

THE HIGH COURT

[2018 No. 9532 P.]

BETWEEN

JERRY BEADES

PLAINTIFF

AND

ULSTER BANK IRELAND LIMITED, DECLAN TAITE AND PATRICK BRENNAN

DEFENDANTS

EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 28th day of May, 2019**Introduction**

1. I have already ruled upon the application of Mr. Beades to recuse myself from hearing this application which is the subject of a typed note on the Court file.

2. Before the Court are two applications made and now confined by counsel for only the second and third named defendants ("*the receivers*"), to:-

(i) An order striking out the claim of the plaintiff ("*Mr. Beades*") pursuant to O. 19 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of the court on the ground that the plaintiff's claim is an abuse of process, discloses no cause of action against the second and third named defendants, is frivolous, vexatious and/or is bound to fail.

(ii) An order pursuant to s. 123(b)(ii) of the Land and Conveyancing Law Reform Act 2009, or pursuant to the inherent jurisdiction of the court vacating the *lis pendens* registered on 1st November, 2018, in respect of 106 McKee Road, Finglas, Dublin ("*the house*").

3. The following is an undisputed chronological background to this application:-

07/04/2006 The plaintiff executed a mortgage ("*the mortgage*") in favour of the first named defendant ("*Ulster Bank*") over the house.

19/03/2013 The receivers were appointed by Ulster Bank pursuant to the mortgage.

30/09/2013 McDermott J. granted an interlocutory injunction to receivers appointed by Ulster Bank over different residential properties pursuant to separate deeds of mortgage dated 7th April, 2006.

10/10/2013 McGovern J. granted summary judgment in favour of Ulster Bank against Mr. Beades for a sum greater than €3.5m, which is the subject of an appeal by Mr. Beades that has yet to be determined.

19/05/2015 The third named defendant resigned as a receiver and the second named defendant ("*Mr. Taite*") is now the sole receiver in respect of the house.

15/10/2018 Mr. Taite executed a contract for the sale of the house to a Mr. and Mrs. Feeney who remain in rented accommodation due to the inability of Mr. Taite to close the sale on account of the *lis pendens* registered, unknown to Mr. Taite, on 1st November, by the plaintiff.

01/11/2018 The plenary summons issued. The solicitors for the receivers obtained knowledge of the summons upon learning of the *lis pendens*. They entered an appearance on 7th December, 2018, requesting the delivery of a statement of claim.

19/02/2019 The notice of motion (grounded upon an affidavit sworn by Mr Taite on the 14th February 2019), now before this Court, was issued.

11/03/2019 Mr. Beades, who now indicates on affidavit that his place of business is PO Box 80851, Doha, Qatar with an address for service at a particular premises on Richmond Avenue, Fairview, Dublin, delivered a statement of claim along with his affidavit in reply to Mr Taite's grounding affidavit.

27/03/2019 Is the date of the defence which Mr. Beades told the Court that he only saw for the first time today despite an affidavit of service of same and information given previously to Reynolds J. who made rulings to enable the hearing of this motion today.

4. Counsel for Ulster Bank attended today pursuant to a direction of Reynolds J., although Ulster Bank is not seeking any relief against Mr. Beades in this motion. Counsel for the receivers, Mr. Powell, conceded that the relief arising from the delay on the part of Mr. Beades in delivering a statement of claim was not of major concern save as to the issue of the costs in relation to this motion.

5. Paragraph 5 of Mr. Taite's supplemental affidavit filed on 27th March, 2019, summarises the grounds for Mr. Beades' claim, as it now stands as against the receivers, as follows:-

(a) Mr. Beades "*felt coerced*" to sign a facility letter with Ulster Bank to address his then liabilities after the date for repayment of loans;

(b) no proper demand was made for the debt due by Mr. Beades to Ulster Bank;

(c) the receivers were appointed on foot of a facility letter of 20th May, 2010, that does not exist;

(d) Mr. Beades has made a complaint to Royal Bank of Scotland ("RBS") in relation to the treatment afforded to him by Ulster Bank and its successor following the global restructuring group ("GRG"), which Mr. Beades has referred to as having been the subject of investigations by parliamentary committees or such like in the United Kingdom and in Ireland concerning the alleged mistreatment of customers by Ulster Bank and others in the RBS Group.

