

THE HIGH COURT

[2013 No. 13289 P]

BETWEEN

JOSEPH DELANEY

PLAINTIFF

AND

ALLIED IRISH BANKS PLC AND DECLAN TAITE AND SHARON BARRETT

DEFENDANTS

JUDGMENT of Mr. Justice Cregan delivered the 13th day of January, 2015**Introduction**

1. In this application the first, second and third defendants are seeking to have the plaintiff's action against them struck out on the grounds that it discloses no reasonable cause of action and/or on the grounds that the plaintiff's claim is frivolous and/or vexatious and/or is bound to fail.

Background to the present application

2. The plaintiff's story which leads to these proceedings is very unfortunate. The plaintiff, in an affidavit dated 2nd December, 2013 set out the background to these proceedings. Mr. Delaney emigrated from Edenderry, County Offaly in 1975 and worked in the construction industry in the United Kingdom for 23 years. He returned home to Ireland in 1998 when, as he put it, he had "sufficient financial well- being to do so". Mr. Delaney had a deposit account in AIB in Edenderry with his then wife Marian Delaney. He had a sum of almost €430,000 in the account in 2007. On or about that time Mr. and Mrs. Delaney closed that account and Mr. Delaney transferred the monies that were in it into a single account into his then wife's name. Thus the new account was in the sole name of his former wife Marian Delaney. Mr. Delaney's evidence on affidavit was that he left all bank procedures to his wife as he did not have the literacy skills required to do normal banking business.

3. When Mr. Delaney returned from the UK he operated a small plant hire business and in order to comply with his tax obligations he employed the services of Gerard Killaly as his accountant. Mr. Killaly did his accounts and kept Mr. Delaney's tax affairs in order.

4. However Mr. Delaney's problems started in August 2008 when his accountant Mr. Gerard Killaly approached him for financial help. Mr. Killaly informed Mr. Delaney that he was having temporary cash flow problems with his auctioneering and property business. Mr. Delaney's evidence was that "having known him for a long time as a professional accountant I agreed to assist him. I consented to provide monies to him and made it a condition of the loan that he would secure my money if there was any delay in repayments or if difficulties were to arise. Mr. Killaly agreed to my terms".

5. Subsequently Mr. Delaney asked his former wife Mrs. Marian Delaney, with whom he appears to be on good terms, to carry out the necessary withdrawals from AIB in Edenderry in County Offaly in order to enable Mr. Delaney to pay certain sums to Mr. Killaly by way of loans.

6. On 20th August, 2008 Mrs. Marian Delaney withdrew €100,000 from the plaintiff's account. This money was withdrawn in the form of a bank draft made payable to Mr. Gerard Killaly and Mr. Richard O'Connor. The request to carry out this withdrawal came from Mr. Joseph Delaney.

7. On 21st August, 2008, Mr. Delaney instructed his wife to withdraw a further sum of €50,000. This also was withdrawn in the form of a bank draft made payable to Gerard Killaly.

8. On 8th September, 2008, Mr. Joseph Delaney instructed his wife to withdraw a further sum of €66,500. This again was withdrawn in the form of a bank draft made payable to Gerard Killaly.

9. Again on the 8th September, 2008, Mr. Delaney instructed his wife to withdraw a further bank draft in the sum of €30,000 made payable to Gerard Killaly and Mr. Richard O'Connor.

10. On 15th September, 2008, the plaintiff instructed his wife to withdraw two further bank drafts in the sum of €20,000 and €30,000 and both of these drafts were also made payable to Gerard Killaly.

11. It is important to emphasise that all of these withdrawals were done by Mrs. Marian Delaney on the specific instruction of Mr. Joseph Delaney and with his full knowledge and consent. Indeed it appears that although the account was solely in the name of Mrs. Marian Delaney, she was effectively holding this money in trust for her husband Joseph Delaney or else in trust for both of them. In any event Mr. Delaney has accepted at all times that his wife was acting with his full knowledge and consent in carrying out these withdrawals and also in making the bankers drafts payable to Gerard Killaly and/or Richard O'Connor.

12. It appears from an affidavit sworn by Marian Delaney on the 4th December, 2013 that in the course of carrying out these later transactions on (15th September, 2008) Mrs. Marian Delaney was questioned by a member of staff of AIB Edenderry as to her motive for withdrawing the monies. Mrs. Marian Delaney's exact evidence on this is as follows:

"In the course of doing the transactions on 15th September, 2008 I was questioned by a member of staff of AIB Edenderry as regards the motive for withdrawing the monies. The bank employee asked if I was being threatened or forced to withdraw the monies. I replied that I was not but in view of the enquiry I felt uneasy and it appeared that the official in the bank was unhappy with the situation because she would have known the payee on the bank drafts as he was a prominent customer of the branch. When I left the bank I gave the draft to my husband and told him what had been asked of me by the official in the bank in relation to the withdrawals of the monies. He indicated he would discuss

the matters raised with Mr. Killaly. I say and believe all these facts to be true".

13. Mr. Joseph Delaney in his affidavit of 4th December, 2013 then takes up the story. He states in this affidavit that on 15th September, 2008 it was brought to his attention by his former wife that a member of staff of AIB Edenderry, County Offaly had queried the withdrawal of monies by his wife Marian Delaney. Mr. Delaney stated on affidavit that Mrs. Delaney gave Mr. Delaney the bank drafts which Mrs Delaney took out at the bank. Mr. Delaney in turn handed them to Gerard Killaly. Mr. Delaney's evidence was that he asked Gerard Killaly why the bank would make such an inquiry about the withdrawal of bank drafts in his name as he had an account in the same branch at AIB Edenderry. However, Gerard Killaly denied there was anything wrong and informed Mr. Delaney that if Mr. Delaney was concerned he would grant Mr. Delaney a 24 year 9 month lease on a premises at number 82 JKL Street, Edenderry, County Offaly. Mr. Delaney stated on affidavit that "having considered matters including my financial exposure I agreed to the lease. At this stage I was exposed in total for €346,000 mostly which was withdrawn from AIB Edenderry, County Offaly. It was only when the account was almost empty that the bank made the enquiries regarding the nature of withdrawal of funds to Mr. Killaly. I signed the lease contract with Gerard Killaly and his wife Naomi Killaly on 12th December, 2008".

