Neutral Citation: [2014] IEHC 260

THE HIGH COURT

[2012 No. 9180 P.]

BETWEEN

THOMAS KEARNEY

PLAINTIFF

AND

K.B.C. BANK IRELAND PLC AND JOHN REYNOLDS

DEFENDANTS

JUDGMENT of Mr. Justice Birmingham delivered the 16th day of May 2014

1. The matter before the court sees the defendants seeking an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of the court striking out the plaintiff's claim on the grounds that the pleadings disclose no reasonable cause of action and that the proceedings are frivolous, vexatious and bound to fail. The factual background is that the bank has advanced six loans to the plaintiff, who is a property investor/developer. The loan facilities were secured by way of mortgages over various investment properties mainly located in Ireland, but in the case of two apartments in Birmingham in England.

2. In summary, the position in relation to the loans was as follows. The first loan facility was advanced on foot of a letter of offer dated the 1st November, 2004, and was in the amount of €156,000. A form of acceptance that was appended to the letter of offer was signed by the plaintiff and witnessed by his solicitor. This loan was secured by way of a mortgage dated the 24th December, 2004, in respect of 21 Pearse Court, Athlone, Co. Westmeath. A letter of demand issued and in a situation in which the sum demanded was not repaid, a receiver was appointed on the 28th September, 2012. The second loan facility involved three loan letters dated the 10th January, 2005, in the amount of €1.2m, the 9th June, 2005, in the amount of €154,700 and the 13th February, 2007, in the amount of €180,000. Forms of acceptance were appended to each loan letter and were signed by the plaintiff and witnessed by his solicitor. All three elements of the loan facility were drawn down by way of a cheque made payable to his then solicitors. The loans in question were secured by way of a mortgage dated the 20th April, 2005, over a number of properties in Castlegar, Co. Galway, a second legal charge was in place over three other properties. A letter of demand was served, but the sum demanded was not repaid and a receiver was appointed on the 28th September, 2012.

3. The third loan facility was advanced on foot of a letter of offer dated the 3rd June, 2005, in the amount of €267,600. Again the form of acceptance appended to the letter of offer was signed by the plaintiff and witnessed by his solicitor and drawn down by way of loan cheque payable to the plaintiff's solicitor. This loan was secured by way of a mortgage dated the 31st August, 2005, over two properties in Tarmonbarry, Co. Roscommon. When the sum demanded through a letter of demand was not repaid, a receiver was appointed in this case on the 18th December, 2012.

4. The fourth loan facility was advanced on foot of a letter of offer dated the 11th August, 2005 and the sum involved was €300,000. On this occasion the plaintiff's wife was a party to the loan and the form of acceptance was signed by both the plaintiff and his wife and was witnessed by their solicitor. This loan was secured by way of a mortgage dated the 1st November, 2005 and a supplemental indenture of mortgage of the 10th November, 2005, over Apartment 13, Amhra House, St. Brendan's Avenue, Co. Galway. In this case a receiver was appointed over the secured property on the 19th October, 2012.

5. Loan facilities 5 and 6 related to properties in Great Britain. There were two loan offers dated the 27th November, 2007 and the sums advanced were Stg£163,000 and Stg£113,080.15. As in the case of the earlier loans the form of acceptance that was appended to the facility letters was signed by the plaintiff, but on these occasions, was witnessed by his financial consultant rather than his solicitor. The funds in question were drawn down by the plaintiff. The loan facilities were secured by two mortgage deeds both dated the 15th February, 2008 over Apartment 25 and Apartment 32, Arena View, Clement Street, Birmingham. In these cases a receiver was appointed to the secured property on the 3rd October, 2012.

6. The present proceedings were commenced by the issue of a plenary summons on the 11th September, 2012. Somewhat unusually the plenary summons was accompanied by a grounding affidavit. On the 22nd October, 2012, two different statements of claim were served. One statement of claim was directed to the position of the first named defendant and the second statement of claim was directed to the position of the second named defendant. The second named defendant, it may be noted was the then Chief Executive of the first named defendant bank.

7. The plaintiff's pleadings, might, I think fairly be described as diffuse and do not easily lend themselves to being summarised. In the circumstances I have decided to append to this judgment the plenary summons, the grounding affidavit and the two statements of claim.

8. Notwithstanding, the difficulties in summarising the plaintiff's pleadings which has led me to appending the pleadings, counsel on behalf of the defendant has undertaken that task. I did not understand the plaintiff to take significant issue with the summary presented and so I will make use of the defendants' summary. Counsel for the defendant has offered the following summary of the plaintiff's claim as against the bank.

