corp Holdings Ltd. The Court is satisfied that the transaction as outlined by the plaintiff in the statement of claim and in the affidavits filed on this motion are more consistent with a banking transaction carried out in the normal course of business which were "innocent acts in themselves and it is not to be presumed they were done with a fraudulent intention". Furthermore, I am not satisfied that on the admitted facts in this case, the plaintiff could possibly succeed in establishing a case of deceit on the balance of probabilities against the bank. The absence of any form of representation or statement is also fatal to any claim for damages for negligent misstatement in relation to this transaction.

43. The Plaintiff also claims that as a result of the statement made in or about 2006, by an official of the bank, that Money Corp Ltd. was not a client of the bank, he was induced to enter contracts for loans and mortgages which he would not otherwise have entered as he did not wish to do business with a bank which dealt with that company because he was suing it in respect of the bank drafts and deposits. He claims that he made it a condition precedent to entering any new loans with the defendant that the company should not be a client of the bank. The bank's statement was incorrect because at the time, Money Corp Ltd. held accounts with the Defendant through a different branch. The plaintiff also claims that this gave rise to a conflict of interest and a breach of the fiduciary duty which the bank owed to him as a customer.

44. I am satisfied, without in any way ruling on the merits of this aspect of the claim against the defendant, that the plaintiff has formulated the bones of a claim for negligent misstatement. It remains to be seen whether he is in a position to establish the other elements of the tort and a nexus between the alleged statement and his subsequent dealings with the bank, the draw-down of the loan monies, the failure to re-pay it and any alleged loss.

45. I am not satisfied that there is any basis for a claim for damages for breach of fiduciary duty set out in the statement of claim.

46. There is a very long section in the statement of claim devoted to alleged breaches of statutory duty. This is pleaded in a completely unsatisfactory way. It simply quotes large extracts from or offers a summary of different statutory provisions including:-

(a) Various sections of the Consumer Protection Act 2007 are quoted at pages 3 to 9: this includes a claim that the plaintiff "believes that an offence has been committed with the consent, connivance or approval of or to have been facilitated by AIB Plc. under sections 116(1)(a)(b)(2)(3)(a)(b)". It is alleged that the financial regulator revoked the authorisation granted to Money Corp. Ltd. under section 116(11) of the Consumer Credit Act 1995 (as amended) as appears in the Register of Revoked Mortgage Intermediaries maintained under section 151 of the Act;

(b) The plaintiff claims that permitting the operation of the sterling account was, in the circumstances, a breach of section 29(1) of the Criminal Justice (Theft) and Fraud Offences Act 2001 at pages 9 to 13 of the statement of claim;

(c) Sections 16, 110, 111, and 117 of the Central Bank Act 1989 as amended are quoted at pages 15 to 21;

(d) Sections 31 and 32 of the Money Laundering Act 1994 are quoted at page 2 and pages 25 to 29;

(e) Sections 1, 2, 6, 19, 20 and 21 of the Consumer Information Act 1978 are quoted at pages 25 to 28;

(f) Section 147 of the Companies Act 1963 concerning keeping of books of account is quoted at pages 28 and 29;

(g) Sections 7 and 8 of the Criminal Law Act 1997 concerning penalties for those who aid, abet, counsel or procure the commission of an indictable offence or concealing such an offence are quoted at pages 29 and 30;

(h) Directive 2005/29/EC of 11 May 2005 concerning unfair business in consumer commercial practices and summarising the provisions relating to misleading and aggressive commercial practices is outlined at pages 31 and 32.

These recitals occur without any particular focus or reference to any specific facts.

47. The recital of a series of statutory provisions in a statement of claim is not sufficient to advance a claim for damages for breach of statutory duty. It is essential for the plaintiff to lay a factual basis of alleged wrongdoing by the defendant, its servants or agents as a result of which loss was suffered. A nexus must be outlined between the alleged wrongdoing, the loss and the breach of statutory provision relied upon. If the defendant is to have an opportunity to defend an allegation of breach of statutory duty, it is important that the nature of that duty is specifically identified by reference to the provision. There may be a number of issues to be determined by the Court in relation to any such alleged breach, such as whether the particular statute relied upon was enacted for the benefit of a particular class of persons or the general public, or a person such as plaintiff, or whether a civil remedy was contemplated by the provision relied upon. The plaintiff is obliged at the hearing of the action to prove on the balance of probabilities that the defendant was in breach of the statutory provision in the manner alleged, if he is to succeed. The claim must bear some reasonable relation to the mischief addressed by the statute and the plaintiff must be one of those persons contemplated as coming within its protection. I do not consider that the material set out in the statement of claim provides a clear or stateable nexus between the grievance outlined by the plaintiff and the provisions cited or quoted, sufficient to give rise to a claim for damages for breach of statutory duty or one that could possibly succeed.