14. Mr. Delaney's evidence was that because his financial position was weakened it took him some months to organise finance to set up a business on the premises at 82 JKL Street in Edenderry. He says that he consulted his family with a view to obtaining funding to set up a business in the premises and his family were pleased that he was starting an enterprise in his native town of Edenderry where he was born and raised.

15. He says that in early April 2009 he was in the said premises carrying out a cleaning operation with his assistant Michael Dunne. Whilst he was there Mr. Hugh Gillen the acting manager of AIB Edenderry arrived at the premises. Mr. Dunne introduced Mr. Delaney to Mr. Gillen and told Mr. Delaney that Mr. Gillen was the manager at AIB. Mr. Delaney says that he found the situation extraordinary as he, Mr. Delaney did not owe AIB money and wondered why Mr. Gillen was there. He says he thought perhaps Mr. Gillen had come down to the premises to wish him well and because Mr. Killaly, who was also his customer, had leased him the property. However Mr. Delaney said *"I did not have to wait long to be told by him [Mr. Gillen] that he was unhappy with my presence on the premises. I was very annoyed as I had a contract with Mr. Killaly and had paid in full for the privilege of being on the premises. Mr. Gillen was not privy to the contract but I informed him I had taken most of the money which I held in his bank with my wife Marian and this property was my security. ... It was clear there was something wrong in the bank regarding Mr. Killaly's dealings in the branch. I felt like I was caught between two professional people who are known to each other through their business dealings in the bank. I informed him that I was aware that monies I gave to Gerard Killaly in the form of bank drafts that had been withdrawn from his branch were almost immediately relodged into Gerard Killaly's account which was also in his branch.....In view of what I told Mr. Gillen he asked me to contact him on his personal mobile phone number in relation to queries regarding the premises and undertook to resolve matters to my satisfaction. He was adamant that I phone him directly and not through the branch in Edenderry."*

16. Mr. Delaney's evidence was that some time later a meeting was requested by Mr. Gillen at the Marriot Hotel, Johnstown Bridge, County Kildare. Those present at the meeting were Mr. Gillen, Mr. Gerard Killaly, Mr. Laurence Murphy and Mr. Delaney. Mr. Gillen of AIB enquired of Mr. Delaney as to the nature of the permission which he had to lease the premises. Mr. Delaney replied that his contract was with Gerard Killaly and not AIB.

17. Some weeks later, according to Mr. Delaney, he telephoned Mr. Gillen on his personal mobile phone number only to be told by Mr. Gillen that he had been transferred from the Edenderry branch of AIB. Mr. Delaney says *"I was astonished to be told by him that he no longer dealt with any matters in relation to his former branch at Edenderry and sadly was no longer interested in assisting me in getting the matters resolved in relation to the premises at 82 JKL Street, Edenderry. I felt humbled and degraded. I had to face my family with the consequences of financial ruin and embarrassment. I say and I believe my faith in Mr. Gillen and his employer was completely diminished. I had transacted my banking business in Mr. Gillen's branch through my wife over the years and never gave the bank any reason to treat me the way they did in relation to these matters."*

18. In July 2009 AIB bank secured judgment in the sum of €15.5m against Gerard Killaly. In addition NAMA appointed receivers Declan Taite and Sharon Barrett the second and third named defendants over the premises at 82 JKL Street, Edenderry.

19. Gerard Killaly and Naomi Killaly were both adjudicated bankrupt on 27th July, 2009.

The plaintiff's application for an injunction

20. Mr. Delaney believed that he had an entitlement to the premises at 82 JKL Street and in the circumstances he issued a plenary summons on 4th December, 2013 claiming a right over the premises. The plaintiff's proceedings were against AIB, Declan Taite and Sharon Barrett. The plaintiff also claimed damages due to loss of use of the premises, damages for stress due to the conduct of the defendants in their duty of care to him in relation to Gerard Killaly and the conduct of their affairs with him.

21. The plenary summons is handwritten and appears to be drafted by Mr. Delaney or by a person acting on his behalf. In it it is stated that *"inter alia* the plaintiff's claim is against the bank in that they showed no duty of care to me. My claim is they failed in their duty to investigate matters in relation to the conduct of Mr. Gerard Killaly as a customer of their bank and allowed him to continue in a haphazard manner. In this regard the bank's conduct was totally unacceptable. The bank in its quest against Mr. Gerard Killaly did not inform the High Court of my interest in the premises 82 JKL Street, Edenderry".

22. Subsequently the plaintiff brought an application for an interlocutory injunction to restrain the defendants from transferring the said property to any other persons.

23. The plaintiff made an application to the High Court and obtained short service of a notice of motion for an interlocutory injunction returnable on Friday 6th December, 2013 (Gilligan J). In addition the High Court also acceded to the plaintiff's application to amend his plenary summons to include the claim set out above in the previous paragraph (Gilligan J. 4th December, 2013). The plaintiff's application was for an injunction to restrain AIB and the receivers from trespassing or attempting to sell the property at 82 JKL Street, Edenderry, County Offaly. Various affidavits were sworn by Mr. Delaney and his wife Marian Delaney and Michael Dunne, (Mr. Delaney's assistant) in respect of the injunction application and I have had full regard to those affidavits in considering the nature of the plaintiff's case in these proceedings.

24. Mr. Laurence Murphy also swore an affidavit on 4th December, 2013 on behalf of the plaintiff. In it he states that he was a former employee of Gerard Killaly auctioneer and that on 12th December, 2008 he witnessed a lease agreement between Gerard Killaly and Joseph Delaney. There is no doubt therefore that Mr. Gerard Killaly did enter into a lease with Mr. Delaney. Indeed that is not disputed by either the bank or the receivers.

25. This agreement was stated to be a "Business Letting Agreement" and was made on 12th December, 2008 between Gerard and

Naomi Killaly and Joseph Delaney in respect of the premises 82 JKL Street, Edenderry, County Offaly. The term of the lease was stated to be 24 years and 9 months commencing on 12th December, 2008 and the rent payable was €12,000 per annum plus VAT. In form and in substance it is a lease from Gerard Killaly and Naomi Killaly to Joseph Delaney.

Replying affidavit of AIB in the injunction proceedings.

