

## THE HIGH COURT

[2007 No. 8488 P]

BETWEEN

KEVIN TRACEY

PLAINTIFF

V.

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND, THE ATTORNEY GENERAL, THE COMMISSIONER OF AN GARDA SIOCHANA, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE DUBLIN METROPOLITAN DISTRICT COURT, THE COURTS SERVICE, AND DAVID REYNOLDS

DEFENDANTS

**JUDGMENT of Mr. Justice Robert Eagar delivered on the 22nd day of March, 2019**

1. This is a judgment in respect of an application by the seventh named defendant in the above entitled action (the Courts Service) seeking an order striking out the proceedings herein against the seventh named defendant pursuant to the inherent jurisdiction of the Court and/or on the grounds that the proceedings herein are frivolous or vexatious and/or bound to fail.

**History of the proceedings**

2. On the 15th November, 2007, the plaintiff issued proceedings against the following defendants – the Minister for Justice, Equality and Law Reform, Ireland, the Attorney General, the Commissioner of An Garda Síochána, the Director of Public Prosecutions, the Dublin Metropolitan District Court, the Courts Service and Mr. David Reynolds, seeking damages including nominal damages, exemplary and punitive damages, aggravated damages, general damages and special damages for misfeasance in public office, constitutional and human rights violations, malicious prosecution, abuse of the legal process and perversion of the course of justice.

3. The plaintiff also claims damages for loss, inconvenience and expense occasioned by the breach of contract and negligence including breach of duty by the defendants, their officers, servants or agents. He also seeks further and other reliefs for interest pursuant to the Courts Act, 1981 and costs.

4. The plaintiff is a litigant in person and has acted on his own behalf in these proceedings.

5. In respect of the sixth and seventh named defendants, Messrs A&L Goodbody entered an appearance on behalf of the sixth and seventh named defendants on the 7th December, 2007.

6. On the 22nd December, 2007 the plaintiff issued a statement of claim. (the Court will revert to the statement of claim later in the judgment) On the 18th January, 2008, Messrs A&L Goodbody issued a notice for particulars arising out of the statement of claim dated the 22nd December, 2007.

7. On the 21st February, 2008, the plaintiff sought an order of judgment against *inter alia* the sixth and seventh named defendants on the basis that they were in default of the defence. In response to that application, Ms. Sinead Hayes, solicitor with the firm of A&L Goodbody referred to the history of the proceedings and stated at para. 4: -

*"The plaintiff has failed to particularise any claim as against the sixth and seventh named defendants in a manner sufficient to allow the said defendants to understand the nature of the claim against them."*

At para. 6 she referred to the notice of particulars served on the plaintiff on the 18th January, 2008 setting out the correspondence sent by the solicitors on behalf of the sixth and seventh named defendants dated the 31st January, 2008 noting that his replies to particulars were necessary to enable the defendants to file their defence. She said that at that time the plaintiff had failed to provide replies to the notice of particulars.

8. This motion on behalf of the plaintiff came before McKechnie J. on the 31st March, 2008 and it was ordered that the plaintiff reply to the notice of particulars delivered by the sixth and seventh named defendants to the plaintiff dated the 18th January, 2008 within four weeks from the date of the perfection of the order, and that the sixth and seventh named defendants had three weeks from the date of receipt of the said replies to particulars for the delivery of a defence. Other orders were made in respect of other defendants, but these are not relevant to this judgment.

9. On the 25th April, 2008 Mr. Tracey served replies to the notice for particulars and the Court will revert to this matter later in the judgment. On the 16th June, 2008 the defence of the sixth and seventh named defendants was delivered by Messrs. A&L Goodbody on behalf of the sixth and seventh named defendants.

10. An application was made on the 14th October, 2008 on behalf of the sixth and seventh named defendants, for the following orders: -

(i) An order pursuant to O. 19, r. 28 dismissing the plaintiff's claim as against the sixth and seventh named defendants on the basis that same is frivolous and vexatious;

(ii) An order pursuant to O. 19, r. 27 – 28 striking out the plaintiff's pleadings as against the sixth and seventh named defendants on the basis that same disclosed no reasonable cause of action against those defendants;

(iii) An order pursuant to the inherent jurisdiction of the court dismissing the plaintiff's claim as against the sixth and seventh named defendants on the basis that same are frivolous or vexatious or bound to fail.

11. This application was based on the affidavit of Ms. Margaret O'Neill who was then the acting Director of Circuit and District Court Operations in the Courts Service. On the 6th January, 2009, the plaintiff served a notice of cross-examination of Ms. Margaret O'Neill.

12. The motion brought by the sixth and seventh named defendants came before Hedigan J. on the 26th January, 2009 and he ordered that the plaintiff's claim as against the sixth and seventh named defendants be dismissed pursuant to O. 19, r. 28 on the

basis that same was frivolous and vexatious. His order recited that pursuant to the inherent jurisdiction of the court, that the plaintiff's claim as against the sixth and seventh named defendants was dismissed on the basis that same was frivolous or vexatious or bound to fail.

13. On the 11th February, 2009, the plaintiff served notice of appeal arising from the judgment of Hedigan J. dated the 26th July, 2009 and perfected on the same date.

14. At this stage there have been six High Court cases (including this case). In a number of the cases the plaintiff Karen Tracey, was also included, but not in this particular case. They were dismissed by the then President of the High Court, Kearns P., on the 4th March, 2011 for delay on the basis of what might be described as a finding of significant procedural failure on the part of the two plaintiffs, Kevin Tracey and Karen Tracey. Having regard to the decision of Hedigan J. which was the subject matter of an appeal, the decision of Kearns P. did not relate to these proceedings against the sixth and seventh named defendants.

15. In the early part of 2010, before the appeal against the order of Hedigan J. was listed in the Supreme Court there were a total of seven sets of proceedings in being which Mr. Tracey whether alone or in one guise or another, was the principal moving party and the elements of the State were the main defendants. In that context, in early 2010 the State respondents brought a motion seeking case management of all of these proceedings together. One of the cases was struck out by order of Charleton J. on the 29th June, 2010 but the other matters were listed by case management before Kearns P.