> (a) The bank has failed to prove that the plaintiff entered into binding contracts with the bank.
>
> (b) The bank has acted in breach of the loan agreement from the outset.
>
> (c) The bank fraudulently misrepresented and wilfully misled the plaintiff in relation to a property development in Birmingham, England in order to unjustly enrich the bank and its employees and agents.
>
> (d) The loan facilities and/or mortgages were sold or securitised. On this basis, the plaintiff contends that the bank no

longer holds full ownership of the loans and as a result is not a "real party of interest" and accordingly does not have the right to enforce the loans.

(e) The bank failed to obtain the consent of the plaintiff to the securitisation of the loans, which constituted a breach of the Central Bank Asset Securitisation Document.

(f) The bank offered the plaintiff a loan of money, but instead created a debt or deposit.

(g) The bank did not fund the loans advanced to the plaintiff and never informed the plaintiff of its plans to 'outsource' the funding of the loans/mortgages.

(h) The bank, by way of the loans advanced to it, created a financial instrument, which could be sold or assigned to a third party. On this basis, it is contended that the bank had committed 'a criminal offence of creating currency'.

(i) The bank was not entitled to appoint a receiver to the secured properties, absent documentation evidencing the existence of lawful contracts as between the bank and the plaintiff.

(j) The bank has failed to prove that it is a solvent bank with the right to trade and to repossess property.

9. As against the second named defendant, the former Chief Executive Officer of the bank, the plaintiff's claim is that:

(a) The second named defendant, through his stewardship as CEO of the bank has been complicit in the unlawful practices of the bank.

(b) The second defendant had the ultimate responsibility within the bank to ensure that the bank adhered to the trading requirements laid down by Irish law, and failed in that responsibility.

(c) The second named defendant 'stood by' while the bank committed the acts complained of.

(d) The second defendant knows that the bank committed the acts complained of.

(e) The second defendant has failed to provide the plaintiff with information that he requested from the bank.

(f) The second defendant officiated over the bank and therefore shares responsibility with the bank for fraudulently misrepresenting and wilfully misleading the plaintiff in relation to a property development in Birmingham.

(g) The second named defendant allowed the bank to commit the offence of creating currency.

(h) The second named defendant has failed to explain the basis upon which receivers were appointed to the plaintiff's property by the bank.

10. There can be no doubt, but that the court has power pursuant to both O. 19, r. 28 and pursuant to its inherent jurisdiction to strike out proceedings that are frivolous or vexatious. It must be said immediately, that it is not a jurisdiction to be exercised lightly. In *Sun Fat Chan v. Osseous Limited* [1992] 1 I.R. 425, 428 McCarthy J. commented:-

"Generally, the High Court should be slow to entertain an application of this kind and grant the relief sought."

11. In the particular circumstances of this case, I attach significance to the fact that the authorities clearly establish the proceedings should not be dismissed if they are capable of amendment. See in that regard Delaney and McGrath on *Civil Procedure in the Superior Courts*, (3rd Ed.) at para. 1606 and the cases therein cited. Accordingly, if the proceedings can be saved by amendments, even radical amendments, then the proceedings will not be struck out at this stage.

12. The defendants have gone on to seek to distil the claims against them further. Again, the plaintiff did not seem to dissent significantly from this summary though placing particular emphasis in oral argument on two matters. The summary offered by the defendants was as follows:-

(i) that the bank has failed to prove that the plaintiff entered into a binding loan agreement with the bank;

(ii) that the bank engaged in the illegal creation of currency;

(iii) that the bank does not retain the entitlement to enforce the loans following the securitisation of the loans;

(iv) that the bank acted in breach of the Central Bank Asset Securitisation Document in failing to obtain the consent of the plaintiff to the securitisation of the loans;

(v) that the bank was not entitled to appoint a receiver to the plaintiff's properties without court application;

(vi) that the bank is or was insolvent or has failed to prove that it is solvent; and

(vii) that the bank, its servants or agents fraudulently misrepresented matters in relation to a proper development in Birmingham in order to unjustly enrich the bank and its employees and agents.

Alleged failure to prove binding contract between plaintiff and bank

13. The plaintiff has written repeatedly to the bank calling on it to provide:-

(i) what is described as validation of debt – there is some dispute as to where or with whom this phrase originated;

(ii) verification of the bank's claim against the plaintiff by a sworn affidavit or signed invoice; and

(iii) a copy of the contract binding on both parties.

14. These letters stated that:-

> "[I]f all related valid documentary evidence exists and is supplied, we are more than happy to pay any and all amounts that we lawfully owe."

15. The bank has furnished the plaintiff with copies of each of the signed letters of offer, all witnessed, copies of the mortgages, copies of account statements demonstrating the sum said to be due and owing and redemption statements.

16. The form of acceptance appended to each of the letters of offer, each signed by the plaintiff and, in one case also signed by his wife, and each witnessed by the plaintiff's solicitor or, in the case of the Birmingham loans by the plaintiff's financial adviser, provide that the loan is governed by the terms and conditions set out in the letter of offer, the particulars of advance, the bank's general conditions, the special conditions, the bank's standard form mortgage and the assignment of life policy.