6. The statement of claim makes out a claim against Ulster Bank which proceeds without an application from Ulster Bank to strike same out. However, this Court urges Mr. Beades, with legal representation if he can secure the service of solicitors, and the solicitors for Ulster Bank to progress these proceedings in a much more focused manner than presently exists.

7. Today, this Court is only concerned with a rather net question which could be asked as follows: has the plaintiff in the statement of claim set forth a stateable claim against the receivers and is any such claim bound to fail?

The Law

8. Mr. Beades and counsel for the receivers both quoted from para. 30 of judgment of McDonald J. in *McCarthy v. Moroney* and *Moroney v. Property Registration Authority & Ors* [2018] IEHC 379, (unreported, High Court, 29th June, 2018). That paragraph contains an appropriate synopsis about the jurisdiction to dismiss proceedings in an application like this:-

"Before turning to the specific basis on which Ennis Property and Bank of Scotland seek to strike out or dismiss Mr. Moroney's claim, it is important to consider the nature of the court's jurisdiction on an application of this kind. ... I was also provided with a copy of the decision of the Supreme Court in Lopes v. Minister for Justice Equality and Law Reform [2014] 2 IR 301. In his judgment in that case, Clarke J. (as he then was) summarised the relevant principles relating to the court's jurisdiction to dismiss proceedings at pp. 307 – 310 of the report. For present purposes, the applicable principles can be synthesised as follows:-

(a) If on the basis of the facts pleaded, a case is bound to fail, then the proceedings should be dismissed under O. 19, r. 28.

(b) In contrast, the inherent jurisdiction of the court can be invoked where it is possible to establish the facts at an interlocutory stage with clarity, and where it is possible to show (again with clarity) that those facts do not support the claim made such that the court can conclude that the proceedings are bound to fail on the merits.

(c) The inherent jurisdiction of the court should, however be sparingly exercised. The court should be slow to entertain an application to dismiss.

(d) In responding to an application to dismiss a claim, all that a plaintiff needs to do is to put forward a credible basis for suggesting that the plaintiff may, at trial, be able to establish the facts which are asserted and which are necessary for success in the proceedings. The court should bear in mind that, in a plenary action a plaintiff has available the range of procedures provided for in the rules to assist in establishing the facts such as discovery, interrogatories and the summoning of witnesses by subpoena. Some of the steps are not available at an interlocutory stage, in the case of others, it is usually not practicable to take such steps prior to the hearing of an application to dismiss.

(e) There are certain types of cases which are more amenable to an assessment of the facts at an early stage. This is especially so in cases which are wholly or significantly dependent on documents.

(f) Although not specifically stated by Clarke J. in Lopes v. Minister for Justice, it is also clear from the case law that the onus lies on a defendant in an application of this kind to demonstrate that it is very clear either that the plaintiff's claim is bound to fail or that it should be struck out under O.19. r.28.

(g) Again, although not specifically mentioned by Clarke J. in Lopes v. Minister for Justice, it is also clear from the judgment of McCarthy J in the Supreme Court in Sun Fat Chan v. Osseous Ltd. [1992] 1 I.R. 425 (which is cited by Clarke J. in Lopes at p. 428) that if a statement of claim admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed."

9. This Court recognises that it should exercise its jurisdiction to strike out pleadings or dismiss sparingly. The statement of claim of Mr. Beades mentions, *inter alia*, the absence of a demand for repayment, the reference to a facility letter dated 20th May, 2010, (which is acknowledged by the receivers not to exist), his grievance about the state of the house, the GRG complaints process which he is pursuing and the validity of the appointment of the receivers purportedly relying upon the non-existent facility letter quoted by Ulster Bank in correspondence.

