Neutral Citation [2015] IEHC 525

THE HIGH COURT

[2015 No. 1553 P.]

BETWEEN

VICO LIMITED, ALEXANDRA O'DONNELL, BLAISE O'DONNELL, BRUCE O'DONNELL AND BLAKE O'DONNELL

PLAINTIFFS

AND

GOVERNOR AND COMPANY OF THE BANK OF IRELAND,

BANK OF IRELAND PRIVATE BANKING LIMITED, TOM KAVANAGH, DAVID HARRIS, GERRY HEPBURN, DECLAN KENNY, KEVIN BROMLEY, KATHERINE GEORGINA HARDING, ELAINE HIGGINS,

GETHIN TAYLOR, LINDSEY LUDGATE, KEITH JONES,

FIRST NAMES TRUST CO (ISLE OF MAN) LIMITED AND

CHANCERY TRUSTEES LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Brian McGovern delivered on the 24th day of July, 2015

1. The first, second and third named defendants in these proceedings have brought an application to the court to vacate two lis pendens registered on behalf of the first named plaintiff in respect of the lands and premises known as "*Gorse Hill*" Vico Road, Killiney, Co. Dublin. The lis pendens were registered on 3rd March, 2015, following the vacating of the property by the second, third, fourth and fifth named plaintiffs who are the children of Brian O'Donnell and Mary Patricia O'Donnell. They vacated the premises on foot of a Supreme Court order requiring them to do so. The lis pendens were registered on the same day as this Court refused to grant the plaintiffs' interlocutory injunctions restraining the Bank from taking possession of Gorse Hill. In the motion before the court, the first, second and third named defendants seek an order vacating the lis pendens pursuant to s. 123 of the Land and Conveyancing Law Reform Act 2009, on the grounds that the claim constitutes an abuse of process and/or that the matters raised by the plaintiffs in these proceedings are *res judicata* and/or frivolous, vexatious, and ought to be struck out. The first, second and third named defendants also claim that the first named plaintiff has been guilty of manifest and unjustifiable delay in seeking to make its claims and to register the lis pendens.

2. When one reads the plenary summons in this case, it is clear that the plaintiffs are challenging the security documents on foot of which the third named defendant (as receiver) has taken control of the premises at Gorse Hill. The plaintiffs challenge the security documents whereby the first named plaintiff pledged the property as security for monies lent by the first named defendant to Brian O'Donnell and Mary Patricia O'Donnell, and the proceedings seek to restrain the first, second and third named defendants from taking any step in purported reliance on the security documents. The second, third, fourth and fifth named plaintiffs also seek orders restraining the third named defendant from interfering with their quiet possession, use, occupation and enjoyment of Gorse Hill. In essence, these proceedings amount to a challenge to the validity of the security given by Vico Limited and an assertion that the second, third, fourth and fifth named plaintiffs are entitled to possession, use, occupation, and quiet enjoyment of the premises. While there are other matters referred to in the plenary summons, the main and clear focus of the proceedings are the matters referred to above.

Factual Background

3. In order to put this application in context, it is necessary to set out some factual background. In December 2010, the first named defendant ("the Bank") instituted summary proceedings (record number 2010/6100S) against Brian O'Donnell and Mary Patricia O'Donnell seeking recovery of approximately €69m which had either been advanced to the O'Donnells personally, or had been guaranteed by them. In March 2011, in the course of the Bank's application to enter summary judgment, the Bank and the O'Donnells entered into a settlement agreement whereby the O'Donnells expressly acknowledged their indebtedness to the Bank. They also agreed to make a number of scheduled repayments to the Bank and that in the event of any default in making the scheduled repayments they would consent to judgment being entered against them in the sums sought by the Bank.

4. The O'Donnells defaulted on the payments required of them under the settlement agreement and on 12th December, 2011, judgment was entered against them and certain related companies in the sum of approximately €71m. In an attempt to enforce payment of the sums due, the Bank issued a letter of demand to the first named plaintiff (Vico Limited) in respect of its liabilities under guarantees it had executed. Vico Limited was a single purpose vehicle controlled by the O'Donnell family and existed solely for the purpose of owning the premises at Gorse Hill. As the demand was not satisfied by Vico Limited, the Bank appointed a receiver over Gorse Hill in June 2012.