26. Mr. Frank Dennehy of AIB swore an affidavit on behalf of AIB in the plaintiff's injunction proceedings. In this affidavit sworn on 16th December, 2013 Mr. Dennehy states that Mr. Hugh Gillen the former branch manager of AIB Edenderry died tragically on 8th January, 2012 and therefore could not rebut any assertions made by the plaintiff. Mr. Dennehy states that he was a manager of AIB and that he managed matters relating to, and connected with, Gerard Killaly during all relevant periods and that Mr. Gillen provided local support to him during this period. (Mr. Dennehy is based at AIB in Bankcentre, Ballsbridge, Dublin 4.) The bank's position (in response to the plaintiff's claim that he held a lease on the relevant premises) was that the bank had advanced a mortgage to Gerard Killaly and Naomi Killaly over the said premises and that one of the written conditions of the mortgage was that the mortgagor covenanted with the bank not to assign the mortgaged property without the prior written consent of the bank.

27. AIB's position was that the lease was granted in breach of an express covenant of the mortgage and that the plaintiff therefore held no enforceable property rights against either the bank or the receiver.

28. Moreover Mr. Dennehy gave evidence on affidavit that Mr. Killaly in fact sought AIB's consent to a second charge in favour of Joseph Delaney through their solicitors but that AIB expressly stated that they would not consent to this. Thus as Mr. Dennehy states *"It seems quite clear that Mr. Killaly's solicitors sought consent to register a second charge and were informed that such consent would not be forthcoming at least two months before the meeting at the Marriot Hotel in Johnstown Bridge is alleged to have taken place"*.

29. It appears that at this meeting at the Marriot Hotel in Johnstown Bridge, the plaintiff alleges that Mr. Gillen raised the issue of whether consent to lease the property had been obtained and that Mr. Killaly stated that he had leased property to numerous clients for which he had not obtained nor was requested by AIB to obtain AIB's consent.

30. Mr. Declan Taite also swore an affidavit in the injunction proceedings on behalf of the receivers. He stated that he was appointed as joint receiver on 7th August, 2013 under a deed of appointment by NAMA, (the AIB loan having been transferred to NAMA). He was appointed receiver over many security assets of Gerard and Naomi Killaly including the property in dispute in the injunction proceedings.

31. Mr. Taite stated in his affidavit that on his appointment as receiver over the property he immediately took steps to take possession of, and secure, the property. The property was visited by his staff on 7th August, 2013. He says that on that day the property was unoccupied but despite this the rear exit door was wide open. He says that leftover food, blankets and clothes were dispersed across different floors and it appears that the property had been used as a casual place for people to sleep. However the receivers arranged for the property to be secured and changed the locks and they also organised for the property to be cleaned. The receivers submitted to the High Court in relation to the injunction proceedings that the prior written consent of AIB had not been obtained as was required under the terms of the mortgage and therefore AIB could not be bound by the lease. Therefore NAMA as a successor of AIB could also not be bound by the lease in this case.

32. Mr. Taite in his affidavit also states at para. 21 *"I wish to make it clear that I have sympathy for the plaintiff in the position which he finds himself in. If as appears he has advanced sums to Mr. Killaly which he now has no prospect of recovering he has been very badly treated by Mr. Killaly. Nevertheless it is also the case that Mr. Killaly has very significant liabilities which resulted in his bankruptcy and many of his creditors including NAMA will recover only a fraction of the debt due to them from Mr. Killaly"*.

33. This averment sets out in a nutshell the predicament the plaintiff finds himself in. He has effectively been persuaded by Mr. Killaly into advancing monies to Mr. Killaly by way of a loan when Mr. Killaly probably knew or ought to have known that he had no prospect of repaying them. Indeed as matters turned out Mr. Killaly had no ability to repay the loans to the plaintiff and Mr. Killaly was subsequently adjudicated bankrupt. Therefore the plaintiff has no prospect of recovering his loans from Mr. Killaly and therefore now seeks to sue AIB in respect of these matters.

34. Mr. Delaney in a further affidavit sworn in the injunction proceedings dated 6th January, 2014 exhibits certain AIB bank statements of Mr. Killaly. In his view the bank accounts show that Mr. Killaly was "walking a tight rope in banking terms". Mr. Delaney says the account purports to show that the account was overdrawn on certain occasions. The account also shows certain lodgements posted to the account. For example on 21st August, 2008 the sum of €100,000 was lodged to the account. Mr. Delaney states that this lodgement was a draft which he had given to Mr. Killaly. Mr. Delaney states that based on his analysis of the account that Mr. Killaly, "the account holder lost control of his affairs" and that *"as a professional bank manager Mr. Dennehy [of AIB] failed in his duty to place the account on enquiry long before matters got out of hand. I further say and I believe that Mr. Dennehy in failing to bring a timely closure to the ongoing mismanagement of the account allowed misconduct of a serious magnitude which suggests that a reasonable conclusion of damages to third parties was likely to happen"*.

35. The heart of Mr. Delaney's case is that he claims that AIB were or should have been aware that Mr. Gerard Killaly was in financial difficulties, that AIB were actually aware that Mr. Delaney was paying money over to Mr. Killaly and that therefore AIB should have intervened either to warn Mr. Delaney that Mr. Killaly was in financial difficulties- or in some undetermined way- should have ensured that Mr. Delaney did not act the way he did, that he did not make loans to Mr. Killaly or that in some way the bank drafts which he gave to Mr. Killaly should not have been put into Mr. Killaly's account with AIB Edenderry.

36. One of the exhibits to Mr. Delaney's affidavit was an AIB account in the name of Gerard Killaly and Richard Connor from 13th August, 2007 until 23rd March, 2012. However this account appears to show, at its height, that the account was overdrawn in the sum of approximately €9,000 before the plaintiff's bank draft was lodged to the account in 21st August, 2008 in the sum of €100,000. Once the bank draft was lodged it was in credit and subsequently a significant amount of withdrawals were made from it. However as at 23rd March, 2012 the account was only overdrawn in the sum of €2,768. Thus it is not entirely clear that there would have been any particular issue with this account that AIB should have been aware of.

37. On 4th February, 2014 the High Court (Cross J.) gave judgment in respect of the injunction issues. In his decision Mr. Justice Cross referred to the decision of Dunne J. in *Fennell & Anor. v. N17 Electrics Ltd* [2012] IEHC 228 where Dunne J. held that if a mortgagor enters into a lease with a tenant without the prior written consent of the mortgagee then the lease would be binding on the mortgagor as lessor (vis-à-vis the lessee) but as against the mortgagee the lease will not be binding. That was also clearly the case here. The court held that the mortgage entered into by Gerard Killaly with Mr. Delaney was not binding as against AIB.

