THE HIGH COURT

CHANCERY

[2012 No. 4213P]

BETWEEN:

ANGELA MCMAHON & PATRICK MCMAHON

PLAINTIFFS

-AND-

BANK OF SCOTLAND PLC

AND (BY ORDER OF LAFFOY J. MADE ON 26 JULY, 2012)

SIMON DAVIDSON

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 4th day of July, 2017.

1. This case considers the plaintiffs' meaningless claims against a bank (e.g. that the bank 'created currency' and that 97% of money is in the minds of bankers, that the plaintiffs have unknowingly taken part in the creation of currency and that they have been tricked into creating their own finance). It also considers claims by the plaintiffs which appear to be based on foreign law and which have no basis in Irish law such as that the bank was guilty of 'fraud in the factum' and 'fraud in inducement'.

2. In addition, the plaintiffs' claim involves an attempt by the plaintiffs to re-litigate cases before the Irish courts to which they were not even parties and in making their claims, the plaintiffs make baseless and very serious allegations against lawyers acting for the bank, while all the while showing complete disregard for the use of court resources.

3. In this case, this Court considers whether in all of these circumstances this Court should accede to the bank's claim for a dismissal of some or all of the plaintiffs' claims against the bank. This case also considers whether this Court should, on its own motion, make an Isaac Wunder order against the plaintiffs.

4. Subject to one claim relating to whether interest, which was incorrectly calculated by the bank, could affect the validity of the appointment of the receiver, this Court concludes that the plaintiffs' claims should be dismissed and an Isaac Wunder order should be made against them.

Background

5. The plaintiffs are lay litigants and are the owners of a home in Castleknock and five investment properties in different parts of Ireland. They are suing Bank of Scotland plc ("BOS") for damages in connection with its appointment of a receiver over the plaintiffs' properties. This appointment arises from loans which were made by Bank of Scotland (Ireland) Limited ("BOSI") to the plaintiffs for the purchase of the plaintiffs' properties and/or the re-financing of the loans for the purchase of those properties. The defendants are seeking to have the plaintiffs' claim dismissed on the grounds, *inter alia*, that it is frivolous and vexatious.

Preliminary issue

6. Towards the end of the hearing, counsel for BOS brought to the attention of the Court that a mistake had been made in the calculation of the interest on one of the loan accounts (loan account no. -504). This mistake related to the loan for one of the properties the subject of these proceedings (the property known as 29 Woodlands, Ballyjamesduff, Co. Cavan, the "Ballyjamesduff property"). For this reason, after all the other issues had been heard in this case, there was an adjournment of the hearing to the 14th June, 2017, to allow BOS to file affidavits to clarify the issue regarding the error made in the calculation of interest on loan account no. -504.

7. At the adjourned hearing, it transpired that interest was charged by BOSI at 1.45% over the European Central Bank rate, rather than at the rate of 1.05% over that rate, which was the rate which had been agreed by the plaintiffs. When a recalculation was done by BOS applying the correct interest rate, it became clear that if the correct interest rate had been applied, account no. -504 would not have been in arrears on the date of the demand made by BOSI on that loan account and that it would not have been in arrears on the date of the appointment of the receiver over that property. On the basis of this new information, counsel for BOS conceded that BOS did not now wish to press for dismissal in *limine* of the plaintiffs' claim insofar as it related to the appointment of a receiver over the Ballyjamesduff property. Instead, BOS indicated to the Court that it would consent to the plaintiffs amending their Statement of Claim to insert a claim that the error in the calculation of the interest on loan account no. -504 meant that the receiver over the Ballyjamesduff property was not validly appointed. The extent of the concession by BOS was that the error in the calculation of interest, which only came to light during the motion to dismiss the plaintiffs' claim, meant that it was no longer appropriate for BOS to press its claim that it was entitled to dismiss the plaintiffs' claim in *limine* insofar as it related to the appointment of the receiver over the Ballyjamesduff property. Counsel for BOS made it clear that BOS is still of the view that the receiver was nonetheless validly appointed over the Ballyjamesduff property, on the grounds *inter alia* of cross-securitisation, and that when this matter comes to a plenary hearing, it will be seeking to defeat the plaintiffs' claim on this basis.

8. In relation to this preliminary matter and in light of the concession made by the defendants, this Court will order that the plaintiffs are entitled to amend their Statement of Claim to claim that the receiver over the Ballyjamesduff property was not validly appointed on the grounds that at the date of the demand on loan account no. -504 and on the date that the receiver was appointed to the Ballyjamesduff property, loan no. -504 was not in arrears.