16. On the 4th March, 2011, Kearns P. dismissed all of Mr. Tracey's proceedings.

17. Mr. Tracey appealed to the Supreme Court against the order of Kearns P. on the 4th March, 2011.

18. In that context it should be emphasised that Mr. Tracey's appeal against the order of Kearns P. came before the Supreme Court in 2016 and Clarke J. in dealing with the decision of the President, raised the question as to whether the dismissal of each of the relevant proceedings was a proportionate response. He said:-

"7.6 In summary, therefore, it seems to me that the trial judge was entitled to conclude that there had been inordinate and inexcusable delay, in the particular sense relevant to the facts of this appeal, by virtue of the persistent failure of the Traceys to present adequate medical reports to the Court so as to enable the Court to make an appropriate decision as to whether, and if so for how long, to put these proceedings on hold.

7.9 Nonetheless, in my view, in the light of the fact that the Traceys had progressed the relevant proceedings in a timely fashion up to that point and had at least provided some additional medical information, a dismissal of the proceedings was a disproportionate sanction to impose for the undoubted procedural failure present.

7.11 It follows that, in my view, the trial judge was in error in dismissing the relevant proceedings and that this appeal must, therefore, be allowed.

*8.3 In those circumstances I would propose that this Court give a direction that each of the matters be listed, at the earliest convenient date available, before the President of the High Court or a judge nominated by the President for the purposes of further case management. It should, in that context, be emphasised that, while the dismissal of the relevant proceedings may be seen as disproportionate in all the circumstances then prevailing, nonetheless there was a material procedural failure on the part of the Traceys. It follows that any further procedural failures, provided that they be of substance and could not be regarded as minor or trivial, could legitimately lead a judge conducting further case management of these proceedings to the conclusion that such further procedural failure, when taken in conjunction with the procedural failure which is the subject of this judgment, rendered the failures concerned sufficiently persistent to warrant dismissal. It is of the utmost importance, in that context, that it be understood that any directions given by a case management judge in the future should be strictly complied with."*

19. It is clear that the application of the sixth and seventh named defendants which had been successful and which was the subject matter of the judgment of Hedigan J. dated the 26th January, 2009 was not considered by the Supreme Court in those proceedings. Mr. Tracey's appeal against the order of Hedigan J. came before the Supreme Court in 2018 and on the 31st July, 2018 the judgment of the court was given by MacMenamin J. The judgment of the Court recited three of the proceedings.

20. Order 19 Rule 28 provides:

*"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."*

21. MacMenamin J.'s judgment provides:

*"5. The legal principles upon which a court will proceed in dealing with an application under Order 19, Rule 28, are well established. The terms 'frivolous and vexatious' are to be understood as meaning that the claim is unsustainable in law, has no chance of success, such that its continuation would be an unfair imposition on a defendant.*

*6. In considering an application to strike-out proceedings under Order 19, Rule 28, it is necessary for the courts to balance the constitutional right of a plaintiff's access to the courts against rights and interests of defendants who should not be exposed to defending proceedings which are bound to fail. As the authorities make clear, the courts are 'slow', 'careful' and 'sparing' in exercising this function. In Aer Rianta c.p.t. v. Ryanair Limited [2004] 1 I.R. 506, this Court, (Denham, Hardiman, McCracken JJ.), emphasised that an application of this type relates only to the textual content of the statement of claim. Denham J., in Aer Rianta, explained that an affidavit filed for the motion in that case purely described the factual situation as to the pleadings, but did not seek to advance any matter outside them.*

*8. An application to strike out is to be decided on the assumption that the statements in the statement of claim are true, and will be proved at trial. If good cause of action can be discerned, then an application under Order 19 Rule 28 cannot succeed, regardless of the parties' prospects of establishing that cause of action at the trial. An application will not succeed, either, if a deficiency in pleading can be rectified by an amendment in the pleading. (Sun Fat Chan v. Osseous Limited [1992] 1 I.R. 425; Lawlor v. Ross, Supreme Court, 22nd November, 2001). In Aer Rianta, Denham J.*

explained that the Rule relates to the full Statement of Claim, and not any part thereof. But, if a court is convinced that a claim will fail, the pleading will be struck out.

9. To these principles I would add that, in determining such an issue, a judge should indicate clearly whether he or she is exercising the jurisdiction pursuant to Order 19, Rule 28, or whether, alternatively or additionally, the court is proceeding under its inherent jurisdiction to strike-out proceedings, where the considerations differ and are set out in numerous decisions of the courts. The three issues in this appeal now fall to be considered."

12. The following issues fall to be determined in this appeal. First, whether Mr. Tracey was wrongly denied a right to cross-examine a deponent, Margaret O'Neill, who swore a grounding affidavit in the High Court on behalf of the Courts Service, and next, whether any claim is sustainable in law against the sixth named defendant, the 'Dublin Metropolitan District Court'. Counsel for the defendants submits the words merely describe a District Court venue, defined by legislation, and not a legal entity or personage capable of being sued. Finally, the question arises as to whether the statement of claim makes out a cause of action against the Courts Service, the seventh named defendant. The judgment concludes with some more general observations. It is now necessary to trace the course of the procedure adopted in the High Court."

13. Arising from the statement of claim, the two defendants' solicitors served a notice for particulars, requiring details of the allegations against each defendant. The plaintiff brought a motion for judgment in default of defence before the High Court (McKechnie J.), who directed the plaintiff to reply to the notice for particulars, allowing time after the reply thereto for the defendants to file their defence. Mr. Tracey duly furnished a reply to the notice for particulars on the 26th April, 2008.

14. He set out further allegations made against the two defendants. These included an allegation against the Courts Service to the effect that a District Court clerk had, allegedly, acted 'irregularly' in witnessing or certifying the allegedly irregular signing of the District Court order by another judge; and claiming that there had been a failure to inform Mr. Tracey of a listing of the case in the District Court on the 17th February 2006, at which point an order was made adjourning the prosecution to a future date.

15. A defence was filed on behalf of the two defendants on the 16th June, 2008. This contained the plea that the sixth named defendant was not a legal person and could not be sued, either in a representative capacity, or otherwise. It also contained a plea that the seventh defendant, the Courts Service, was confined to acting within its statutory remit as set out in the Courts Service Act, 1998, and that no wrongs were alleged against the Service in the statement of claim.