Motion to strike out

38. Subsequently on 3rd March, 2014, AIB and the receivers brought their motions to strike out the plaintiff's claim as disclosing no reasonable cause of action or on the grounds that it was not statable or on the grounds that it was bound to fail.

The principles relevant to a strike out application

39. The principles which are relevant to a strike out application are agreed between the parties. The relevant principles can be summarised as follows:

1. The Court has jurisdiction pursuant to Order 19 Rule 28 (of the Rules of the Superior Courts) and also pursuant to its inherent jurisdiction to strike out proceedings if they are bound to fail.
2. In 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 consider evidence on affidavit relating to the issues in the case (per Costello J. in *Barry v. Buckley* [1981] IR 306).
3. This jurisdiction to strike out proceedings is one to be "exercised sparingly and only in clear cases". (See Costello J. in *Barry v. Buckley* [1981] IR 306).
4. Moreover as McCarthy J. stated in *Sun Fat Chan v. Osseous Ltd* [1992] 1 IR 425 "Generally the High Court should be slow to entertain an application of this kind".
5. In addition as was stated by Keane J. in *Lac Minerals v. Chevron Corporation* [1995] 1 I.L.R.M. 161 (High Court, 6th August, 1990) (and quoted with approval by the Supreme Court) in *Supermacs Ireland Ltd v. Katesan (Naas) Ltd* [2000] 4 I.R. 273 "a judge in considering an application to strike out or dismiss a claim must be confident that the plaintiff's claim cannot succeed no matter what might arise on discovery or at the trial of the action."
6. If the pleadings can be amended in such a manner as to save the action then the proceedings should not be dismissed (see McCarthy J. in *Sun Fat Chan v. Osseous Ltd*).
7. The Court can only exercise a jurisdiction to strike out a claim on the basis that "on admitted facts it cannot succeed" (per McCarthy J. in *Sun Fat Chan v. Osseous Ltd*).
8. The Court in considering whether to strike out a claim "must treat the plaintiff's claim at its high water mark" (per Clarke J. in *McCourt v. Tiernan* [2005] IEHC 268).
9. The burden of proof lies on the defendant to establish that the plaintiff's claim is bound to fail. (See *Salthill Properties Ltd v. Royal Bank of Scotland* [2009] IEHC 207)
10. The Court should not require a plaintiff to be in a position to show a *prima facie* case, merely a stateable case, in an application to strike out. (See Clarke J. in *Salthill Properties Ltd v. Royal Bank of Scotland*.)

The nature of the plaintiff's claim

40. It is difficult to understand exactly what the plaintiff's claim against AIB and the receivers is, because he has filed a number of different amendments to his plenary summons and a number of different amendments to his statement of claim.

41. The plaintiff appears to have delivered at least seven versions of his statement of claim in this case as follows:

1. The first statement of claim was dated 7th January, 2014.
2. The second statement of claim was dated 13th January, 2014.
3. A third additional statement of claim was delivered on 27th February, 2014.
4. A fourth additional statement of claim was delivered on 31st March, 2014.
5. A fifth statement of claim was delivered on 14th April, 2014.
6. A sixth statement of claim was dated 12th May, 2014.
7. A seventh statement of claim was dated 22nd May, 2014.

42. The plaintiff is a lay litigant and full allowances must be made for that fact. My approach in this case has been to try to analyse the nature of the plaintiff's case and to take his case at its height. I have also had the benefit of reading the extensive affidavits filed by the plaintiff and by the defendants in this matter and therefore I have been able to form a reasonable view of the nature of the plaintiff's case against AIB and the receivers.

43. It should of course be emphasised that the plaintiff's case on affidavit - and in his oral submissions to the court (at the hearing of the application to strike out his claim) - was that he lent the money voluntarily to Mr. Gerard Killaly. There was no suggestion of fraud or duress or undue influence. It was a simple loan which the plaintiff entered into voluntarily with Mr. Killaly. As it turns out it was an unfortunate and improvident transaction. Even on the plaintiff's own case, it appears that Mr. Killaly sought the loan because he was in financial difficulties. Therefore it could be argued that perhaps the plaintiff should have been more careful as to whether he should have granted a loan to a person in such circumstances and without proper security.

44. Moreover the plaintiff fairly accepted that he never sought legal advice in relation to the security for the loan. Had he done so then his solicitor might have advised him that the security which Mr. Killaly was offering was of no legal effect because AIB's consent had not been given. However the plaintiff did not obtain legal advice and clearly made another significant mistake in that regard.

45. In addition, it is clear on the facts of this case that the plaintiff never sought or placed any reliance on the guidance or advice of AIB. He withdrew funds from his account in AIB and gave them as a loan to Mr. Killaly. AIB was not involved in this transaction at all

except to pay bank drafts out at the request of the plaintiff or his wife from the plaintiff's own account.

46. The statement of claim is replete with various grievances which the plaintiff has against Mr. Killaly, various employees of AIB and the effect which the loss of the money has had on him. However any complaints which Mr. Delaney has against Mr. Killaly are clearly a matter which are only relevant for any claim which the plaintiff wishes to bring against Mr. Killaly. It is the plaintiff's cause of action against AIB (and the receivers) which is the subject matter of this application.

The negligence claim

47. From the facts outlined above, the plaintiff's case is that he loaned the sum of €346,000 to Mr. Gerard Killaly. These loans were done by way of the plaintiff instructing his former wife to make six withdrawals totalling €346,000 between 20th August, 2008 and 15th September, 2008 from a bank account in her name. These loans were never repaid by Mr. Killaly.

48. The plaintiff's case is that

(a.) AIB actually knew that the bank drafts were made payable to Gerard Killaly and Richard O'Connor because AIB made out the bank drafts in AIB Edenderry to these persons.

(b.) AIB knew or ought to have known of Gerard Killaly's financial position because he also had an account with AIB at the same branch in AIB Edenderry.

(c.) Because AIB knew or ought to have known of Gerard Killaly's weak financial position they ought to have advised Mr. Delaney. It ought to have enquired of Mr. Delaney why he was advancing monies to Mr. Killaly and when it was aware that Mr. Delaney was advancing a loan it should have advised him against making a loan to Mr. Killaly.

49. Essentially, based on the facts set out above, the plaintiff's claim is

(a) That AIB owed him a duty of care because he was a customer of AIB.