9. The remainder of this judgment will consider first, whether the other claims made by the plaintiffs are such as to justify the defendant's motion that they be dismissed on the grounds, *inter alia*, that they are frivolous and vexatious and secondly it will consider the plaintiffs' motion to amend the Statement of Claim and to add a defendant, Tanager Limited, to the proceedings.

Background

10. The Statement of Claim issued by the plaintiffs is difficult to understand in parts and in other parts it contains claims for which

there is no basis in Irish law. For example, in the Statement of Claim dated 23rd July, 2012 the plaintiffs claim, *inter alia*, that:-

- BOSI committed a criminal offence of creating currency which only the Government and the Central Bank can do;
- BOSI created a debt (deposit) when in fact it offered a "loan of money";
- there was no agreement by the plaintiffs to accept a substitute for "a loan of money";
- there was never an intention on the part of BOSI or its successor to create an instrument at the inception of the contract;
- BOSI is guilty of unjust enrichment, fraud, insolvent trading, counterfeiting, false pretence, extortion and deceit;
- BOSI is guilty of fraud in inducement (which appears to be a concept of US law);
- BOSI is guilty of fraud in the factum (which also appears to be a concept of US law).

11. In addition, at paragraph 24 of their Statement of Claim, the plaintiffs state:-

> "The Defendant did not:
>
> a. Act honourably on the contract because they sold on the loan or part of it (ie beneficial ownership of the loan) to a 3rd party.
> "A contract founded on a base and unlawful consideration, or against good morals, is null."
>
> NOR did they act in honour from the very instance of communication from the plaintiffs to them in Feb of 2011, when the defendant failed to answer relevant questions put to them or deliver documents requested.
>
> b. Did not perform on the contract by not handing over 'money' as agreed but rather a 'promise to pay' which is more similar to 'credit' than money.
>
> c. Did breach contract law by:
>
> i. Not presenting 'full disclosure' of the contract together with the defendant's true intentions.
>
> ii. Not bringing equal consideration to the contract, ie they brought 'promises' not 'money' to the contract.
>
> iii. Bringing into the contract a 3rd party who by 'privity of contract' was not and could not of been an 'interested party'."

12. When particulars were raised on this Paragraph 24 of the Statement of Claim by BOS, the plaintiffs stated in their Replies to Particulars as follows:-

> "The Plaintiffs claim that, 97% of the money in the minds of bankers is just numbers in a computer and could never be used or repaid or loaned as it is Virtual Money. The other 3% is what people have in their wallet or in the tills and cash machines of the country. When a promise is made it makes no difference if it is a corporation that makes it they must be able to perform on it in REAL terms Bank of Scotland could not as they give promises to pay future money that was not yet in existence nor would never be in existence in the REAL sense as money is known to customers of a bank."

In similar terms, in answer to Particulars raised on paragraph 18 of the Statement of Claim, the plaintiffs stated:-

> "From the commencement date of each contract a 'direct debit' was set up for each account. The plaintiffs have unknowingly taken part in the creation of currency and have been TRICKED into creating their own finance."

Motions

13. It is against this background that the motions before this Court are being considered. The first motion issued on the 10th December, 2012 and it is an application by the defendants to have the plaintiffs' claim dismissed on the grounds that it is frivolous and/or vexatious and that the pleadings disclose no reasonable cause of action, and/or that it is bound to fail. In the alternative the plaintiffs seek an order striking out from the Statement of Claim matters which are scandalous and/or unnecessary and/or may tend to prejudice, embarrass and/or delay the fair trial of the action.

14. The second motion before this Court issued on the 11th March, 2015 and it is an application by the plaintiffs to amend this Statement of Claim and also to add Tanager Limited as a defendant.

15. This Court must now consider the two motions before this Court against the background of the foregoing claims by the plaintiffs as set out in the Statement of Claim and clarified in the Replies to Particulars, which are patently frivolous and meaningless e.g. that BOSI created currency and that 97% of money is in the minds of bankers, and breaches of concepts which are not known to Irish law such as 'fraud on the factum'.

16. Dealing with such nonsensical claims wastes the time and resources of any defendant that has the misfortune to be subject to such claims (in this case BOS). Each of these claims has to be reviewed by lawyers and then individually refuted, and for this purpose particulars have to be raised to show in Court that they are nonsensical. Dealing with these claims wastes valuable court resources as it is necessary for the Court to be brought through each of these nonsensical claims and the equally nonsensical Replies to Particulars by the plaintiffs when they were asked to substantiate their claims.