Conclusion

48. I am satisfied that the claim made by the Plaintiff for damages for deceit is not pleaded with sufficient particularity in respect of any of the matters set out in the statement of claim and does not disclose on its face the basis of a cause of action that could possibly succeed as pleaded under that heading. I am therefore satisfied that those elements of the statement of claim referable to that claim should be struck out.

49. I am not satisfied that the claim for damages for breach of statutory duty has been pleaded with sufficient particularity to give rise to a stateable cause of action as set out in the statement of claim or one that could possibly succeed for the reasons already stated. The text of the statement of claim set out at pages 3 to 12 commencing at the bottom of page 3 with the words "and this was in breach of the Consumer Credit Act, 1995..." and ending at the bottom of page 12 will be struck out. The further recitals of statutory provisions referred to above should also be struck out from the statement of claim from pages 15 to 32 inclusive.

50. I do not consider that the Plaintiff has set out an arguable claim for breach of fiduciary duty within any of the usual legal tests and I am not satisfied that the fiduciary duty alleged could be established or that a claim based on such a claim could possibly succeed.

51. The facts set out under that heading at page 14 ought more properly to be considered under the heading of a claim for damages for negligence and breach of a duty of care to the plaintiff or breach of contract. I will therefore strike out the claim for damages for breach of fiduciary duty at 3(a), (b) and (c) but the statement of facts contained in 3(d) should remain and be considered as part of the narrative of events upon which the balance of the claim rests. Therefore, the following section of paragraph 3(d) remains as part of the statement of claim:-

"The Defendant knew that the Plaintiff was in litigation against the broker (Record No. 2006/172S) and that the Plaintiffs deposits were lodged to the Money Corp Ltd GBP – Current account 2860332) somehow under the control and use of the

Directors and shareholders of Money Corp Holdings Limited an unrelated and unregulated entity and had no chance of getting settlement of any judgment made against Money Corp Limited from Money Corp Holdings Limited as the Bank Drafts were made to the order of Money Corp Limited. By the Defendant inducing the Plaintiff into a contract without disclosing that there was a conflict of interest between the parties involved and knowing that the longer this material fact was kept from the Plaintiff the more the Defendant would unjustly enrich themselves from these events makes any alleged contract between the Plaintiff and Defendant void”.

52. The claim for loss of consortium set out at paragraph 5 on page 15 of the statement of claim is dismissed as an abuse of process.

53. The claim for “breaches of the constitution” at page 32 is not stateable and will be struck out.

54. The claim to set aside the order of Ms Justice Laffoy is dismissed as an abuse of process.

55. The claims seeking damages for reckless lending, creating a false boom and crippling the country are dismissed as an abuse of process.

56. The Plaintiff is entitled to proceed with his claim for negligence, breach of duty and breach of contract as summarised in paragraphs 32 and 33 above.

57. There is no stateable basis for a claim based on negligent misstatement arising out of the lodgement and withdrawal of the deposit monies in 2004. However, the Plaintiff makes the case that the later misstatement or misrepresentation by the bank’s official in 2006 that no accounts were operated by the bank for Money Corp Limited was relied upon to his detriment in entering the new loans and that he relied upon the bank for the accuracy of that statement as a result of which he suffered loss. He claims that it was a condition precedent to entering these contracts that Money Corp Limited was not a customer of the bank and that he is entitled to damages and rescission of the contract. He claims that this misrepresentation and the failure of the bank to inform him of the fact that Money Corp Holdings Limited exercised control of the Money Corp Limited account and business frustrated his attempt to recover the deposit monies and take steps to secure the assets of either or both companies so that they would be available for the execution of any judgment obtained. I express no view on the merits of this aspect of the case; it may be that the further claim for negligent misstatement may be more properly subsumed under his wider case for negligence, breach of duty and contract. However, I am also satisfied that this element of the claim based on negligent misstatement is adequately pleaded and may proceed.

58. I am mindful of the caution that ought properly to be applied to granting the relief sought on this motion. My conclusions are based upon an examination of the pleadings in the case. I have only ventured into the evidence and in particular, that advanced in the Plaintiff’s affidavits where they contained an explanation of aspects of his claim. It is important to ensure that he is not denied a right of access to the courts or an opportunity to proceed with a legitimate cause of action by an overly formalistic view of pleading which might result in injustice. However, the defendant is entitled to know what case is made and whether it gives rise to a reasonably stateable cause of action. If it could not possibly succeed or is unstateable, frivolous, vexatious or an abuse of process it should be dismissed. The action may proceed on the limited basis set out above.