16. Relying on both Order 19, Rules 27 and 28, the two defendants then brought this motion, seeking an order that the pleadings disclosed no stateable cause of action against either of them, or alternatively an order pursuant to the inherent jurisdiction of the High Court, dismissing the claim on the basis that the proceeding against them was frivolous, vexatious, and bound to fail.

17. Having heard the application, Hedigan J. delivered an ex tempore judgment, confining himself to reaching conclusions, under Order 19, Rule 28. He made no finding on the basis of the inherent jurisdiction of the Court. Later, for the purpose of this appeal, the judge furnished a report to this Court setting out what occurred in his court, and the basis of his conclusions. The fact that the Judge's decision was diminished in this way has consequences considered later in this judgment. [this Court's emphasis]

23. At the risk of being otiose or circular, what is defined as the Dublin Metropolitan District, therefore, is simply that a court district having defined geographical boundaries. As such, it is not an entity having legal personality capable of being sued. It cannot be joined as a party to legal proceedings. In the words of Order 15, Rule 1, RSC 1986, as amended, it cannot be properly alleged that a substantive right to relief or damage exists, or could exist, against what is, in effect, merely a description of a court venue. On occasion, express or implied reference is made in judicial review proceedings, by implication or otherwise, to judges of the Dublin Metropolitan District (this Court's emphasis). But, that is in the entirely different context when an order is made in the High Court directed to District Court judges. But this does not render the district itself a legal person potentially amenable in court proceedings, or some form of damages claim. It is impossible to conceive how a claim for an actual wrong could appropriately be brought against a District Court area, or how relief could be granted against it. This claim was unsustainable and, therefore, frivolous and vexatious. I would uphold the judgment of the High Court on this point.

24. There is, however, the allegation as to the alleged conduct on the part of a District Court clerk. This claim was not fully particularised, either in the statement of claim, or in the reply to particulars. For a cause of action such as misfeasance in public office to be sustainable, a plaintiff would have to allege that conduct by a public servant was motivated by malice or ill-will or knowing illegality. There is no such specific plea in these proceedings. Nonetheless, the allegation, as it stands, subsists as part of the claim. Furthermore, the order relied on was included in the evidence and appears to show that a clerk certified that the order was a true copy of the original. It does not appear that the signature complained of goes to the validity of the order, or even on Mr Tracey's case is in any way wrongful - he asserts that the order was indeed in that form, i.e. signed by the judge in question, Judge Fitzpatrick, but contends this was unlawful. All this is without adverting to terms of the District Court Rules on signature of orders already referred to. However, these matters were not considered or addressed on the appeal before this Court and there remains, at minimum, a prima facie allegation pleaded against one of the employees of the Courts Service. Can the Courts Service then avail of Order 19, Rule 28 to strike out? I am not persuaded that this can be done under this Order and Rule. In expressing this view, I do not preclude the possibility that an application might be made to the High Court to strike out the proceedings against the Courts Service, but this time based upon the inherent jurisdiction of that court. In such an application, different legal criteria would arise. These are described in the case law. Here the High Court judge did not adopt the alternative course of striking out the claim by reference to inherent jurisdiction of the court, notwithstanding that the alternative relief was sought in the notice of motion. This discrete issue did not, therefore, arise for consideration on appeal in this Court. No submissions were made on the point on appeal. It would be unfair for this Court to itself invoke this inherent jurisdiction without the parties having been given the opportunity of addressing the point. Such application might, if necessary, be made at first instance, based on such grounds as there may be for such application. A new application to strike out the claim against the Courts Service, relying on the different and distinct basis of inherent jurisdiction of the Court, would not be res judicata by reason of the prior application of this judgment." (this Court's emphasis).

### **Submissions in respect of the present application by the seventh named defendant**

22. The application before the Court is the application (identified by MacMenamin J.) in which he stated that a new application to strike out the claim against the Courts Service, relying on the different and distinct basis that the inherent jurisdiction of the court would not be *res judicata* by reason of the prior application of this judgment. The seventh named defendant is seeking:

An order striking out the proceedings as against the seventh named defendant pursuant to the inherent jurisdiction of the court, and/or the grounds of the proceedings are frivolous or vexatious and are bound to fail.

23. The application is based on the grounding affidavit of Ms. Lisa Scott who is a member of the staff of the Courts Service serving within the Circuit and District Court operations of the Courts Service. At para. 3 she states:

*"The plenary summons in these proceedings was issued on the 15th November, 2007 and statement of claim was delivered on the 22nd December, 2007. The plaintiff made the same allegation against each of the sixth and seventh named defendants. It is alleged in para. 4 (p. 4) of the statement of claim that on the 22nd June, 2006, Judge Fitzpatrick signed the two orders made at the sittings of the District Court on the 8th February, 2006 and on the 17th February, 2006 (collectively referred to as the Orders). The plaintiff claims that Judge Fitzpatrick was not the presiding judge on those days and further question whether the District Court sat on the latter date. The plaintiff claims that signing of the Orders by a judge other than the sitting judge means that the Orders are a fabrication".*

At para. 4 she states:

*"It should be noted that the Orders are in fact copies of orders; the significance of this is that the plea is referred to below. The Order of the 8th February, 2006 was an order adjourning the complaint against the plaintiff to the 17th February, 2006. The Order of the 17th February, 2006 was an order adjourning the same complaint to the 12th July, 2006. The case was adjourned thereafter and was not heard until the 21st February, 2007. The plaintiff was ultimately successful and the case was dismissed."*

She states at para. 5:

*"I say and am so advised that nowhere in the statement of claim are there any factual allegations, which would allow the plaintiff to succeed against the seventh named defendant. It was in these circumstances that the sixth and seventh named defendants applied to have the plaintiff's claim as against them dismissed on the basis that it was frivolous and vexatious by way of the notice of motion issued on the 14th October, 2008."*

She states at para. 6:

*"On the hearing this application on the 26th February, 2009, the High Court struck out the plaintiff's claim as against the sixth named defendant and the seventh named defendant pursuant to O.19 r.28 of the Rules of the Superior Courts, 1986 (as amended). The High Court judge did not adopt the alternative course of striking out a claim by reference to inherent jurisdiction of the court, notwithstanding that the alternative relief was sought in the notice of motion. (it is also reflected in the judgment of MacMenamin J.)"*