17. While the plaintiffs have issued a notice of motion to amend this Statement of Claim by removing many of the more ridiculous claims (and as noted below in considering the merits of the motion to dismiss, this Court considers the Statement of Claim and the proposed amendments to it), it is nonetheless the case that the Statement of Claim as exists at the date of this hearing, and

therefore which falls for consideration by this Court, is one which is nonsensical.

18. This fact and the waste of both the time and money of the defendant that was subject to these claims, and the waste of the court resources in dealing with these claims, cannot simply be air-brushed from these proceedings by virtue of the fact that the plaintiffs now wish to amend the Statement of Claim. In this regard, it is relevant to note that during the hearing of the motion to dismiss (which was the first motion heard by this Court), and therefore before the motion for the amendment of the Statement of Claim was heard, counsel for BOS gave the plaintiffs the opportunity to abandon the parts of the Statement of Claim that were purported to be deleted as part of the plaintiffs' motion to amend the Statement of Claim. This opportunity was rejected by the plaintiffs.

Plaintiff's reliance on fact that they are lay litigants as reason for nonsensical claims
19. It is relevant to note that the plaintiffs purported to rely on the fact that they were lay litigants as an excuse for making these nonsensical claims that they now wish to delete from the Statement of Claim. However, this Court does not accept this excuse. This is because first, this Court found the plaintiffs to be what might be termed 'professional lay litigants' in the sense that they were exceptionally intelligent, skilled and combative advocates (and the plaintiffs advised this Court that they had been in Court on 144 different days in relation to this matter) and in this Court's view they are not persons who would make nonsensical claims unintentionally or through ignorance. Secondly, in Mr. McMahon's own submissions, he claimed to be one of the few people, along with a few specialist counsel in Ireland and the UK, who could make the very technical submissions which he wished to make on Directive 2002/47/EC on Financial Collateral Arrangements. In this regard, Mr. McMahon handed into Court a lever arch folder containing 22 authorities including Irish caselaw, European Directives, European Regulations, Irish Acts, Irish Statutory Instruments, English Statutory Instruments and Northern Irish Statutory Instruments.

20. For this reason, this Court concludes that the initial decision to include nonsensical claims in the Statement of Claim was not done through ignorance or lack of expertise on the part of the plaintiffs. Rather, it is this Court's conclusion that it was done by the plaintiffs to seek to thwart or delay the receiver in selling the plaintiffs' properties to pay off their borrowings from BOSI, by forcing BOS to deal with these nonsensical claims, without any consideration of the court resources that are also wasted in this process.

Analysis
21. Based on the Statement of Claim and the proposed amendments by the plaintiffs to the Statement of Claim, it seems clear to this Court that as of the date of this hearing the essence of the plaintiffs' claim is that BOS acted unlawfully in appointing a receiver by Deed of Appointment dated 11th November, 2011, over the plaintiffs' five properties because of:-

> (i) the securitisation of the plaintiffs' loans which occurred, when BOSI securitised the loans in favour of Wolfhound Funding 2 on the 2nd December, 2009;
>
> (ii) the cross-border merger of BOSI into BOS pursuant to the European Communities (Cross Border Mergers) Regulations 2008, which occurred on the 31st December, 2010;
>
> (iii) the failure of BOS to register its interest in the properties with the Property Registration Authority;
>
> (iv) the fact that the receiver who was appointed to the relevant properties was not properly appointed; and
>
> (v) that a number of conditions in the documentation relating to the loans connected to the properties were unfair under the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

22. To summarise, the plaintiffs do not deny that they borrowed money and that they defaulted in repayments. However, the essence of their claim is that they do not owe money to BOS because of the securitisation and the cross-border merger. They also claim that the receiver who was appointed to their properties was not properly appointed.

Securitisation, cross-border merger and registration
23. As regards the first three arguments made by the McMahons, similar and indeed almost identical claims have been shown to be without foundation in cases such as *Kavanagh v. McLaughlin* [2015] IESC 27, *Freeman v. Bank of Scotland* [2016] IESC 14 and *Wellstead v. Judge White & Or* [2011] IEHC 438. For example, in relation to the issue of securitisation, Dunne J. stated at page 8 of her judgment in *Freeman v. Bank of Scotland PLC & ors* [2016] IESC 14, that-

> "the Appellants have throughout these proceedings maintained that the appointment of the Receiver was invalid by reason of the cross-border merger, the securitisation of the loans and the non-registration of the Bank as the owner of the Charge in accordance with the provisions of the Act of 1964. As is clear from the judgments in *Kavanagh v. McLaughlin*, those arguments cannot succeed. The Bank, following the cross border merger was the entity entitled to appoint a receiver and that entitlement was not affected by the securitisation of the loans or the non-registration of the Bank as the owner of the Charge."