10. Mr. Beades took the liberty today to make submissions, despite the Court noting its reluctance to hear such submissions, based on statements or beliefs which are not set out in the statement of claim or on affidavit concerning alleged serious fraudulent activities and breaches of fiduciary duty of unspecified individuals and employees associated with Ulster Bank.

11. Mr. Beades identifies flaws and particulars of a technical nature which he uses to advance arguments. Mr. Beades repeatedly refers to his lay litigant status and appears to misunderstand the status of pleadings and the purpose of a formal defence. A formal defence does not constitute evidence, rather it admits facts asserted by a plaintiff or puts the plaintiff on proof of the facts which the plaintiff asserts. Here there is no dispute; the letter of 20th May, 2010, does not exist as far as the receivers and Mr Beades are concerned.

12. Mr. Beades does not appear to realise, or conveniently ignores, the obligation to plead with particularity the allegations of fraud or breach of trust. Particulars of dates, names, sums and circumstances are required at the very least. Counsel for the receivers is correct in submitting that the Court should avoid taking submissions based on general allegations made "on the hoof".

13. Mr. Beades has been involved in a series of cases and ought to be aware, if he is not already, that the manner by which he made allegations in open court today is not appropriate. He can make relevant allegations or pursue claims in proceedings which are supported by proper pleadings, affidavits or in particulars.

14. Mr. Beades complains in reply that the affidavits filed on behalf of the receivers rely on hearsay evidence. Order 40 of the Rules of the Superior Courts provides for hearsay evidence in affidavits. There is no corresponding rule to allow a lay litigant to give hearsay evidence by way of submissions and without having leave to give sworn oral evidence.

15. The aforementioned is really a distraction, like so many other points raised by Mr. Beades, in his quest to prevent the sale or management of the now dilapidated house. The real focus of this application is whether Mr. Beades, in his replying affidavit and statement of claim of 11th March, 2019, describes a cause of action against either or both of the receivers and if such a cause of action is bound to fail.

16. Mr. Beades is not precluded from pursuing Ulster Bank in respect of the wrongs which he described today whatever way this Court decides upon the two applications now. Counsel for Ulster Bank merely attended and apprised the Court of factual matters relating to the management of the motion and of these proceedings as they concern Ulster Bank.

17. Mr. Beades does not dispute the terms of the mortgage, which I will abbreviate as follows:-

(i) clauses 10.1 and 10.2.1 provide that after the due date for the discharge of the loan, the obligation to repay monies occurs without the necessity for a letter of demand; the expiry of the facility, as acknowledged by Mr. Beades, rendered the security (i.e. the mortgage) enforceable;

(ii) clause 11.1 provides for the appointment and removal of receivers and sale by joint receivers;

(iii) clauses 11.4.1 and 11.4.3 provide for taking possession and the power to sell.

18. Mr. Beades executed the mortgage, the existence of which is not in doubt. Mr. Beades' claim that he felt coerced into executing a facility letter with Ulster Bank is, at best, the beginning of a claim against Ulster Bank although it escapes me now from the limited facts disclosed, how he will establish that that is a cause of action against Ulster Bank. Whatever it is, it is not a claim against the receivers.

19. The complaints about selling at an undervalue and mismanagement of properties do not go to an entitlement to ignore the undisputed terms of the mortgage. The statement of claim is not directed to the remedies, if any, which Mr. Beades could ever seek about an alleged breach of fiduciary duties on the part of the receivers and it is stressed that no such allegation is made in the statement of claim. If the statement of claim actually mentioned same, particulars are required in the pleadings; the statement of claim singularly fails to give those particulars.