(b) That AIB breached this duty of care because it failed to notify him of the difficulties in the account of another customer at the same AIB branch (namely Gerard Killaly), that it should have notified him about the state of the other customer's account and that if it had so notified him he would not have advanced the loans to Mr. Killaly.

(c) That as a result of this duty of care and breach of duty that Mr. Delaney suffered loss and damage.

50. Thus in relation to the negligence claim, the plaintiff's case appears to be that because Mr. Killaly was also an AIB customer, AIB should have advised the plaintiff not to lend money to Mr Killaly because of his poor financial position. The proposition only has to be stated in these terms to realise that it is completely unstateable.

51. Firstly it is clear that AIB owes a strict duty of confidentiality to all of its customers. Indeed this duty of confidentiality is an absolute bedrock of banking law. There are no circumstances in the present case why AIB should have breached this duty of confidentiality to inform Mr. Delaney of any facts which pertained to Mr. Killaly's account.

52. Secondly AIB might have been aware of Gerard Killaly's accounts with AIB but it might not have been aware of his overall financial situation. For all AIB knew, Mr. Killaly might have had accounts in credit with various other financial institutions. Therefore if AIB purported to advise Mr. Delaney in respect of Mr. Killaly's financial situation simply based on the information which it had in relation to his AIB accounts, it could have been completely and utterly wrong and could have caused damage to Mr. Killaly.

53. Thirdly, if one customer of AIB wishes to enter into a loan transaction with another customer of AIB in circumstances where the lender customer does not seek the advice of AIB about this transaction and does not even seek a credit reference in relation to the borrower, then the proposition that AIB should intervene and intermeddle in this loan transaction between two of its customers is also unstateable. It is not the bank's business to meddle in business dealings between its customers.

54. Fourthly, AIB was not aware of the purpose of these transfers. Mr. Dennehy for AIB in his affidavit of the 5th February, 2014 states that *"I say that AIB was not aware of the purpose of these withdrawals from Mrs. Delaney's account. The sole enquiry which AIB made into the purpose of these withdrawals was made on 15th September, 2008 when the final withdrawals of €50,000 were made by Mrs. Delaney. On that date the AIB bank official's questions were solely directed at ensuring that Mrs. Delaney was not being coerced."*

55. Indeed the plaintiff never suggested that AIB was so aware or that he made AIB aware either before or at the time the withdrawals were made.

56. Fifthly, Mr Delaney never sought any advice from AIB in relation to this matter. Likewise Mr. Dennehy states at para. 10 of his affidavit:

"Having reviewed AIB's records pertaining to the plaintiff and Marian, I say and believe that at no point did the plaintiff or his ex wife ever seek AIB's advice in relation to their decision to lend money to Gerard Killaly and Richard (otherwise known as Richard) Connor"

57. Again this averment has not been challenged and is therefore an agreed fact. Again, in fairness to the plaintiff, the plaintiff never suggested either in evidence or in his submissions to the court, that he ever sought AIB's advice in relation to his decision to lend money to Gerard Killaly. This is an important fact in the context of this application. Thus the decision by the plaintiff to loan money to Mr. Killaly was his and his alone.

58. Mr. Dennehy also states at para. 11 of his affidavit:

"I say and believe that advice of this nature is outside the scope of the banking services which AIB or any bank would offer to deposit account customers such as Marian Delaney. I have been advised and believe that in these circumstances no duty of care of the kind which the plaintiff seeks to rely on could be imposed on AIB. I say further that I have been advised and believe that AIB's duty of confidentiality to all of its customers would have prevented it from giving such advice."

59. In a further amendment, to the plaintiff's statement of claim, Mr Delaney says;

"I further say that the payee was perceived as a "big player" in the bank. I say that under such circumstances given the status of the customer the official would not need to pose such questions unless alarm bells were ringing within the branch.... I say that the bank showed a deliberate ignorance to the appalling events that were taking place on the account despite an actual knowledge of the customer's insolvency".

60. However it is clear that there is no evidence at all that AIB had actual knowledge of Mr. Killaly's financial position. However, even if it did, that would not necessarily mean that AIB would then have a duty of care to intervene with a customer of AIB's to advise that customer against making a loan to another customer where that customer has not sought such advice or even a reference.

61. It is noteworthy that Mr. Delaney did not seek any credit references from Mr. Killaly nor did he seek any credit references from the bank about Mr. Killaly. In addition he loaned the money to Mr. Killaly without taking security. Moreover when he took security several months later he did so without the benefit of obtaining legal advice. This was a catalogue of errors for which the plaintiff himself must bear a significant and heavy responsibility. It is a most unfortunate situation for the plaintiff and the plaintiff has my full sympathy. However he did not take such steps as a reasonable and prudent lender would have taken in such circumstances by obtaining credit references from Mr. Killaly, by seeking appropriate security for the loan and by taking legal advice to ensure that the security was legally effective. Of course these matters would only be relevant to contributory negligence, and if the plaintiff had a stateable case against AIB then these are matters which would have to be pleaded by AIB as particulars of contributory negligence in the normal way.

Applicable legal principles of banking law

62. As is stated in *Banking Litigation (Hewetson and Elliot* third edition para. 2 – 005);

"A bank cannot be liable for failing to advise a customer if he owes the customer no duty in law to do so. Generally speaking, banks do not owe their customers the duty to advise them on the wisdom of commercial projects for the purpose of which the bank is asked to lend money. If the bank is to be placed under such a duty, there must be a request from the customer, accepted by the bank, or some arrangement between the customer and the bank under which the advice is to given."

63. Thus it is clear that it is well established law that a bank owes no general duty to advise its customers on the wisdom of their commercial projects.

64. Indeed, as was stated in *National Commercial Bank (Jamaica) Ltd v. Hew and others* (by Lord Millett in the Privy Council) 2003 UKPC 51;

"It may well have been foolhardy of Mr Hew to embark on the project without obtaining estimates of the likely costs and cash flow forecasts; but the bank was under no duty to advise him against such a course. It may have been unwise of Mr Cobham to have lent the money without insisting on being provided with such estimates and forecasts and without having conducted a feasibility study of his own. But, as Mr Cobham explained, any such study would have been for the bank's protection, not Mr Hew's. The reason he did not call for such a study is that he did not think that the bank's interests required it; the bank had sufficient security to support a much larger loan than anything that was contemplated at the time. This is a useful illustration of the truism that the viability of a transaction may depend on the vantage point from which it is viewed; what is a viable loan may not be a viable borrowing. This is one reason why a borrower is not entitled to rely on the fact that the lender has chosen to lend him the money as evidence, still less as advice, that the lender thinks that the purpose for which the borrower intends to use it is sound." (Emphasis added).