She states at para. 7:

*"I say that the plaintiff appealed this decision in the Supreme Court on the 11th February, 2009. In a judgment of MacMenamin J. delivered on 31st July, 2018 the Supreme Court dismissed the appeal with regard to the sixth named defendant but allowed the appeal with regard to the seventh named defendant on the basis that a prima facie allegation of misfeasance in a public office by a District Court clerk while not particularised, was made out by the plaintiff and that therefore the seventh named defendant could not avail of O.19 r. 28 of the Rules of the Superior Courts, 1986 (as amended)*

At para. 8 she states:

*"I say and am so advised that the claim made against the seventh named defendant is unsustainable, bound to fail and invidious and vexatious. The plaintiff does not suggest that he has suffered any damage as a result of the seeking of the orders, nor could he in circumstances where the orders only adjourned the hearing of the complaint against him. The plaintiff makes no substantive complaint about these adjournments nor does the plaintiff identify any adverse consequences that allegedly flowed from the making of the order."*

24. At para. 9 she states:

*"there is no substance to the plaintiff's allegations. I say that ordinarily orders are not drawn up in the District Court given the vast number of applications that it deals with. An order is only drawn up upon request. It is well established that a judge in the District Court may sign a copy of an order that is made by another judge. This is recognised by s.14 of the Courts Act, 1971 and O.35 of the District Court Rules.*

*She says that s. 14 provides that an order may be authenticated by the signature of the judge who made the order or by the application of the seal of the appropriate District Court. However as noted above the orders in these proceedings are copies of orders and they fall to be dealt with under s.14(1)(b) namely or are copied thereof certified in accordance with the rules of court. At para. 10 she asserts that the appropriate rule of court applicable at the date of the making of the orders in 2006 was (and remains) O.35 of the District Court Rules. The applicable rule has since been substituted but at the time the orders were issued, it provided the following:*

*"Order 35 - Certified copies of orders and of other documents*

*10 (1) Where, pursuant to section 14 of the Courts Act, 1971, a copy of an order made in any case of summary jurisdiction is required, the order shall be drawn up by the Clerk for the court area wherein the order was made and shall be signed by a Judge. The Clerk shall retain such order in his or her custody.*

10(2) Any person having a bona fide interest in the matter may, upon payment of the prescribed fee (if any), obtain from the Clerk, a copy of the order (in the Form 35.1, 35.3, or 35.4, Schedule B, as appropriate) certified by the Clerk in accordance with the provisions of rule 4 of this Order.

10 (3) Any party in any proceedings may, upon payment of the prescribed fee (if any), obtain from the Clerk a copy of any information, written complaint or deposition which is in his or her custody and was made or taken in any case in his or her court area, and of any order which is in that Clerk's custody and was made by a Judge in the preliminary examination of any indictable offence in the said court area.

10 (4) Where a Judge is satisfied that a copy of an order or other document is reasonably required by any person for the purpose of any legal proceedings, such Judge may direct the Clerk to furnish a copy of such order or other document to such person upon payment by such person of the prescribed fee (if any).

10 (5) A copy of an order or other document furnished under this Order shall be certified by the Clerk to be a true copy of the original order or document as the case may be, which is in his or her custody."

25. At para. 11 she states that:

*"The rules of court permit "a" judge to sign a copy of an order and it is not required that the judge who made an order signs the copy of the order so long as it is certified by the District Court Clerk as being a true copy of the original order. The rationale behind this is that the judge who made the order on any given day may not be sitting in the same District at the time the order or a copy of an order is requested. Therefore, to avoid delays, given that a particular judge may not sit again in that District for some time, an order or copy of an order may be signed by the judge presiding at the time the order or copy of the order is requested. It should be noted that O. 35 has been subsequently amended to provide that the District Court Clerk may sign and certify an order and it is no longer required that a judge signs the order. This again reflects the practicality of dealing with the large number of cases which come before the District Court and the fact that judges may not sit again in the same district for some time."*

At para. 12 she states:

*"In the present case orders were signed by Judge Fitzpatrick who is the presiding judge at the time the copy orders were requested and the orders were certified as true copies by the District Court Clerk. All of this is provided for by law. Accordingly, there is no merit to the plaintiff's challenge to the authenticity of the orders and there is nothing sinister whatsoever about the fact that a different judge signs the order."*

26. At para. 13 in relation to the legal standing of the seventh named defendant that the seventh named defendant is a statutory body established under the Courts Service (The Act). Its statutory functions under s. 5 of that Act are:

- "(a) to manage the courts,*
- (b) to provide support services for the judges,*
- (c) to provide information on the courts system to the public,*
- (d) to provide, manage and maintain court buildings, and*
- (e) to provide facilities for users of the courts."*

At para. 14 she states:

*"Section 9 of the Courts Service Act, 1998 provides as follows:*

*9. - No function conferred on or power vested in the Service, the Board or the Chief Executive, under this Act shall be exercised so as to interfere with the conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of—*

- (a) a judge in the performance of his or her judicial functions, or*
- (b) a person other than a judge in the performance of limited functions of a judicial nature conferred on that person by law."*

At para. 15 she states that by virtue of s.9 of that Act, that the seventh named defendant, its board and officers have no role in the exercise by the judiciary of the judicial functions (this court's emphasis). In fact, the seventh named defendant is prohibited from interfering with the performance of the judiciary of its functions. For this reason alone, the seventh named defendant could not have had any legal responsibility for the signing of the orders in circumstances where it was carrying out its statutory duties. As a matter of law no cause of action could arise from the carrying out of one's professional or in this case statutory duty.

27. At para. 16 she says:

*"[I]n the Replies to Particulars dated the 26th April, 2008 the plaintiff expanded his allegations to include a complaint providing the denial of a McKenzie friend. This complaint clearly relates to the exercise of judicial functions and for the same reason could not give rise to any cause of action against the seventh named defendant in circumstances where he is expressly prohibited from interfering with the exercise of judicial functions."*

At para. 17 she states that the plaintiff makes a general allegation in para. 10 of the statement of claim that the defendants are guilty of malicious prosecution. However, the plaintiff has limited this allegation, (as far as the seventh named defendant is concerned) to the allegation that the orders were signed by a judge other than the judge who made the orders. As explained above there is nothing unlawful about this practice.