20. The tendency of Mr. Beades to make general allegations without specifics has not assisted him in resisting this application. I accept the submission of counsel for the receivers that neither this Court nor the receivers can anticipate a claim. The inability of Mr. Beades to plead properly cannot be overcome by his plea to the Court that he is a lay litigant. The receivers, according to the averments in the affidavits supported by exhibits filed on their behalf, do not disclose any impropriety in their appointment. Mr. Beades has not pointed to any specific infirmity despite having access to all of the exhibits. In addition, this Court cannot divine a claim based on unsworn submissions which are made without notice.

21. For all of those reasons, I find that O. 19, r. 28 of the Rules of the Superior Courts can be successfully invoked on behalf of the receivers. The statement of claim as against the receivers is hereby struck out on the grounds that it discloses no reasonable cause of action against those named defendants and the statement of claim is frivolous and vexatious insofar as it relates to the receivers, having regard to the meanings given to those words (frivolous and vexatious) in various judgments.

22. Moreover, and even if I could detect a stateable cause of action in the statement of claim which could be made by an amendment, (no amendment having been sought by Mr. Beades), I determine on the facts pleaded and described in the affidavit of Mr. Beades that the plaintiff is bound to fail in the action as against the receivers.

23. I dare not advise Mr. Beades other than to encourage him to seek legal advice about the best way of proceeding in any stateable claim he may have against Ulster Bank and whatever other claim he can articulate with the benefit of legal advice against either or both of the receivers.

Lis pendens

24. The second relief sought is an order to vacate the *lis pendens* on the application of the receivers registered in respect of the house because, "*the action is not being prosecuted bona fide*". Mr. Taite is now the receiver with a power of sale and he has agreed to sell the house to a couple who are renting other accommodation pending the closing of the sale and refurbishment of the house. It follows from the reasons given in my earlier determination about the failure to disclose a reasonable cause of action against the receivers, that these proceedings, in the words of s. 123, are not being prosecuted *bona fide* as against Mr. Taite. I do not apply the considerations for granting interlocutory relief but rather I am proceeding on the basis that I am satisfied that these proceedings against the person who has power to sell the house now are not being prosecuted *bona fide* as that term has been used in the various judgments cited to the Court in written legal submissions dated 22nd May, 2019.

25. As Mr. Beades belatedly raised the point about the identity of the entity which now owns the right to recover the loan advanced to him by Ulster Bank, I merely observe that that was not an issue raised until he replied to counsel for the receivers today.

26. In short, the ownership of the loan is not now a factor which concerns this application. The other rather convoluted and speculative allegations of Mr. Beades may be for another forum or other proceedings if Mr. Beades can identify specific evidence and deliver pleadings with particularity. The introduction of the letter dated 30th April 2019 headed "*Jerry Beades Greencastle Investment Limited and Jerry Beades Construction*" at the hearing of this application was allowed because Mr. Beades insisted that it was in some way relevant. I repeat that more focus and particularity are greatly required if those complaints are going to form some part of proceedings before the courts in this State.

Application for a stay after delivery of judgment

27. This is an application by Mr. Beades for a stay on the order which has been made by the Court vacating the *lis pendens* on the house. In that regard, I consider that the least risk of injustice which could be caused, particularly given the innocent third party involvement, requires me to refuse the application for a stay. Damages will be an adequate remedy for Mr. Beades if he ever succeeds in a claim against Mr. Taite and no question was posed about the ability of Mr. Taite to pay an award of damages. The ability of Mr. Beades to discharge monies due by him is in doubt to say the least, when one considers his indebtedness. Therefore, I refuse that application of Mr. Beades for a stay on the order to vacate the *lis pendens*.

28. In relation to the application for a stay on the order directing Mr. Beades to pay costs, it appears somewhat academic given the indebtedness identified in various judgments against Mr. Beades. Mr. Beades has failed to identify any grounds for not following the rule that costs follow the event or any special reason to disapply that rule. Furthermore, his significant debt does not justify further

indulging Mr. Beades. This Court will not allow itself to be used in a way which can facilitate a party to frustrate enforcement of Court orders. Therefore, I refuse the application for a stay on the order directing Mr. Beades to pay the costs of this application.