5. On 18th July, 2012, the entire issued share capital in Vico Limited was transferred to the O'Donnell children in equal shares and thereafter they were in full control of the company. From July 2012, until December 2012, Brian O'Donnell and Mary Patricia O'Donnell were the sole directors of Vico. The current directors are two of their children, namely, Mr. Bruce O'Donnell and Mr. Blake O'Donnell (the fourth and fifth named plaintiffs). In July 2012, the O'Donnell children issued proceedings against the Governor and Company of the Bank of Ireland, Bank of Ireland Private Banking Limited and Tom Kavanagh (the receiver). These proceedings have record number 2012/7554P and will hereinafter be referred to as the "*Gorse Hill proceedings*".

6. In the course of those proceedings, the plaintiffs, at a very late stage, sought to join Vico Limited as a defendant. This was a tactical move on their part since it was not intended that the company would defend the proceedings and the plaintiffs would thereby obtain an order avoiding the security instruments created by the company. That application was refused. At no time did the O'Donnell children seek to join Vico Limited in those proceedings as a co-plaintiff. The plaintiffs argue that the reason for this was because the company had been struck off the register. It is clear that the O'Donnell family had control over the company and were able to have

the company restored to the register for the purpose of maintaining these proceedings. There is no reason why they could not have done so in respect of the Gorse Hill proceedings. Indeed, the O'Donnell children made extensive arguments in the Gorse Hill proceedings challenging the validity of the security offered by Vico Limited to the Bank.

7. At the hearing of this motion, counsel for the first, second and third named defendants informed the court that yet another set of proceedings (record number 2015/4232P) were issued on 26th May, 2015, in which Vico Limited is named as plaintiff and the defendants are the Governor and Company of the Bank of Ireland and Tom Kavanagh (the receiver). In those proceedings, the plaintiff seeks an injunction compelling the defendants to vacate Gorse Hill and deliver up to the plaintiff the keys of the property. The plaintiff also seeks damages for trespass and other relief. The applicants in the motion only became aware of these proceedings on the afternoon before this hearing took place. Mr. Blake O'Donnell informed the court that these proceedings had issued because the receiver has taken possession of the company's property without its consent.

Res Judicata and the Rule in Henderson v. Henderson

8. The doctrine of res judicata has its origins in public policy considerations which require that there should be finality to litigation and parties should not be permitted to re-litigate matters which have already been determined by the courts. In *Dublin Corporation v. Building and Allied Trade Union* [1996] 1 I.R. 468, Keane C.J. at p. 481 said that the court recognised:-

> *"[T]he interest of all citizens who resort to litigation in obtaining a final and conclusive determination of their disputes. However severe the stresses of litigation may be for the parties involved - the anxiety, the delays, the costs, the public and painful nature of the process - there is at least the comfort that at some stage finality is reached. Save in those exceptional cases where his opponent can prove that the judgment was procured by fraud, the successful litigant can sleep easily in the knowledge that he need never return to court again."*

9. A complementary jurisdiction to avoid multiplicity of proceedings is to be found in *Henderson v. Henderson* (1843) 3 Hare 100, which has been approved by the Supreme Court in *Re Vantive Holdings* [2010] 2 I.R. 118, where Murray C.J. quoted with approval the trial Judge where he said at pp. 124 – 125:-

> *"The rule in Henderson v. Henderson is to the effect that a party to litigation must make its whole case when the matter is before the court for adjudication and will not afterwards be permitted to reopen the matter to advance new grounds or new arguments which could have been advanced at the time. Save for special cases, the plea of res judicata applies not only to issues actually decided but every point which might have been brought forward in the case. In its more recent application this rule is somewhat mitigated in order to avoid its rigidity by taking into consideration circumstances that might otherwise render its imposition excessive, unfair or disproportionate."*