65. Moreover Scott L.J. in *Lloyds Bank Plc v. Cobb* (unreported Court of Appeal 18th December, 1991) stated as follows:

"The ordinary business of a high street bank is to hold on current account terms the funds of its customers, to make arrangements for overdrafts in current accounts and to make loans to customers. The ordinary business of a high street bank does not include giving advice to customers on the wisdom of commercial projects for the purposes of which the bank is asked to lend money.

In my judgment the ordinary relationship of bankers and customers does not place on the bank any contractual or tortious duty to advise the customers on the wisdom of commercial projects for the purpose of which the bank is asked to lend money. If a bank is to be placed under such a duty, there must be request from the customer, accepted by the bank, or some arrangement between the customer and the bank under which the advice is to given. (Emphasis added)

If a customer applies to the bank for a loan for the purposes of some commercial project and the bank examines the details of the project for the purpose of deciding whether or not to make the loan, the bank does not thereby assume any duty to the customer. It conducts the examination of the project for its own prudent purposes as lender and not for the benefit of the proposed borrower. If the borrower chooses to draw comfort from the bank's agreement to make the loan, that is the borrower's affair. In order to place the bank under a duty of care to the borrower the borrower must, in my opinion, make clear to the bank that its advice is being sought. The mere request for a loan coupled with the supply to the bank of the details of the commercial project for whose purposes the loan is sought does not suffice to make clear to the bank that its advice is being sought".

66. In my view all these statements of principle are applicable in the present case. Indeed the position is even more stark in this case because Mr. Delaney did not seek a credit reference from AIB about Mr. Killaly and he did not seek any advice from the bank about making a loan to Mr. Killaly. Moreover Mr. Delaney did not seek to borrow from the bank with a view to making a loan to Mr. Killaly. All Mr. Delaney did was, in effect, withdraw money from his own account. He then used that money to make a loan to Mr. Killaly which Mr. Killaly never repaid.

67. Moreover it is clear from the AIB evidence that although AIB knew the identity of the payees to whom the drafts were to be paid they did not know the purpose for which these funds were being transferred. Thus, for all AIB knew, Mr. Delaney might have owed Mr. Killaly money and he was seeking to repay those monies. In the alternative, for all AIB knew, Mr. Delaney may have purchased some asset from Mr. Killaly and was using these funds to pay for such an asset. The point is that AIB was a complete stranger to the loan agreement and the financial transaction between Mr. Delaney and Mr. Killaly.

68. To impose a duty of care on banks to enquire of customers who make withdrawals as to what is the purpose of such withdrawals

and to whom are such monies being paid, to impose a duty on banks to investigate the credit worthiness of the recipients of such funds and/or to impose a duty on banks to advise their customers generally on the wisdom of such transactions (without being asked to give a credit reference for the payee or to provide any investment advice to the customer) would be to impose a duty of care on banks which would not only go well beyond the current state of the law on the duty of care which a bank owes its customers but it would fundamentally undermine the nature of bank confidentiality with its customers. There is no reported case for the proposition for which the plaintiff is now urging upon the court. That is not surprising in my view. The plaintiff's case in negligence against AIB is unstateable as a matter of law.

Duty of confidentiality

69. It is settled law that a bank owes a duty of confidentiality to each of its customers. Thus as was stated in *Tournier v. National Provincial and Union Bank of England* 1924 1 KB 461 by Scrutton L.J. (at page 480)

"I have no doubt that it is an implied term of a banker's contract with his customer that the banker shall not disclose the account, or transactions relating thereto, of his customer except in certain circumstances."

70. These circumstances were subsequently set out by Bankes L.J. as follows (page 472).

"In my opinion it is necessary in a case like the present to direct the jury what are the limits, and what are the qualifications of the contractual duty of secrecy implied in the relation of banker and customer. There appears to be no authority on the point. On principle I think that the qualifications can be classified under four heads: (a) Where disclosure is under compulsion by law; (b) where there is a duty to the public to disclose; (c) where the interests of the bank require disclosure; (d) where the disclosure is made by the express or implied consent of the customer."

71. AIB submit that it is obliged under the Data Protection Act 1988 (as amended by the Data Protection (Amendment) Act 2003) not to reveal information relating to an individual other than with that individual's consent or in compliance with the Act. AIB submit that disclosure of such information relating to Mr. Killaly's finances to the plaintiff or his former wife would have breached this Act. However I do not think it is necessary for the purpose of this judgment for me to consider this argument further in the light of my conclusions above.

The property claim

72. The Plaintiff's second cause of action is that he has a claim against AIB in respect of the property at JKL street. However in my view, there is absolutely no doubt that the plaintiff's property claim against AIB, whilst stateable is, on the basis of agreed facts, bound to fail. There is ample evidence before the court that Mr. Killaly entered into a mortgage over the said premises at Edenderry with AIB; it is also clear that this mortgage contains a covenant to obtain the prior written consent of AIB before letting the mortgaged premises to any other parties; it is also clear that Mr. Killaly through his solicitors sought to obtain the bank's prior written consent and it is also clear and undisputed that the bank refused to give their prior written consent at all. The plaintiff has not been in a position to controvert any of these essential facts. His evidence is that Mr. Killaly entered into a lease with him. That may well be true but based on the authority of the N17 case (which has been accepted as correct in a number of other cases) the lease between Mr. Killaly and Mr. Delaney was valid as between Mr. Killaly and Mr. Delaney but was invalid and unenforceable as between Mr. Delaney and AIB. Therefore the plaintiff's claim against AIB in respect of the property is, on admitted facts, bound to fail.

The plaintiff's claims in relation to the breach of the NAMA Act 2009

73. In the second statement of claim the plaintiff alleges that AIB breached ss. 7 (2), 7 (4) and 82 (1) of the National Asset Management Agency Act 2009 (the NAMA Act).

74. Section 82 (1) of the NAMA Act provides as follows:

"An applicant credit institution or a participating institution shall provide any information and explanations requested by NAMA in relation to the matters referred to in sections 80 and 81 or any other matter relevant to the acquisition of a bank asset, and shall also secure that an officer or staff member of the applicant credit institution or participating institution shall provide an explanation of any such information, documentation, book or record, including an explanation of any apparent omission from the information, documentation, book or record."