24. The decisions in the three cases of *Kavanagh, Wellstead and Freeman* establish that the claims made by the McMahons regarding the cross border-merger, the securitisation and the non-registration of the interest in the properties, are without foundation. This Court does not propose to repeat the analysis that has been made in those cases in this judgment.

Authority of the receiver
25. The fourth argument maintained by the McMahons is a challenge to the authority of Mr. Laurence Venn, on behalf of BOS, to appoint Mr. Davidson as a receiver. Very similar arguments were made unsuccessfully in *Kavanagh v. McLoughlin* (a case also involving the appointment of a receiver on behalf of BOS) regarding different personnel on behalf of BOS, but a similar chain of authority. In addition, BOS has exhibited Legal Opinions of Mr. Gabriel Moss Q.C. and Mr. Mark Lindsay Q.C. on English & Welsh law and Scottish law respectively which state conclusively that Mr. Venn was properly appointed under those laws. As these are opinions on foreign law, they have the status of evidence, rather than legal submissions, in proceedings before this Court. In this regard, the plaintiffs have provided no contrary evidence from lawyers in England & Wales or Scotland and the plaintiffs have no standing to attack those Legal Opinions with their own personal opinions on the laws of those jurisdictions. For this reason, this Court can see no basis for not relying on these Legal Opinions and therefore can see no grounds for the claim that the receiver was not properly appointed and so concludes that it is bound to fail.

Unfair Terms in Consumer Contracts
26. The fifth argument maintained by the plaintiffs is that the loan documentation in this case was unfair. In the proposed amendments to the Statement of Claim reference is made to the *Unfair Terms in Consumer Contracts Regulations*. However, during

the hearing the plaintiffs produced no allegation or evidence of any particular term of the loan documentation being unfair. On this basis this Court concludes that this claim discloses no reasonable cause of action and so is bound to fail.

Vexatious proceedings?
27. While it is this Court's view that the foregoing conclusions would be enough for this Court to find that the plaintiffs' action should be dismissed as bound to fail, there are three further aspects to this case that are particularly concerning and put beyond question this Court's conclusion that these proceedings are vexatious:

Re-litigating cases in which plaintiffs were not parties

(i) The plaintiffs made it clear in their oral submissions and affidavits that one of their intentions in pursuing this litigation is because of their wish to attempt to re-litigate in the High Court the *Kavanagh* case, the *Freeman* case and the *Wellstead* case (in which cases, the plaintiffs were not even parties).

Making scurrilous allegations against the lawyers in this case and other cases

(ii) In the proceedings before this Court, the plaintiffs, in their conviction that they are right and that these three cases were wrongly decided, accuse the lawyers for the banks in those cases, and the lawyers involved in this case, of very serious misconduct (so serious in fact, that if true, the lawyers could be struck off). Yet, these allegations are being made without a scintilla of evidence to support them.

The attitude of the plaintiffs to the use of Court resources in this litigation

(iii) The plaintiffs seem to believe that it is their entitlement to use such amount of court time as they deem is appropriate to air their grievances, without any regard to the fact that this involves public money and that other litigants with claims that are not bound to fail are being delayed in having their cases heard as a result of this waste of court-time.

Re-litigating cases in which plaintiffs were not parties
28. As regards re-litigating cases in which the plaintiffs were not involved, reference has to be made to the affidavits of Mr. McMahon, rather than their proposed amended Statement of Claim, to see the plaintiffs' true intentions. It is clear from these affidavits that the plaintiffs' intention in bringing these proceedings is to attempt to re-litigate cases against banks in which the plaintiffs were not involved. In the words of Mr. McMahon (contained in his affidavit dated 26th April, 2016 at paragraph 10), he wishes to make sure that the Supreme Court decision in the *Freeman* case "*does not go unchallenged*". It is clear therefore that the plaintiffs do not accept that the decision of the Supreme Court is binding on them and they want this Court to disregard its binding nature. At paragraph 10 of this affidavit, Mr. McMahon avers, in relation to the High Court hearing in the *Freeman* case, that:-