10. In this application, the first, second and third named defendants argue that the claims brought in these proceedings (and the recently discovered plenary summons bearing record number 2015/4232P) are an attempt by the plaintiffs to reopen matters which have already been determined by the courts and amount to a collateral attack on judgments already delivered. The plaintiffs maintain that the first named plaintiff was never a party to the Gorse Hill proceedings and cannot be bound by the judgment given in that case and the plaintiffs also assert that the Bank's witnesses in the Gorse Hill proceedings were guilty of perjury and gave false evidence to the High Court. Significantly, the O'Donnell children did not cross examine those witnesses on that evidence or refer the witnesses to the material which they now say revealed the true position that they contend for, namely, that the relevant borrowings by their parents in respect of Gorse Hill were from Bank of Ireland Private Banking (BOIPB) and not the Bank. The plaintiffs claim that the Bank's witnesses conflated BOIPB and the Bank and knowingly and untruthfully represented that BOIPB was a credit institution when it was not and that accordingly, the orders and judgments in the Gorse Hill proceedings and the Bank's proceedings against their parents were procured by fraud.

11. Apart from the plaintiffs' contention that Vico Limited was not a party to the earlier proceedings and, therefore, cannot be bound by any judgment affecting the ownership of Gorse Hill or the validity of the guarantee and/or security offered by Vico Limited to the Bank, the plaintiffs argue that there are other new issues arising in these proceedings which were not canvassed in the earlier proceedings. (See para. 15 below)

12. In *Kenny v. Trinity College Dublin* [2008] IESC 18, Fennelly J. stated at para. 54 and 55, the evidential requirements in an action to set aside a final judgment on the grounds of fraud:-

> *"54. I am satisfied that, in order to ground an action to set aside a judgment, the plaintiff must allege fraud in the true sense, that is deliberate and purposeful dishonesty, knowing and intentional deceit of the court…*
>
> *55. In addition, the fraud alleged must be such as to affect the impugned decision in a fundamental way. It will not suffice to allege that the new situation revealed by the uncovering of the fraud might have affected the judgment. It will not be enough to show, for example, that a witness lied unless it is shown that the true version of his evidence would probably have affected the outcome."*

13. In Dicey, Morris and Collins, *Conflicts of Laws*, (15th Ed., 2014, Sweet and Maxwell), the editor, Lord Collins observes at para. 14-138 that:-

> *"A party against whom an English judgment has been given may bring an independent action to set aside the judgment on the grounds that it was obtained by fraud; but this is subject to very stringent safeguards, which are found to be necessary because otherwise there would be no end to litigation and no solemnity in judgments. The most important of these safeguards is that the second action will be summarily dismissed unless the Claimant can produce evidence newly discovered since the trial, which evidence could not have been produced at the trial with reasonable diligence, and which is so material that its production at the trial would probably have affected the result, and (when the fraud consists of perjury) so strong that it would reasonably be expected to be decisive of the rehearing and if unanswered must have that result."*

14. In *Johnson v. Gore Wood* [2002] 2 A.C. 1, Bingham L.J. in a dictum approved of by the Supreme Court in this jurisdiction in *Carroll v. Ryan* [2003] 1 I.R. 309, *AA v. Medical Council* [2003] 4 I.R. 302; and *Re Vantive Holdings* [2010] 2 I.R. 118, described the principles emerging from *Henderson v. Henderson* as follows:-

> *"…Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is*

reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not."

15. To that I would add that it seems to me appropriate that, in looking at earlier proceedings and comparing them with the action now sought to be dismissed, it is necessary to focus on the obvious purpose of the proceedings in terms of the relief sought and not to be distracted by particular aspects of each case which might show some variations in the particulars pleaded. In the present application, for example, the plaintiffs were at pains to points out to the court that there were some additional particulars pleaded in this case which were not pleaded in earlier litigation. In para. 8 of their written submissions, the plaintiffs set out 22 issues which they say were not raised in the earlier proceedings and these include, breaches of the Consumer Credit Act 1995, legal deficiencies in the security documents, issues arising under the Family Home Protection Act 1976, and irregularities in the execution of the deed of appointment of the third named defendant as receiver over the property. These are just some of the issues contained in that list. To focus particularly on each and every item in that list would be to obscure the bigger picture which the court has to take into account in coming to a decision in an application of this nature which is whether, in essence, the proceedings are covering the same ground as the earlier proceedings which have been determined. The court also has to determine whether or not matters which could have been raised and ought to have been raised in the earlier proceedings are only now being raised for the first time.