75. AIB is a participating institution within the meaning of the NAMA Act.

76. Section 7 (2) provides that:

"A person who intentionally, recklessly or through gross negligence provides false or inaccurate information to NAMA commits an offence."

77. Section 7 (4) provides:

"A person who intentionally withholds information from NAMA in breach of an obligation to provide that information imposed under this Act commits an offence if the withholding of the information has a material impact upon—

(a.) the manner in which NAMA deals with a bank asset.

(b.) a decision by NAMA to refrain from dealing with a bank asset, or

(c.) the value which NAMA determines for a bank asset."

78. However the plaintiff's claims in this regard are completely unstateable and/or are bound to fail for the following reasons:

1. There is absolutely no evidence before the court that AIB intentionally recklessly or through gross negligence provided false or inaccurate information to NAMA.
2. There is absolutely no evidence before the court that AIB intentionally withheld information from NAMA or that the withholding of such information had a material impact upon any of the matters set out at s. 4 (a) (b) or (c).
3. Even if such evidence had been put before the court, it is clear that these statutory provisions exist for the benefit of NAMA not for the benefit of persons such as the plaintiff. It is clear from even a cursory review of the sections that a

person such as the plaintiff is not one of the class of persons whom the statute sought to protect. In those circumstances, under well established principles of law, any breach of such a statutory duty does not confer a right on individuals such as the plaintiff to sue AIB in respect of such alleged breaches of a statute.

Claim for unjust enrichment

79. In the third statement of claim the plaintiff alleges that because he gave bank drafts to Mr. Killaly and because Mr. Killaly deposited these funds with AIB, that AIB in receiving these funds engaged in acts of unjust enrichment or is liable to the plaintiff for unjust enrichment. However again this proposition only has to be stated in these terms to understand why it is unstateable. AIB simply produced a bank draft made payable to Mr. Killaly at the direct request of Mr. Delaney (acting through his former wife). Mr. Killaly then lodged that bank draft to an account which he had with AIB. He did not give it to AIB for AIB's benefit. He lodged it to his own account.

80. This matter was addressed in *Companie Commerciale Andresa v. Artibelle Shipping Co. Ltd* 2001 SC 653 at 661 where Lord MacFadyen stated as follows:

"There is, no doubt, a sense in which money paid to a bank to the credit of the account of one of its customers becomes, on receipt, the bank's money – as Lord Mackay said in Royal Bank of Scotland v. Skinner, it is "simply consumed by the banker". But in that simple situation, the bank is not thereby enriched, because it grants an immediate obligation of corresponding amount to its customer. Receipt by the bank in that way would not, in my opinion afford the necessary foundation for an argument that in the event of the money becoming repayable by the customer to the payer, the bank have been unjustly enriched."

81. In my view, this statement of principle is correct. I therefore find that the plaintiff's cause of action on unjust enrichment is unstateable as a matter of law.

Miscellaneous claims of the plaintiff

82. In various other formulations of the statement of claim the plaintiff makes additional allegations. Thus for example in his fourth statement of claim at para. 4 he claims that the purported grant of a lease by Mr. Killaly created a constructive trust; at para. 6 he makes his claim of deceit and a claim for conversion of the property; at para. 7 he claims that the defendants AIB are volunteers in equity; at para. 8 he claims that the defendants used the Conveyancing Act 1881 as an "engine of fraud".

83. In my view these claims have no reality in law or in fact. There is not a scintilla of evidence in the affidavits or indeed in the submissions made by the plaintiff to court to justify any of these allegations. Allegations of deceit and allegations that the defendants have used the Act as "an engine for fraud" should not have been made. There are no particulars of same set out in the pleadings and there is not a scintilla of evidence to justify them

84. In the sixth statement of claim the plaintiff seeks to claim that the premises at both 81 and 82 JKL Street Edenderry impinge on lands contained in Folio OY 16775F which the plaintiff claims were purchased by his brother William Delaney in December 2013 and held in trust for the plaintiff. The plaintiff asserts that in some way this invalidates the mortgage which AIB entered into with Gerard and Naomi Killaly. As is clear from the affidavit evidence the mortgage between AIB and Gerard and Naomi Killaly was entered into on 14th September 2007 long before any purchase by William Delaney of adjoining lands. Moreover Gerard and Naomi Killaly were at the time of the mortgage the registered owner of the lands comprised in Folio OY 16775F since 10th September, 2003 and no subsequent transfer of these lands to Mr. Delaney or any third party has been registered with the Property Registration Authority.

85. In the circumstances these claims also disclose no cause of action against AIB, or are unstateable or are bound to fail.

The plaintiff's seventh statement of claim

86. In the plaintiff's seventh statement of claim the plaintiff seeks to claim that Ms Angie Donoghue of AIB was guilty of deceit in swearing an affidavit filed in these proceedings on 19th May, 2014.

87. Ms Angie Donoghue swore an affidavit on behalf of AIB on 16th May, 2014. In this affidavit Ms Donoghue confirmed that she was the bank official who met with Mrs. Delaney on 15th September, 2008 as at the time she was the deposit manager for AIB Edenderry. She said that on that day the bank teller who was serving Mrs. Delaney informed Ms. Donoghue that Mrs. Delaney had requested drafts to be drawn for significant sums from her deposit account and that several other significant withdrawals had recently been made by Mrs. Delaney from the same account. In para. 6 of her affidavit Mrs. Donoghue states as follows:

"I asked to speak with Mrs. Delaney and took her aside to a private office. The reason that I asked to speak with Mrs. Delaney privately was to see whether the monies were withdrawn in order to be deposited with another bank in which case I would have sought to see if AIB could have offered a more competitive rate. I could have offered Mrs. Delaney a more competitive interest rate in order to retain her business. Mrs Delaney replied that she was not moving funds in order to obtain a better interest rate from a rival institution. She appeared a little nervous and giggled. I therefore asked her whether she was under any pressure or duress to withdraw the funds to which she replied that she was not and that she was happy with what she was doing. Having satisfied myself that Mrs. Delaney did not appear to be coerced and that AIB could not offer her better interest rate terms in order to retain the deposit of these funds I signed the drafts which had been requested."