> "I respectfully suggest that Mr Justice Brian McGovern seriously erred in law in making no attempt whatsoever to have both Counsels in front of him not make a detailed submission of the extensive, both European and Irish Law, which applied to a securitisation transaction.
>
> I say that I believe that Miriam Freeman instructed her firm of solicitors to bring all matters of securitisation before the Supreme Court at the appeal hearing and that in serious neglect of his instructions Mr Joseph Hogan failed to make any submissions into the securitisation issue.
>
> I say that by the actions of Counsel in the *Freeman* hearings and by the actions of the judges of the Court hearings the issues both myself and other similar mortgage holders of Bank of Scotland PLC will be highly prejudiced if the Freeman judgement does not go unchallenged.
>
> In the circumstances where the Freeman's case has such relevance I have requested that Mrs Freeman the second Named Plaintiff/Appellant in the aforementioned Freeman case swear an Affidavit in all the matters that I have referred to and to the manipulation of evidence by Counsel for both the Plaintiffs and the Defendants in the matter.
>
> Mrs Freeman has agreed to swear such Affidavit and confirm the prejudice of the wilful, deliberate disregard of clear instructions given to her own Senior and Junior Counsel in regard to the securitisation issue, to be place before the Courts.
>
> To return to Para 11 of Kathryn Walters averment. I say that the Court should disregard, and has the established authority to so do, any securitisation authorities made in either the Freeman or Wellstead cases before the Irish courts."

29. In a similar vein, Mr. McMahon in the same affidavit avers at paragraph 3, in reference to BOS that:-

> "…I will give factual representations into how the Bank, its servants and agents, during the course of the Freeman trial in the High Court before Judge Brian McGovern and in the Supreme Court before Ms Justice Dunne, Mr Justice Charleton and Ms Justice O'Malley made wilful and reckless mis-statements, and wilful and reckless omissions into the status of the Deed of Appointment of the Receiver, Simon Davidson, and into the retained security claim by the bank, following the securitisation process with the Wolfhound Funding companies, and the use of loan notes issued by Wolfhound Funding for payment of the Mortgages sold to them by the bank.
>
> I say that the wilful or reckless mis-representation perpetrated by the Bank is fraudulent in the Freeman case, and has materially effected and impacted on my pleading and on my potentially amended Pleadings, before the Court."

30. Later, at paragraph 7 of this affidavit, he avers:-

> "I say that in previous cases involving securitisation to come before the Courts in recent years, and in particular the "Wellstead" case and the "*Freeman* v "Bank of Scotland" matter, that the bank or the Special Purpose Vehicle involved, have set out systemically to wilfully or recklessly mislead the Court, by representations made which they knew to be false, or by wilful and reckless omissions of fact, or the discovery of such facts by the Court."

31. Since the *Freeman* case was decided on appeal by the Supreme Court, it is well established that it would amount to an abuse of

process for Mrs. *Freeman*, the plaintiff in the *Freeman* case, to attempt to re-litigate a claim which has already been decided by the courts. In this Court's view, it is just as much an abuse of process for the plaintiffs, who were not even parties to Mrs. *Freeman*'s action, to attempt to use these proceedings to do something that Mrs. *Freeman* is prohibited from doing. It seems clear to this Court that this attempt, through these proceedings, to re-litigate this claim amounts to an abuse of process by the plaintiffs.

Making scurrilous allegations against the lawyers in this case and other cases

32. It will be seen from the foregoing averments in Mr. McMahon's affidavit that he is making very serious allegations that BOS wilfully or recklessly misled the Court. He then, at paragraph 9 (ii) of the affidavit of 26th April, 2016, targets not just the Bank, but also lawyers acting for the Bank in the *Wellstead* and *Freeman* cases, whom he accuses of the most outrageous conduct, since if it were true (and there is not a whit of evidence to support the claim) it would call their right to practice into question. He avers that:-

> "The plaintiffs will clearly establish at the trial of this action that in other recent cases in respect of securitisation that have been pleaded before the Courts namely the Freeman v Bank of Scotland and the Wellstead case, that Counsel for the bank have wilfully and recklessly misled the Courts both in evidence and by the omission of key transactional documents between the bank and the securitisation SPV, and by the total omission of the key legislation governing such transaction."