At para. 18 she says that in the circumstances outlined above the plaintiff's claim against the seventh named defendant was one that should be dismissed by this court in the exercise of its inherent jurisdiction that the claim is frivolous and vexatious and irrespective of any evidence which the plaintiff might seek to adduce were the proceedings to proceed to trial, is bound to fail.

#### Statement of claim

28. The statement of claim on which proceedings are based dealt with the issue of misfeasance in public office, constitutional and human rights violations, malicious prosecution, abuse of the legal process and perversion of the course of justice and the particulars of the personal claim at para. 4 of the plaintiff's claims that on the 22nd June, 2006 Judge Thomas Fitzpatrick signed two orders based on the sittings of the District Court on the 8th February, 2006 and the 17th February, 2006. Judge Thomas Fitzpatrick never sat at any hearing in this matter on the 8th February, 2006, the sitting judge was Judge Patrick Clyne. A Dail TD attended this hearing. The plaintiff is unsure if any judge presided over proceedings on the 17th February, 2006. The plaintiff is unsure if the District Court sat on this matter on the 17th February, 2006 as he was neither present nor informed prior to any such sitting. The plaintiff states that the order of the 22nd June, 2006 was signed by Thomas Fitzpatrick relating to the sitting of the District Court on the 8th February, 2006 is a fabrication. (It should be noted that on the 21st February, 2007 the charge against the plaintiff was dismissed). At para. 5 the statement of claim recites that on the 12th July, 2006 in District Court 53 of the Richmond District Court, Judge Leo Malone disenfranchised the plaintiff by removing from him his lawful right to have a McKenzie friend assist him in his defence. This was a sitting that was convened for the hearing of this matter. This was the first date on which the plaintiff had the opportunity to seek a Gary Doyle order to enquire as to the nature of the charges and the evidence against him.

29. The notice for particulars issue by the seventh named defendant asked the plaintiff to specify the acts contended for and the servant or agent whom it was alleged was guilty of misfeasance in public office, and to specify in detail in relation to the claim for constitutional and human rights violations and sought particulars in relation to each of the claims made in the statement of claim in relation to the seventh named defendant.

30. The replies to the notice for particulars were delivered on the 26th April, 2008. In relation to the particulars in the respect of malfeasance in public office, constitutional and human rights violations as against the seventh named defendant the acts complained of were:

1. The signature of a judge on an order even though the judge did not preside over the case.
2. The purported witnessing of a judge's signature to a court order even though the judge was not present in the court on that date.
3. Failure to inform the plaintiff of any case on the 17th February, 2006.
4. The denial of a McKenzie friend to the plaintiff in the District Court.

The persons mentioned were 1. Judge Thomas Fitzpatrick or a member of the Courts Service purporting to sign the name of Judge Thomas Fitzpatrick, 2. District Court Clerk whose name is signed on the order or person unknown purporting to sign on his or her behalf. 3. Other persons in who are not directly mentioned in court. These persons were also mentioned in relation to violations to include all other ECHR violations which may be adduced at the hearing of the matter. In relation to the abuse of the legal process in relation to a judge signing his name and the perversion of the course of justice in the relation to the denial of a McKenzie friend again the persons mentioned were Judge Thomas Fitzpatrick or a member of the Courts Service purporting to sign the name of Judge Thomas Fitzpatrick, 2. A District Court Clerk whose name is signed on the order or person unknown purporting to sign on his or her behalf. Other persons in who may yet be mentioned in court.

31. Mr. Compton B.L. on behalf of the seventh named defendant having relied on the affidavit of Lisa Scott setting out the principal facts upon which the application is made referred to the decision of the Supreme Court in *Lopes v. the Minister for Justice, Equality and Law Reform* [2014] 2 I.R. at p. 301. In the headnote to that judgment of the Supreme Court given by Clarke J. at para. 2.2:

*"That it was important to distinguish between the jurisdiction to dismiss that arises under O. 19, r. 28 of the Rules of the Superior Courts 1986 and the inherent jurisdiction of the court. The former was designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, were as asserted, the case nonetheless was vexatious. If, however, it could be established that there was no credible basis for suggesting that the facts were as asserted and that, thus, the proceedings were bound to fail on the merits, then the inherent jurisdiction of the court could be invoked.*

*That the inherent jurisdiction of the court to dismiss proceedings should be sparingly exercised... In order to defeat a suggestion that a claim was bound to fail on the facts, all that a plaintiff needed to do was put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts that were asserted and that were necessary for success in the proceedings.*

*That it was not appropriate to dismiss a claim by virtue of forming a view that it was bound to fail on the law. The essential question for the court was whether there was a credible basis, on the facts, on which the plaintiff could hope to establish the claim."*

32. An affidavit was prepared by the plaintiff in respect of the notice of motion for an order striking out the proceedings as against the seventh named defendant pursuant to the inherent jurisdiction of the court and/or the grounds that the proceedings are not frivolous or vexatious and/or bound to fail. In para. 3 the plaintiff says Ms. Lisa Scott, the deponent, was/is not known to him as a party to this or any of the numerous other cases of wrongful prosecution including the seventh named defendant. He says at para. 4 that this is the third application to strike out this case on the grounds of it being frivolous/vexatious and/or bound to fail as against the seventh named defendant, is misconceived and a blatant abuse of the legal process. It is evidence of a further perversion of the course of justice on behalf of the seventh named defendant. At para. 5 he says that a serious charge and long drawn out process on dangerous driving against me "dismissed by the District Court at trial does not fulfil the requirements of 'frivolous and vexatious'." "Frivolous" in this context means a complaint that was futile, misconceived or hopeless in the sense that it was incapable of achieving the desired outcome (*Nowak v. Data Protection Commissioners* [2012] IEHC 449) and as is plaintively clear these proceedings were initiated by me on reasonable grounds and could never be considered vexatious. In para. 6 he states that the Supreme Court had decided to sustain the seventh named defendant in this case. He said a third appeal to the Supreme Court in the very same matter on his behalf has required further delay in the case for trial and could possibly bring the justice system into further disrepute.