Mrs Donoghue also states:

"It is not AIB's or to the best of my knowledge any other financial institutions practice to reveal any information about a customer to another customer or other third party (other than a regulatory authority or the police and then only in accordance with the mandatory legal requirement) unless that first customer has given their prior consent such as for the purpose of bank references or letters of credit. Any bank would be precluded from revealing such information due to amongst other things our duty of confidentiality to our customers and obligations under the Data Protection Act. I confirm that Mrs. Delaney did not on 15th September, 2008 or at any other point ask me to advise her on whether she should give money to or invest with Gerard Killaly and/or Richard O'Connor and at no point did I give her any such advice".

88. Although there was a sharp conflict of evidence between Ms Donoghue and Mrs. Delaney as to the exact nature of the conversation which they had on the 15th September, 2008 in AIB Mrs. Delaney does not say that she asked AIB for advice in relation

to the loans to Mr. Killaly.

89. However the fact that AIB swore an affidavit in such terms resulted in the plaintiff bringing a further amendment to his statement of claim in which he claimed that "the servant of the first named defendant Angie Donoghue has engaged in a deliberate act of deceit by concealment regarding her motives for enquiries as her assertions that the monies were destined for another bank was known by her to be false".

90. Again it is difficult to see on what possible factual basis or legal basis the plaintiff is seeking to plead deceit against AIB.

91. As is stated by Shanley J. in *Forshal and Fine Arts Collection Ltd. v. Walsh* (unreported High Court 18th June 1997)

"A plaintiff seeking to establish the commission of the tort of fraud or deceit must prove

1. The making of a representation of a past or existing fact for the defendant;

2. That the representation was made knowingly or without belief in its truth or recklessly, carelessly whether it be true or false;

3. That it was intended by the defendant that the representation should be acted upon by the plaintiff;

4. That the plaintiff did act on foot of the representation;

5. And suffered damages as a result

Where fraudulent misrepresentation is alleged it must be established that the representation was intended to and did induce the agreement in respect of which the claim for damages arises."

92. It is difficult to see how any of the actions of Ms. Donoghue in swearing an affidavit which is alleged to be deceitful (rather than just a sharp difference of recollection about a specific incident at the bank) could justify an allegation of deceit.

93. I am satisfied that the plaintiff's claim on this point also is unstateable and/or has no reasonable prospect of success.

94. In addition AIB make the not unreasonable point that the account was in the name of the plaintiff's former wife Marian Delaney and not the plaintiff. However I have ignored this point for the purposes of this application. It seems to me that a case could be made that Mrs. Delaney was holding the funds as trustee for the plaintiff. In the alternative Mrs. Delaney herself could have been joined to these proceedings. I have therefore taken the plaintiff's case at its height.

Application by the receivers to strike out proceedings

95. The receivers have brought a similar motion to strike out the plaintiff's claim against the receivers on the grounds that it is bound to fail. The receivers submit that since the only claim the plaintiff could possibly have against the receivers is one which relates to possession of the property and because the plaintiff has no entitlement to possession of the property by virtue of the fact that AIB failed to give prior consent in writing, there is no stateable cause of action against the receivers. For the reasons set out above, I am of the view that the plaintiff's cause of action against the receivers is also bound to fail.

96. Moreover the receivers submit that in all of the various amended statements of claim which have been delivered in these proceedings, none of them disclose any stateable cause of action against the receivers and on that basis the plaintiff's proceedings against them should be struck out.

97. The receivers note that the first supplemental statement of claim contains allegations that the receivers have breached s.7, s.45, s.81, s. 82 of the NAMA Act. However they say that proper consideration of those sections show that none of these sections have any possible relevance to the matters at issue in these proceedings and on that basis the plaintiff has no valid cause of action. For the reasons set out above, I am of the view that the plaintiff's cause of action against the receivers is also bound to fail.

98. In a further amendment to his statement of claim the plaintiff claims that the receivers have used the NAMA Act as an "engine for fraud". The plaintiff also claims that the said breaches of the NAMA Act were deceitful in nature and that the defendants in concealing the breaches of the NAMA Act committed a further act of fraud. He also claims that the first, second and third defendants have conspired through deceit by concealment in an act of conversion of his property.

99. However I am satisfied that these claims are simply a howl of pain by the plaintiff who has suffered an agonising loss of all his hard-earned capital built up over many years in London. They are not proper causes of action properly pleaded. They are not even proper allegations. They are allegations made without even the flimsiest factual pretext to justify them.

100. The plaintiff again and again amended his statement of claim to make further claims e.g. that Hugh Gillen the manager of AIB was aware of a constructive trust created by the lease. However it is quite clear on the facts of this case that there is no constructive trust. The legal right to the premises at 82 JKL Street was vested in AIB by virtue of the mortgage contract between Mr. Gerard Killaly and AIB. Thus Mr. Killaly could not have granted the lease to Mr. Delaney in a manner which was enforceable against AIB. In the circumstances no question of a constructive trust arises.

101. The plaintiff also makes vague and unparticularised allegations of deceit and concealment, leading to conversion, by the defendants. I am satisfied however that these claims are simply made in desperation and there are no factual or legal basis for these claims whatsoever.

102. The plaintiff- or more correctly his McKenzie friend- referred me to numerous authorities. I have considered these authorities. They were not relevant to the issues which I had to consider. Many contained general statements of principle which had no application to the current matter before the Court.

Conclusions

103. I would therefore conclude as follows:

1. It is clear that Mr. Delaney has suffered a great reversal of fortune in his financial affairs. He advanced an enormous sum of money by way of loan to Mr. Killaly and Mr. Killaly failed to repay this loan. Mr. Killaly is now bankrupt. The plaintiff

has therefore no redress against Mr. Killaly and indeed appears to have been cruelly treated by him.

2. However one cannot remedy the injustice done to Mr. Delaney by Mr. Killaly by visiting an injustice on AIB or the receivers. That would be wrong in principle and in law.

3. For the reasons set out above all of the plaintiff's claims are either unstateable as a matter of law or are doomed to failure as a matter of fact.

4. It would be an injustice to the defendants to force them to defend actions which clearly are unstateable as a matter of law or which are bound to fail and are frivolous or vexatious. To do so would be to force the defendants to engage in a costly defence of legal proceedings when there may be little or no prospect of recovery of their costs against the plaintiff.

5. Moreover it would be to compound the suffering of the plaintiff if he were to be permitted to embark upon costly and lengthy proceedings which have no prospect of success and which might result in him suffering even more ruinous financial loss than he has suffered already.

6. In the circumstances I would dismiss all the pleas made by the plaintiff in his various statements of claim against all defendants.