33. At paragraph 9(iv) of the same affidavit, in relation to the Deed of Assignment dated 20th November, 2008, between Bank of Scotland (Ireland) Ltd and Wolfhound Funding 2008-1 Ltd (which was the Special Purpose Vehicle used in the *Freeman* case, as distinct from Wolfhound Funding No. 2 Ltd, the Special Purpose Vehicle in the plaintiffs' case), he avers that:-

> "The Plaintiffs knew that Solicitors and Counsel for the Defendants with, on balance of probabilities, the collusion of Counsel for the Freemans had wilfully and recklessly colluded to prevent this document and others showing that the bank had sold all of its rights, and retained nothing, to be exhibited or referred to in both the High Court and Supreme Court hearings of the Freeman –v- Bank of Scotland matter, knew the importance and relevance in the voluntary discovery of the Deed of Assignment made between Wolfhound Funding No. 2 Ltd and the herein Defendant Bank."

34. These allegations against BOS and lawyers for BOS, for which not a shred of evidence has been produced, are scurrilous and vexatious.

The attitude of the plaintiffs to the use of Court resources in this litigation

35. In their submissions to this Court, the plaintiffs stated that counsel for the Bank had indicated to Gilligan J. when this matter was called on, that this case would take two days, while the plaintiffs themselves had indicated to Gilligan J. that it would take three days. The issue regarding the correct interest chargeable on an account was brought to the Court's attention during the hearing, but this aspect of the hearing was adjourned to the seventh and last day of the hearing on the 14th June, 2017. Thus, for the hearing of the two motions, it took not two or three days, as anticipated, but five full days and part of a sixth day. The Bank spent approximately eleven hours opening the case and making closing submissions, with a considerable part of this taken up with opening the extensive affidavits and exhibits of the plaintiffs and the extensive affidavits of the Bank replying to those affidavits. The McMahons began their submissions on day three of the hearing and finished on day five and then made some further submissions on day six. Between days three and day six, the plaintiffs spent approximately 9 hours making submissions and much of this time was taken up with referring to affidavits that had been opened by the Bank. The issues raised by the plaintiffs covered a broad spectrum, ranging from the extremely technical but irrelevant issue of whether the purpose of retained securitisation was to avail of Central Bank funding on foot of holding asset backed floating rate notes, to the mundane and equally irrelevant issue of whether the signature of a witness on a document was similar to the signature of the same witness on another document.

36. In the interests of saving Court time, this Court opted to read extensive passages from the exhibits to affidavits which had not been opened by Counsel for the Bank, and which Mr. McMahon wished to open during his submission. This was because it quickly became obvious that this was a more efficient approach. However, the plaintiffs objected to the Court reading passages from their exhibits in this manner as they wished to have the passages read out in full.

37. In addition, in spite of innumerable requests by the Court to Mr. McMahon to stop reading extensive extracts from the affidavits (since all the affidavits had been opened by counsel for the Bank), he continued to do so. Similarly, Mr. McMahon persisted in referring time and again in his submissions to the conduct of the hearing in the *Freeman* case (since the Court advised him that he could not re-litigate that case), despite the requests by the Court that he refrain from doing so. It is also relevant to note that when this judgment was being delivered, the plaintiffs interrupted on three separate occasions and repeatedly announced that certain terms of the judgement were 'totally irrelevant'.

38. The plaintiffs claim to be unsophisticated lay litigants and in Mr. McMahon's submissions, he sought on a number of occasions to rely on this fact for his own benefit, e.g. to support his application for an adjournment of the hearing before this Court to allow the plaintiffs to consult with the Attorney General in relation to the Judicature Act 1877. However, the reality is that during his oral submissions Mr. McMahon read from a detailed written script over a period of four days of Court time, which script was far from unsophisticated. It contained very technical and academic legal arguments with extensive reference to caselaw and Irish and European legislation (most of which has already been dealt with in the *Freeman* case and the *Kavanagh* case.) This sophisticated and technical legal argument contained in Mr. McMahon's submissions to this Court is also evident in his affidavit, since to take an example, at paragraph 9 (iv) of Mr. McMahon's affidavit of 26th April, 2016, he avers that:-

> "The Court will note when all the transaction documents are properly discovered the significance of the grading by the Rating Agency in the triggering of contractual clauses within the series of contracts between the parties. If the bank had attempted, which is prohibited by the securitisation European and Irish legislation and regulations, to retain certain security rights and obligations this would have to be taken into consideration by the Rating Agency, which agency is an integral part of the listing on the Stock Exchange of the loan notes to be issued by Wolfhound Funding."

39. On the one hand therefore, the plaintiffs were claiming that they were unsophisticated lay litigants who were seeking the indulgence of the Court and on the other hand they presented very detailed and complex written and oral arguments over four days which they suggested only they, and some specialist counsel, could make.