33. He says that at para. 7 on the 31st July, 2018 the Supreme Court did not deem the case against the seventh named defendant

frivolous/vexatious and/or bound to fail. He says that to support his claim that this application is itself frivolous and vexatious and an abuse of the legal process, he advises this Court that on the 4th March, 2011 this case 8488p/2007, and five other cases were struck out (in the case of a motion in a different case 2006/6407 P) by the High Court during "*my medically certified critical illness requiring hospitalisation.*" This was appealed to the Supreme Court with a hearing on the 26th May, 2016 and on the 26th July, 2016, the Supreme Court returned the case and five other cases to the High Court for case management to advance those cases to trial, inclusive of the seventh named defendant and he says that the Supreme Court did not deem the case against the seventh named defendant frivolous/vexatious and/or bound to fail. He says that on the 6th December, 2018, within six months of the determination of the Supreme Court of the 31st July, 2018 mentioned above, the solicitors had brought forward this third motion to strike out the plaintiff against their client the seventh named defendant. He quotes at para. 10 from McCracken J. in *Ruby Property Company v. Kilty* [1999] IEHC 50, that where there is a dispute on affidavit, the court will be most unlikely to strike out the proceedings as to do so would limit the plaintiffs' right to access the courts. In *Millstream Recycling Ltd v Tierney* [2010] IEHC 55 Charleton J. commented at para 15. that a weak or innovative case based on contested assertions of fact is not the type of case that should be dismissed "*unless it can be demonstrated that what the plaintiff asserts is utterly undermined by the known and readily ascertainable circumstances of the claim, usually in written documentary form.*" She said that conflicts of fact could only be resolved by a hearing and she knew a way to circumvent that. Under points of clarification he makes a complaint of the tone of Ms. Scott's affidavit.

34. He states that the affidavit of Ms. Scott deliberately fails to mention the second attempt by counsel and his solicitors to have the proceedings against the seventh named defendant struck out and he ordered the High Court dated the 4th March, 2011 (without a motion before the court) which struck out the defendants (inclusive of the seventh named defendant) in this case and five other cases in his absence due to critical illness which was successful and which again was overturned by the Supreme Court on the 26th July, 2016 which allowed his case against the seventh named defendant. He says that he outlines in the statement of claim the damages suffered resulting from the actions of all the defendants including the seventh named defendant.

35. He says he fully accepts para. 13 of Ms. Scott's affidavit in that the Courts Service did manage this wrongful prosecution, did provide support services for this wrongful prosecution, provided information on the court systems, provided a court building and did provide the facilities for the prosecutors (Courts Service Act, 1998). He says with regard to the seventh named defendants, Ms. Scott is misinformed that her claim is limited to the signing of District Court orders which purport to be true copies of the order. He also states that any wrongful prosecution such as was determined in the District Court on the 21st February, 2007, must have originated in the Courts Service. The presence of the seventh named defendant is a necessary part to the proceedings as was established by the Supreme Court. He then refers to a submission which he made to the Supreme Court for the appeal hearing on the 2nd May, 2018. He states that the claim against the seventh named defendant is contained in paras. 2 and 3 of this submission, the offending summons on foot of which the Director of Public Prosecutions lost his case against the applicant was malicious. It had been processed through the Courts Service. For this reason, the appellant had properly joined the Courts Service in his action and, the appellant alleges that the order of Judge Thomas Fitzpatrick of the 8th February, 2006 was a fabrication. It carried the signature of a member of the Courts Service, a clerk of the District Court, certifying that "*The above is a true copy of the original which is held in my custody.*" For this reason also, the appellant was entitled to sue the Courts Service. He then criticises the nature of the judgment of Hedigan J. and in particular his report of the judgment of the 26th January, 2009.

36. He says in his statement of claim at para. 10 that the appellant alleges malicious prosecution by "*the above defendants which includes the Courts Service at para. 7.*" At a page entitled "*Particulars of misfeasance*" malicious prosecution is alleged in the heading and also in "C" and "D" because of the intrinsic role of the Courts Service in the issuing of summonses, an allegation of malicious prosecution perforce is an allegation against the Courts Service. Contrary to the court's express view, this factual allegation was also present in the appellant's claims and could have led to a finding against the Courts Service.

37. In his "Particulars of personal claim", the appellant deals in para. 4 with his allegations concerning the "*forgery of the District Court Judge's name (or unauthorised use of his name) by another person*" to indicate wrongfully that the judge in question had sat in court on this issue on the 8th February, 2006 when in fact he did not. This allegation perforce is also an allegation against the Courts Service hence the name of one of its servants, a court clerk, appears signed at the foot of the corrupt document asserting that it is "*a true copy of the original which is held in my custody*" which allegation the appellant claims could have led to a finding against the Courts Service. At the conclusion he asks this Court to dismiss this abuse of process by way of motion of the seventh named defendant.

## Discussion

38. The court is satisfied that this is the second application by the seventh named defendant to have the proceedings struck out pursuant to the inherent jurisdiction of the court on the grounds that the proceedings are frivolous and vexatious and/or bound to fail. It is not the third attempt. The court notes that Hedigan J. on the 26th January, 2009 ordered pursuant to O. 19, r. 28, that the plaintiffs' claim as against the sixth and seventh named defendants were hereby dismissed on the basis that same were frivolous and vexatious and he also ordered that pursuant to the inherent jurisdiction of the court, the plaintiff's claim as against the sixth and seventh named defendants was dismissed on the basis that same was frivolous or vexatious or bound to fail. The plaintiff served notice of appeal arising from the judgment of Hedigan J. dated the 26th July, 2009 which were not heard until May of 2018. The dismissal of the six High Court cases by the President of the High Court, Kearns P., on the 4th March, 2011 for delay did not relate to the proceedings against the seventh named defendant.