Vico Limited Not a Party to Earlier Proceedings

16. The plaintiffs argue that the first named plaintiff was not a party to the earlier proceedings and having regard to the law as expressed in *Salomon v. Salomon & Company* [1897] A.C. 22, the interest of the shareholders and the company are distinct so that there was no privity of interest between the company and the parties to the earlier proceedings. In *Johnson v. Gore Wood*, the plaintiff's counsel argued that the rule in *Henderson v. Henderson* could have no application to the first named plaintiff's claim on the basis that the first named plaintiff was not a party to the original action against the defendant. At p. 32 of his judgment, Bingham L.J. said:-

"In my judgment this argument was rightly rejected [by the courts below]. A formulaic approach to application of the rule would be mistaken. WWH was the corporate embodiment of Mr. Johnson. He made decisions and gave instructions on its behalf. If he had wished to include his personal claim in the company's action, or to issue proceedings in tandem with those of the company, he had power to do so."

17. Lord Bingham approved the following statement of principle by Sir Robert Megarry V-C in *Gleeson v. J. Wippell & Co. Limited* [1977] 1 WLR 510 at 515:-

"Second, it seems to me that the substratum of the doctrine is that a man ought not to be allowed to litigate a second time what has already been decided between himself and the other party to the litigation. This is in the interest both of the successful party and of the public. But I cannot see that this provides any basis for a successful defendant to say that the successful defence is a bar to the plaintiff suing some third party, or for that third party to say that the successful defence prevents the plaintiff from suing him, unless there is a sufficient degree of identity between the successful defendant and the third party. I do not say that one must be the alter ego of the other: but it does seem to me that, having due regard to the subject matter of the dispute, there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party. It is in that sense that I would regard the phrase 'privity of interest'."

18. The applicants argue that there is a manifest privity of interest between Vico Limited and the O'Donnell children in this case and in the Gorse Hill proceedings. The O'Donnell children are joined in this action as co-plaintiffs with Vico in making what is essentially the same case that was made by them in the previous action. Vico Limited is not only owned and fully controlled by the O'Donnell children now (as it was when the Gorse Hill proceedings were launched) but Mr. Blake O'Donnell, one of the personal plaintiffs, seeks to present the case on behalf of Vico Limited in this action as he does on behalf of himself and the other plaintiffs.

19. The O'Donnell children were in full control of Vico Limited on 18th July, 2012, and could have caused it to join in the Gorse Hill proceedings as co-plaintiff or to initiate separate and parallel proceedings against the Bank. Mr. O'Donnell argues that the company had been struck off the register at that time but it is clear that the O'Donnell family, with their control over the company, were able to have it restored to the register for the purpose of these proceedings and no reasonable explanation has been offered to the court as to why they could not have done so in the earlier proceedings.

20. It is clear from the evidence adduced in the Gorse Hill proceedings that the Bank maintained that Vico Limited was the proper party to bring any claim challenging the validity of the guarantee and/or security offered by the company to the Bank. In essence, all the substantial claims made by Vico Limited in these proceedings were advanced by the O'Donnell children in the Gorse Hill proceedings and were disposed of in those proceedings on their merits both in the High Court and the Supreme Court. If the court determines that Vico Limited ought to have been before the court in the Gorse Hill proceedings as a co-plaintiff or as a plaintiff in parallel proceedings, then it would follow that the claims made in these proceedings should not be permitted.

21. On any view of the pleadings in this case and the Gorse Hill proceedings (and indeed the latest proceedings, record number 2015/4232P) they all have as their purpose the setting aside of the security offered by Vico Limited to the Bank, the ousting of the receiver from Gorse Hill and the reinstatement of Vico Limited as owner of the property, thereby facilitating the return of the O'Donnell children (and also their parents) to possession of Gorse Hill. There can be no doubt that this is the common purpose of all these proceedings.

22. In the course of the hearing of this application, Mr. Blake O'Donnell stated *"Vico is entitled to issue proceedings when it sees fit. It's irrelevant that the O'Donnell children are the shareholders, it's irrelevant that the O'Donnell children are directors"*. He also

argued that the company was entitled to have access to the courts under the Constitution and under the European Convention on Human Rights.