40. In this context, it was no surprise when counsel for the Bank described the actions of the plaintiffs as being that of "filibusters" who seemed to want to continue the hearing for as long as *they* felt was appropriate. This interjection by counsel for the Bank came after numerous unsuccessful requests by this Court to Mr. McMahon to refrain from opening affidavits that had already been opened, and when Mr. McMahon commenced reading *verbatim* in open court what appeared to be the Memorandum of Association of the Special Purpose Vehicle used in the securitisation of the plaintiffs' loans by the Bank.

41. After the completion of the fourth day of a hearing that was expected to last three days at most, this Court was concerned that a straight forward motion for dismissal and a motion to amend the Statement of Claim and to add a defendant to the proceedings, was taking much more time than would be normal for such motions. On this basis, at the end of the fourth day, this Court sought to limit the plaintiffs to one further hour of the following day to finalise their submissions. On the fifth day, the plaintiffs resisted any such limit and submitted that there was no such thing as a limitation on a court case and that they were entitled to make their case for as long as they needed. At that stage Mr. McMahon sought a further two days to complete his submissions. The Court let Mr. McMahon continue his submissions without putting any time limit on him at that stage and as matters transpired, he took 2-3 further hours to complete reading from his script and he did so towards the end of the fifth day, although he did make some further submissions on the sixth day of the hearing.

42. From this exchange with the plaintiffs regarding the length of their oral submissions, it became clear to this Court that the plaintiffs thought that a good defence to the claim that their proceedings were frivolous and vexatious was the fact that they were referring to an enormous volume of material in their submissions. This was because Mr. McMahon asked the rhetorical question, how could their case be frivolous and vexatious when there was all this material to which he was referring? Of course, the quantity of material a party refers to in support of their claim has no impact on the issue of whether their claim is frivolous and vexatious.

Use of court resources in lay litigant cases
43. In light of the plaintiffs' belief that there was no limit to the court time to which they are entitled to deal with their claim, it is necessary to refer to paragraph 45 of the Supreme Court judgment in *Tracey v. Burton* [2016] IESC 16. In that case, MacMenamin J. observed, in the context of lay litigants, that court time is a "*scarce public resource*" which should not be "*unnecessarily wasted*". He added:-

> "Court time is not solely the concern of litigants, or their legal representatives. There is a strong public interest aspect to these issues."

44. It is also relevant to refer to the Supreme Court decision in T*albot v. Hermitage Golf Club* [2014] IESC 57. At paragraph 47, Denham C.J. states that:-

> "The resources of the courts are there for litigants. Those resources are not, however, unlimited. No litigant is entitled to more than what is reasonably necessarily required for the just disposal of a case within the context of the other demands on court time. Whether it is an unrepresented litigant or not, the resources which the courts decide to assign to a case must depend on: the importance of the legal issues involved; the gravity of the wrong allegedly suffered by the moving or counterclaiming party; the monetary sum involved; and the public interest in the outcome of the case. Courts are entitled, and indeed are required, to foster their resources. This is both a matter of public and private interest. Court resources used in litigation are funded by public money. In addition, the parties pay for legal representation. Litigants should not be faced with cases that are longer or more expensive than they need to be for a fair resolution. In many instances, costs if awarded against a losing party may not be recovered. In that regard, putting reasonable limits on submissions in terms of time and allowing a measured number of hours or days for each side to litigate the case is both right and appropriate."

45. It is clear to this Court that the High Court has an obligation, to 'foster the resources' of the Courts to ensure that scarce public resources are not unnecessarily wasted. This Court has already found that the claims of the plaintiffs' are bound to fail. In addition, the claims are vexatious and amount to an abuse of process since they seek to re-litigate cases which have been decided by the Supreme Court and in which the plaintiffs were not even parties. The plaintiffs have also made scurrilous allegations against lawyers involved in this and other cases and the plaintiffs' conduct during the hearing, when they ignored repeated attempts by the Court to foster the resources assigned to the case, amounted to an abuse of process.

46. On this basis, this Court has little hesitation in finding that it would be a waste of scarce court resources for the plaintiffs' claim (save the claim in respect of the validity of the receiver appointed to the Ballyjamesduff property) to be allowed to proceed to a full plenary hearing, particularly as six days of High Court resources have already been expended in dealing with very extensive claims by the plaintiffs.