39. In the Supreme Court, relating to the appeal against the order of Hedigan J., MacMenamin J. stated that Hedigan J. had delivered an ex tempore judgment confining himself to reaching conclusions under O. 19, r. 28. He had made no finding on the basis of the inherent jurisdiction of the court. MacMenamin J. stated

*"The fact that the judge's decision was diminished in this way setting out what occurred has consequences considered later in this judgment."*

40. With the usage of this phrase, he stated that he did not preclude the possibility that the application might be made to the High Court to strike out the proceedings against the Courts Service and that any new application to strike out the claim against the Courts Service relying on the different and distinct basis of the inherent jurisdiction of the court would not be res judicata by reasons of the prior application of this judgment. The Court is satisfied therefore, that the application which has been made by the seventh named defendant is one which this Court considers in accordance with the judgment of the Supreme Court and will apply the appropriate jurisprudence.

## The jurisprudence of striking out proceedings pursuant to the inherent jurisdiction of the court

41. The present day origins of this jurisdiction of the court is contained in the judgment of Costello J. in *Barry v. Buckley* [1981] IR 306. Costello J. confirmed that apart from the power conferred by O. 19 r. 28, the court had an inherent jurisdiction to strike out or stay proceedings if they were frivolous or vexatious or bound to fail and he explained that this jurisdiction exists to ensure that an

abuse of the process of the courts does not take place and if the court is satisfied that the plaintiff's case must fail "then it would be a proper exercise of the discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to the defendant". Clarke J. in *Lopes v. Minister for Justice Equality and Law Reform*, *ibid cit*, said that it was important to emphasise that: -

*"The inherent jurisdiction of the court should not be used as a substitute for, or means of getting around legitimate provisions of procedural law."*

42. Clarke J. also commented in *Moylist Construction Ltd. v. Doheny* [2016] IESC 9: -

*"That the default position in respect of any proceedings was that they should go to trial. Depriving the parties of a full trial was a departure from the norm, and one which should only be engaged in when it was clear that there was no real risk of injustice in adopting that course of action."*

43. 2. In Delaney and McGrath on Civil Procedure, 4th Ed., 2018 has the following comment at 16 - 15: -

*"It was suggested by Edwards J. in Keane v. Considine, [2010] IEHC 257 that unlike the position in relation to applications brought pursuant to O. 19, r. 28 in considering whether to dismiss a claim pursuant to the courts inherent jurisdiction, the court is entitled to engage in some analysis of the facts of a case. However, as Clarke J. stated in Keohane v. Hynes [2016] IESC 66 'it is important to emphasise that the extent to which it is appropriate for the Court to assess the evidence and the facts on a motion to dismiss as being bound to fail is extremely limited.' The court may also make a broader inquiry into the context of and background to the proceedings when exercising its inherent jurisdiction. Clarke J. considered the relationship between the power pursuant to O. 19 r. 28 and the courts' inherent jurisdiction in Lopes v. Minister for Justice Equality and Law Reform and stated as follows: -*

*"The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v. Buckley [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action."*

44. Observations by McCarthy J. in *Sun Fat Chan v. Osseous Ltd* [1992] 1 IR 425 in which he states: -

*"Experience has shown that the trial of an action will identify a variety of circumstances perhaps not entirely contemplated at earlier stages in the proceedings; often times it may appear that the facts are clear and established but the trial itself will disclose a different picture."*

45. Delaney and McGrath state at 16-20:-

*"A consequence of this judicial restraint is the fact that if the pleading in question is capable of an amendment which will remedy the deficiency in the case as pleaded, then an application to strike out will not succeed."*

46. When considering an application to strike out proceedings pursuant to its inherent jurisdiction, the court is not limited to considering the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case. It follows that the jurisdiction cannot be exercised where there is a dispute between the parties as to the facts and the disputed oral evidence of fact cannot be relied upon. In *Doe v. Armour Pharmaceutical Inc.* [1997] IEHC 139, Morris J., highlighting that the court will only exercise its jurisdiction where it is clear beyond doubt the plaintiff could not succeed, said that "Such circumstances would clearly envisage that no dispute could arise on the issues of fact." If such a dispute did arise then, in his view, it could only be determined by the trial judge at the hearing of the action.

47. The jurisprudence highlights that insofar as there is a conflict of fact this must be resolved in favour of the party against whom the application to strike out has been brought. Further, Clarke J. stated in *Salthill Properties Ltd. v. Royal Bank of Scotland* [2009] IEHC 207: -

*"It is clear from all of the authorities that the onus lies on the defendant concerned to establish that the plaintiff's claim is bound to fail. It seems to me to follow that the defendant must demonstrate that any factual assertion on the part of the plaintiff could not be established. That is a different thing from a defendant saying that the plaintiff has not put forward, at that time, a prima facie case to the contrary effect."*

48. 6. Delaney and McGrath assert at 16-29:-

*"A claim will be struck out where on admitted facts or undisputed evidence it is clearly unsustainable or bound to fail."*

49. In *Abbey International Finance Ltd. v Point Helicopters Ltd.* [2012] IEHC 374, Kelly J. (as he then was) suggested that the fact that the Rules of the Superior Courts do not expressly provide for an application of this type is no bar to it being made successfully.

50. It is evident that the category of proceedings that will be considered to be frivolous and vexatious is broader and extends to proceedings which although they have a reasonable prospect of success will not confer any tangible benefit on the plaintiff or are taken for collateral or improper motives. In *Riordan v. Ireland* (No. 5) [2001] 4 IR 463, O'Caoimh J. referred in his approval to the decision of the Ontario High Court in *Re Lang Michener and Fabian* [1987] 37 D.L.R. 685 where a number of factors indicating that the proceedings were vexatious had been identified which the learned judge summarised as follows: -

*"(a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*

*(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;*

*(c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*



(d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;

(f) where the respondent persistently takes unsuccessful appeals from judicial decisions.”