23. I do not accept that Vico Limited is entitled to issue proceedings when it sees fit if it could have been joined in the earlier proceedings and in circumstances where the case which it now argues for was made in the Gorse Hill proceedings. So far as access to the courts is concerned (whether under the Constitution or the European Convention) that is a right which is not unlimited and is subject to certain constraints based on public policy and legal principles prohibiting frivolous or vexatious actions or actions which amount to an abuse of process or come within with the scope of the *res judicata* rule and the principles set out in *Henderson v. Henderson*. The requirement that parties are entitled to a fair and just hearing does not mean that parties can keep litigating issues which have already been decided by the courts between the same parties or raise issues which ought to have been raised in earlier proceedings. The right of access to the courts carries with it the responsibility to accept the decisions of the courts and not to use the court process to launch a collateral attack on or undermine earlier decisions of the courts on similar issues between the same parties or parties with a privity of interest. While the rule in *Salomon v. Salomon* still applies in this jurisdiction, it does not follow that Vico can maintain these proceedings merely because it did not take part in the earlier proceedings when it could have done so. Vico Ltd could, and should, have been joined as a co-plaintiff in the Gorse Hill proceedings or could have maintained parallel proceedings but those in control of the company chose not to do so.

Res Judicata

24. The issue concerning whether or not the monies were lent by Bank of Ireland Private Banking or the Bank was raised in the Gorse Hill proceedings and the court determined that the monies had been lent by the Bank. The information available to the plaintiffs in these proceedings was available to the O'Donnell children in the Gorse Hill proceedings and it was never put to any of the Bank witnesses that they were giving fraudulent evidence on the legal status of BOIPB. In fact, on the last day of the Gorse Hill proceedings the plaintiffs sought to raise the point they now make about the money being lent by Bank of Ireland Private Banking and not Bank of Ireland. So they clearly knew of the point then. They were not permitted to proceed with that point because it was not pleaded, although it could have been. They did not appeal the court's decision on that point to the Supreme Court. It was clearly a point that they were aware of at the Gorse Hill trial but that they had not included it in the pleadings yet they now seek to canvass the point in these proceedings. In my view that is not permissible having regard to the rule in Henderson v. Henderson.

Conclusion

25. The matters which the plaintiff contend are "*new*" issues arising in these proceedings have either already been determined in the Gorse Hill proceedings or offend the rule in *Henderson v. Henderson* because they could have been raised in those proceedings. Furthermore some of those issues disclose no reasonable cause of action and/or are bound to fail. Specifically the issue surrounding the Bank and Bank of Ireland Private Banking Limited was raised in the earlier proceedings. Moreover there is a judgment against Brian O'Donnell and Mary Patricia O'Donnell in favour of the Bank and in the Gorse Hill proceedings the issue concerning the distinction between the Bank and Bank of Ireland Private Limited was not pleaded, was not permitted to be argued in the High Court and was not raised as an issue in the appeal.

26. The issue concerning the Consumer Protection Code was not raised in the earlier proceedings and moreover the code was not in force at the time when the relevant security documents were executed. Even if it was in force at that time there is an established line of authority which holds that breach of a statutory code does not (with the exception of the moratorium on possession proceedings in the mortgage arrears code) substantively affect the rights and obligations of financial institutions and borrowers.

27. If there is a complaint to be made in respect of the Bank's compliance with the Family Home Protection Act 1976, it does not lie with the plaintiffs in these proceedings to take that point. It would be a matter for Mary Patricia O'Donnell to make such a point but she would not be entitled to do so because the owner of the property at Gorse Hill is the first named defendant and that has already been determined both by this Court and the Supreme Court.

28. The point taken by the plaintiffs under the Consumer Credit Act 1995 is bound to fail. The provisions of the statute cannot avail the first named plaintiff as it only encompasses natural persons. There is no basis on which the other plaintiffs have *locus standi* to raise the point as they were not the borrowers. Brian O'Donnell and Mary Patricia O'Donnell who were the borrowers in respect of Gorse Hill warranted that they were not acting as consumers within the meaning of the 1995 Act. The same considerations apply *mutatis mutandis* to the plaintiffs' claims based on the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, as neither Vico Limited, Mary Patricia O'Donnell nor Brian O'Donnell is or were consumers within the meaning of the Unfair Terms Regulations. The plaintiffs in these proceedings have no *locus standi* to raise that issue and, in any event, if they did the matter could have been raised in the Gorse Hill proceedings but they chose not to do so.