Conclusion
47. For the reasons set out in this judgment, this Court dismisses the plaintiffs' action on the grounds that it is frivolous, vexatious, an abuse of process and bound to fail. This Court also dismisses the application by the plaintiffs to amend their Statement of Claim and their application to have Tanager Limited added as a co-defendant. Adding Tanager as a defendant will not remedy the flaws identified in this judgment with the plaintiffs' claim. The only caveat is that the plaintiffs are permitted to amend their Statement to Claim for it to have one claim only, namely that the receiver that was appointed over the Ballyjamesduff property was not validly appointed on the grounds that the plaintiffs were not in arrears on loan no. -504 at the time of the demand and at the time of the appointment of the receiver.

Issac Wunder Order
48. It is clear to this Court that the plaintiffs are wholly convinced of the strength of their case to the effect that BOSI, BOS and Tanager were in the wrong and it is also clear to this Court that the plaintiffs will do everything to prove their case, as they see it, ranging from seeking to overturn decisions of the Supreme Court (in which they were not even parties) to making scurrilous claims against lawyers. It is clear to this Court that there is nothing that it can say or do that will change the plaintiffs' minds.

49. It is relevant to note that, as lay litigants, the plaintiffs do not have the very significant costs of paying lawyers in order to take High Court litigation and so do not appear to have what is the usual financial disincentive from taking unmeritorious claims, such as this one.

50. In addition, since they are not paying lawyers to represent them day after day in the High Court, the plaintiffs do not appear to have a financial incentive to make their claims in the most efficient manner possible before this Court. Indeed, it is to be noted that the risk of having the costs of a long hearing awarded against them does not seem to have been a motivation for them to condense their arguments. In this regard, the plaintiffs submitted during the course of the hearing that they did not have €3,000 to pay for transcripts or lawyers. Accordingly, it may well be that the plaintiffs feel that even if costs are awarded against them, they do not have the resources to pay such costs and so it is irrelevant whether it is the costs of a one day hearing, or the costs of six day hearing, that is awarded against them. While the plaintiffs had been in Court on 144 different days in relation to this matter, they showed no inclination to seek to condense the number of days involved in dealing with the issues at stake.

51. However, while the plaintiffs may not be concerned whether a hearing lasts for one day or several days, it is a matter of

considerable concern for the courts in light of the public money being expended on providing court resources particularly as there are a greater number of litigants than court hours and where there is such a strain on court resources at present that the Judicial Review list of the High Court was suspended in recent weeks.

52. As this Court has come to the conclusion that its processes are being abused and in the interests of ensuring there is no further waste of scarce court resources, this Court will make an Isaac Wunder Order in this case against the plaintiffs in a form similar to that made by Hogan J. in *Gunning v. Sherry* [2012] IEHC 88. As is clear from that case, the inherent jurisdiction of this Court to make such an order is well established and as Irvine J. explained *in Burke v. Judge Fulham* [2010] IEHC 448, the purpose of the Isaac Wunder Order is to regulate the constitutional right of access to the courts. While it is clear from these cases that the power of this Court to grant an Isaac Wunder order should only be invoked sparingly, this Court nonetheless concludes that the plaintiffs' constitutional right of access to the Courts should be regulated in this case by the imposition of a filter, whereby court approval needs to be obtained for proceedings to be issued by them. This is because of the vexatious and scurrilous claims which the plaintiffs have sought to litigate and the abuse of process in which they have engaged as evidenced by their attempts to re-litigate cases in which they were not even parties combined with their total disregard for the waste of court resources by their actions.

53. The Order from this Court is therefore that the plaintiffs are precluded from commencing any new proceedings which directly or indirectly concern the properties the subject of these proceedings or the borrowings the subject of these proceedings without the prior leave of the President of the High Court, or some other judge nominated by him, such leave to be sought by an application in writing addressed to the Chief Registrar of the High Court.

54. It is important to note first that this Order does not prevent the plaintiffs appealing this judgment and secondly that the imposition of the Isaac Wunder Order only operates as a filter on the plaintiffs' constitutional right of access to the courts. It does not deny the plaintiffs' their constitutional right of access to the courts, since to the extent that the plaintiffs have in the future any meritorious claims which they wish to bring, it is self-evident that these claims would be permitted by the President of the High Court. It is also important to note that this Issac Wunder Order has no impact on the right of the plaintiffs to pursue their claim regarding the Ballyjamesduff property. The purpose of the Isaac Wunder Order is to ensure, *inter alia*, that court resources are fostered for the benefit of other litigants, both represented and lay litigants, who have a right to have their meritorious claims heard as soon as possible.