51. The other jurisdiction in relation to these matters are the striking out of the proceedings as an abuse of process. MacMenamin J. in his judgment in *Tracey v. Burton* [2016] IESC 16 states: -

*"[A] court is entitled to generally have regard to the manner in which proceedings are conducted. While the jurisdiction to strike out proceedings for abuse of process, in one form or another, is to be exercised sparingly, it is a sanction which cannot be ignored. Similarly, while parties have a right to defend proceedings, it may be necessary to identify the manner in which defendants' rights are best vindicated. A court may, under the Constitution, take whatever proportionate steps are necessary to protect the integrity of its own processes and procedures, and the inherent right of courts, themselves, to manage their own procedures in a manner which balances the rights of litigants with the rights of the public, and other litigants."*

52. Murray C.J., commented in *Re Vantive Holdings* [2009] IESC 69: -

*"[A]buse of process may take many forms according to the context or the nature of the proceedings"*

53. In *Fay v. Tegral Pipes Ltd* [2005] IEHC 34, McCracken J. delivering judgment in the Supreme Court, noted that: -

*"While the words 'frivolous and vexatious' are frequently used in relation to applications such as this, the real purpose of the jurisprudence is to ensure that there will not be an abuse of the process of the courts. Such abuse cannot be permitted for two reasons. Firstly, the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second and equally important purpose of the jurisprudence is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed."*

## Decision

54. The Court now will apply the jurisprudence to the facts of the case. The statement of claim dated the 22nd December, 2007 sets out a claim based on the following: malfeasance in public office, constitutional and human rights violations, malicious prosecution, abuse of the legal process and the perversion of the course of justice. Paragraph 4 of the particulars of the personal claim. The plaintiff claimed that on the 22nd June, 2006, Judge Thomas Fitzpatrick signed two orders based on sittings of the District Court on the 8th February, 2006 and the 17th February, 2006. Judge Thomas Fitzpatrick never sat at any hearing in this matter on the 8th February, 2006, the sitting judge was Judge Patrick Clyne. A Dáil TD attended this hearing. The plaintiff is unsure as to who if anyone presided over proceedings on the 17th February, 2006. The plaintiff is unsure if the District Court sat on this matter on the 17th February, 2006 as he was neither present nor informed prior to any such sitting. The plaintiff states that an order of the 22nd June, 2006 and signed by Judge Thomas Fitzpatrick relating to the sittings of the Court on the 8th February, 2006.

55. On the 12th June, 2006 in Court 53 of the Richmond District Courts, Judge Leo Malone disenfranchised the plaintiff by removing from him his lawful right to have a McKenzie friend assist him in his defence. This was a sitting that was convened for the hearing of this matter. This was the first date on which the plaintiff had the opportunity to seek a Gary Doyle Order and inquire as to the nature of the charges and the evidence against him. It is clear that there is no specific claim as to any misconduct that could arise in relation to the seventh named defendants. It is noted that although the proceedings have been taken against the court service no proceedings have been taken against either Judge Thomas Fitzpatrick or Judge Leo Malone.

56. The notice of reply to particulars which was forwarded by the plaintiff to the seventh named defendant dated the 26th April, 2008 complains of the following: The purported witnessing of a judge's signature to a court even though the judge was not present in the court on that date to and for the denial of a McKenzie friend to the plaintiff in the District Court. Persons who are named are: 1. Judge Thomas Fitzpatrick or a member of the Court Service purporting to sign the name of Judge Thomas Fitzpatrick. 2. District Court Clerk whose name is signed on the order or a person unknown purporting to sign on his or her behalf. 3. Other persons who may not yet be mentioned in court. The same persons are identified in relation to constitutional and human rights violations as against the seventh named defendant as an abuse of the legal process as against the seventh named defendant. The plaintiff being subjected to abuse of power and trust perpetrated by persons in authority.

57. The court notes the following: -

(i) S. 14 of the Courts Act, 1971: - *"In any legal proceedings regard shall not be had to any record (other than an order which, when an order is required, shall be drawn up by the district court clerk and signed by a judge or a copy thereof certified in accordance with rules of court) relating to a decision of a justice of the District Court in any case of summary jurisdiction."*

58. S.5 of the Courts Service Act, 1998 provides: -

*"The functions of the Service shall be to—*

- (a) manage the courts,*
- (b) provide support services for the judges,*
- (c) provide information on the courts system to the public,*
- (d) provide, manage and maintain court buildings, and*
- (e) provide facilities for users of the courts."*

59. S. 9: - *"Independence of exercise of judicial functions."*

*"No function conferred on or power vested in the Service, the Board or the Chief Executive, under this Act shall be exercised so as to interfere with the conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of—*

*(a) a judge in the performance of his or her judicial functions, or*

*(b) a person other than a judge in the performance of limited functions of a judicial nature conferred on that person by law."*

60. The court is satisfied that the particulars of misfeasance in public office, constitutional and human rights violations, malicious prosecution, abuse of the legal process and perversion of the course of justice constitute the administration of justice by the exercise of judicial functions by those judges. S. 14 of the Courts Act, 1971 states that an order may be authenticated by the signature of the judge who made the order by the application of the seal of the appropriate District Court. The orders in this appeal are copies of orders and they fall to be dealt with under s. 14 (1) (i) (b) namely a copy certified in accordance with the Rules of Court which is governed by O. 35 of the District Court Rules, para. 1: -

61. *"Where, pursuant to section 14 of the Courts Act, 1971, a copy of an order made in any case of summary jurisdiction is required, the order shall be drawn up by the Clerk for the court area wherein the order was made and shall be signed by a Judge. The Clerk shall retain such order in his or her custody."* (This Court's emphasis).

62. The Rules of the Court permit *"A judge to sign a copy of an order, it is not required that the judge who made an order signs the copy of the order so long as it is certified by the District Court clerk, as being a true copy of the original order."*

63. S. 9 of the Courts Service Act provides that the board and its officers have no role in the exercise by the judiciary of the judicial functions, and in those circumstances the court is satisfied that the seventh named respondent could not have any legal responsibility for the signing of orders in circumstances where it was carrying out its statutory duties.

64. Having regard to the jurisprudence and in particular the comments of McCracken J. in in the Supreme Court in *Fay v Tegral Pipes Ltd* [2005] IESC 34., the Court will strike out the proceedings herein as against the seventh named defendant pursuant to the inherent jurisdiction of this Court. The court is satisfied that the proceedings herein against the seventh named defendant are bound to fail.

65. The court also notes that there has been difficulty in relating to service of legal proceedings by the plaintiff on the defendant and in particular by what is suggested to be the use of persons who are not the acting solicitors in the proceedings.

66. The court is satisfied that all email correspondence in respect of this and the other legal proceedings should be sent directly to Hannah Shaw, solicitor. Her email address is hshaw@algoodbody.com. Should the plaintiff seek to serve documents on any other persons, it will not be deemed good service.