29. The plaintiffs' case based on alleged non-execution of the security documents of the Bank is a matter which could have been raised in earlier proceedings. In the Gorse Hill proceedings, both the High Court and the Supreme Court held that the security given by Vico Limited was a valid security. In *Camiveo Limited v. Dunnes Stores* [2015] IESC 43, the court held that although execution of a deed is necessary to bind the grantor, a party who takes the benefit of a deed is bound by it although he does not execute it. So apart from the raising of this point offending against the rule in *Henderson v. Henderson*, it is bound to fail having regard to the current state of the law.

30. These proceedings constitute an abuse of process having regard to the following matters:-

(a) The second to fourth named plaintiffs ("*the O'Donnell children*") were in full control of the first defendant as of 18th July, 2012, and could have joined it in the Gorse Hill proceedings as co-plaintiff or to initiate parallel proceedings against the Bank;

(b) The O'Donnell children were at all times aware that a significant aspect of the Bank's defence to their claim in the Gorse Hill proceedings was that Vico Limited was the proper party to prosecute and bring those claims forward;

(c) Almost all of the substantial claims made by Vico Limited in these proceedings were advanced by the O'Donnell children in the Gorse Hill proceedings and were disposed of on their merits by this Court and by the Supreme Court. The absence of Vico Limited from those proceedings made no difference to the decisions arrived at by either court;

(d) As the first named plaintiff ought to have been before the court in the Gorse Hill proceedings as a co-plaintiff, it follows that the claims made in these proceedings offend against the rule in *Henderson v. Henderson*;

(e) The O'Donnell children advanced their claims in Gorse Hill on behalf of Vico Limited. It is Vico Limited (as the legal and beneficial owner of Gorse Hill) which would have been the direct beneficiary of any finding adverse to the Bank in those

proceedings. The O'Donnell children would have directly benefited from such a finding in their capacities as shareholders in Vico Limited;

(f) These proceedings are being prosecuted to precisely the same end as the Gorse Hill proceedings, namely the ousting of the receiver and the return to the O'Donnell family of the Gorse Hill property. The addition of Vico Limited in these proceedings does not alter that fact;

(g) There is a complete correspondence between the interest of Vico Limited and those of the O'Donnell children and each should be identified with the other for the purpose of applying the principle of abuse of process;

(h) These proceedings constitute a collateral attack on the findings of law and fact of both the High Court and Supreme Court in the Gorse Hill proceedings;

(i) It appears that the documentary evidence relied on by the plaintiffs is identical to the suite of documents which was considered by the courts in the Gorse Hill proceedings. While the court cannot be absolutely certain of this, it is reasonable to infer that this is the case from the pleadings to date and the submissions made in the application before the court. That is the inference which I draw from the pleadings and arguments made;

(j) To permit these proceedings to proceed against the first, second and third defendants would be to put them to further significant costs in circumstances where it is unlikely any amount will be recovered. Vico Limited is insolvent and the O'Donnell children are the subject of substantial unsatisfied costs orders; and

(k) It is clear that these proceedings are part of a wider co-ordinated campaign by the O'Donnell family including the second, third and fourth named plaintiffs designed to frustrate the Bank and the receiver from realising the security by disposing of the property at Gorse Hill.

31. The security documents sought to be impugned in these proceedings were executed in June 2006, and the Bank demanded repayment on foot of guarantees in May 2012. The receiver was appointed over Gorse Hill since June 2012. The first named defendant stood by while the Gorse Hill proceedings took their course and only registered the *lis pendens* once the application for an interlocutory injunction had been refused. I am satisfied that there was unreasonable delay in registering the *lis pendens* and that it has been registered purely for the improper purpose of frustrating the Bank and the receiver from dealing with the property at Gorse Hill.

32. In summary, I am satisfied that these proceedings constitute an abuse of process, that the plaintiffs are estopped per *rem judicatam* from maintaining these proceedings, that they are vexatious and offend the rule in *Henderson v. Henderson* and that the first, second and third named plaintiffs are entitled to the relief sought in the notice of motion of 17th April, 2015.