17. In my view, there can be absolutely no doubt whatever about the contractual basis for the six loans. There are two other aspects. There is something somewhat incongruous about the plaintiff alleging a failure on the part of the bank to prove a binding contract when it is the plaintiff that has commenced the proceedings. The obligation on the bank to prove its case will arise if and when it issues proceedings. Furthermore, even if there was some issue in relation to the form of contract which there does not appear to be, that would not necessarily relieve the plaintiff of the liability to repay the loans. In *Irish Bank Resolution Corporation v. Cambourne* [2012] IEHC 262, in a situation where there were difficulties with the facilities letters, Charleton J. still held that the defendant was liable to repay money loaned. Again, in *ACC Bank v. Deacon* [2013] IEHC 427, a case where there was a dispute about whether certain documents had been signed, Ryan J. commented, if the bank had been unable to establish the terms on which it had advanced the funds to Mr. Deacon, there would have been an implied obligation on him to repay in a reasonable time after demand.

"The bank engaged in the illegal creation of currency"

18. I have identified this as one of the two areas in which the plaintiff attaches particular emphasis. His interest in this area is related to his success in accessing an article in the Bank of England Quarterly Bulletin, 2014, Q.1, entitled "Money Creation in the Modern Economy" by members of the Bank's Monetary Analysis Directorate.

19. The argument is not a new one. The thrust of the allegation which is that the bank did not advance to the plaintiff a loan of money, but created currency has been canvassed in other cases. Specifically the same argument was considered by Gilligan J. in *Freeman v. Bank of Scotland Ireland* [2013] IEHC 371. There, he referred to the case of *Meads v. Meads*, a decision of the Alberta Queens Bench. He did so in these terms:-

> "The Court accepts the submission by counsel for the defendants that this 'creation of currency' argument resembles the so-called 'money for nothing schemes' discussed in *Meads v. Meads* 2012 ABQB 571. Such arguments are coming before the Courts in numerous jurisdictions with increasing frequency since the economic and property market collapse. In *Meads*, Associate Chief Justice Rooke stated that such arguments are often advanced by a particular type of vexatious litigant which he termed 'Organised Pseudolegal Commercial Argument (OPCA) litigants'. He described these arguments as 'fanciful' and 'completely devoid of merit' and said they are often made by distressed litigants, particularly those who find themselves in financial difficulty, acting under pressure and on the instruction of organised groups or individuals who have a vested interest in disrupting court operations and frustrating the legal rights of governments, corporations and individuals."

20. In my view the phrases "fanciful" and "completely devoid of merit" are very appropriate to describe this argument and indeed significantly more robust language would be justified. Quite simply the plaintiff drew down funds and thereby took on the responsibility to repay. What the source of these funds was matters not a whit. The position is not altered by the sourcing of the article on which the plaintiff places such reliance.

Bank does not retain entitlement to enforce loan following securitisation

21. That the bank does not retain the entitlement to enforce the loans following the securitisation of the loans. This issue is closely linked to contention 4, which is that the bank failed to observe the terms of the Central Bank Asset Securitisation Document, in that it failed to obtain the consent of the plaintiff to the securitisation of the loans. Again, these joint issues taken together constitute an area on which the plaintiff places particular emphasis. Notwithstanding the emphasis laid by the plaintiff, it is necessary to observe that only two of the six loans were securitised. The first loan facility secured by way of mortgage over 21 Pearse Court, Athlone, Co, Westmeath and the fourth loan facility drawn down by the plaintiff and his wife. The difficulty facing the plaintiff and it seems to me an insuperable difficulty is that in accepting the facility letters and in executing the mortgages, he appears to have acknowledged the bank's right, without seeking further consent from or notice to the plaintiff to securitise the loans. Clause 6 of the general conditions appended to the letter of offer provides as follows:

> "The applicant(s) attention is drawn to clause 11(iii) of the Mortgage Indenture. The applicant(s) hereby acknowledge the Lenders right, without further consent from or notice to the applicant(s) to transfer the benefit of this letter of offer, the mortgage loan and the lenders mortgage security (including any insurance policy or policies of life or endowment terms of assurance) over the property to any person, company or corporation on such terms as the lender may think fit, without any further consent from or notice to the applicant(s) or any other person or any consequential assurance or re-assurance or release under such scheme whereupon all powers and discretions of the lender shall be exercisable by the transferee. In the event that any such transfer and/or assignment and/or disposal the lender shall continue to be responsible, as agent for such transferee or assignee, for all matters relating to the administration of the loan, including but not limited to the setting of the interest rates and the handling of arrears in respect of the loan subject to the powers and discretions of the transferee. In regard to the setting of the interest rates and the handling of arrears, the policy of any such transferee shall be the same as that of the Lender. The applicant(s) hereby irrevocably and unconditionally authorises the Lender, for the purpose or in connection with any proposed transfer, assignment, disposal, submortgage, subcharge, trust or arrangement of this agreement, to disclose to the propose transferee and every person proposing to participate in or promote or underwrite or manage any such transfer or securitisation scheme to disclose to every person to whom the lender is obliged thereunder to make disclosure, details of this agreement, without prejudice to the generality of the aforegoing any information and documentation in the Lender's possession in relation to the borrower, the mortgage loan and the Lender's mortgage security over the Mortgage premises and so far as such information constitute personal data within the meaning of the Data Protection Act 1988, this authority shall be consent for the purpose of s. 8(h) of the said Act."

22. Clause 11(ii) of the mortgage dated the 24th December, 2004, provides as follows:-

> "The borrower hereby acknowledges the lender's right, without any further consent from or notice to the Borrower, to transfer the benefit of this mortgage, the mortgage loan and the lender's mortgage security (including any insurance policy or policies of life or endowment term assurance) over the Mortgaged Premises to any person, company or corporation on such terms as the lender may think fit, without any further consent from or notice to the borrower or any other person or any consequential assurance or reassurance or release under such scheme whereupon all powers and discretions of the lender shall be exercisable by the transferee . . ."

23. Mr. Kearney makes the point and I accept that in this regard he is correct that the only express reference to securitisation is in the context of disclosure and data protection issues. However, while acknowledging that, it still seems to me that in relation to both of the 21 Pearse Court transactions, that there is no doubt whatever, but the plaintiff consented to the transfer of the mortgage, without further reference to him, including transfer by way of securitisation.

24. In relation to the emphasis that the plaintiff places on the issue of securitisation; observations made by Peart J. in *Wellstead v. Judge White and Others* [2011] IEHC 438, are very much on point. There, Peart J. observed:-

> "But there is another obstacle which faces the applicant, and which he has not addressed, and it is that there is nothing unusual or mysterious about a securitisation scheme. It happens all the time so that a bank can give itself added liquidity. It is typical of such securitisation schemes that the original lender will retain under the scheme, by agreement with the transferee, the obligation to enforce the security and account to the transferee in due course upon recovery from the mortgagors."

25. The views expressed by Peart J. with which I find myself in complete and respectful agreement, also, accords with the approach of the English Court of Appeal in the case of *Paragon Finance plc v. Pender* [2005] 1 W.L.R. 3412. The Court of Appeal was of the view that all that the special purpose vehicle acquired, under an uncompleted agreement to transfer the legal charge, was an equity in the mortgage. Paragon remained the legal owner, and as registered proprietor of the charge, retained all the powers of a legal chargee, including the right to possession, nor was it necessary to join the special purpose vehicle. The arrangement here was similarly structured to the arrangements with which the English Court of Appeal was concerned and I reach similar conclusions.

26. In summary then as far as this issue is concerned, and it is worth repeating that it is relevant to only two of the loans, the defendant bank retains legal title to the loan facilities and mortgages and the interest that was transferred by the bank to the special purpose vehicles was an equitable interest only and accordingly the bank is clearly entitled to enforce the loan facilities and the security for same.

Alleged failure to comply with Central Bank of Ireland Asset Securitisation Documents

27. The plaintiff contends that the bank has failed to comply with the Central Bank of Ireland Asset Securitisation Documents while the bank firmly maintains that it has complied in full with its obligations. Assuming at this stage that if the matter goes to trial that the plaintiff will be in a position to establish non-compliance, then this would still not serve to render invalid the loan agreements that were entered into between the plaintiff and the first named defendant. The asset securitisation document is not a statutory code, but rather it is a voluntary code.

28. In *Zurich Bank v. McConnon* [2011] IEHC 75, a case dealing with a commercial loan to fund a supermarket/shopping centre development, I took the view that any alleged breach of the Consumer Protection Code would not exempt a borrower from repaying. It is true that a somewhat different approach is to found in the cases of *Stepstone Mortgaging Funding Limited v. Fitzell* [2012] 2 I.R. 318, and *Irish Life and Permanent plc v Duff* [2013] IEHC 43. Indeed, this difference in approach between these two cases and the *Zurich v. McConnon* line of cases caused Gilligan J. to refrain from striking out this aspect of the proceedings in *Freeman v. Bank of Scotland* [2013] IEHC 371. If matters rested there, I would have been minded to take the same approach as Gilligan J. However, I have been referred to the decision of Ryan J. in *ACC Bank v. Deacon* [2013] IEHC 427, who rejected a contention that a failure to comply with the Central Bank Codes of Conduct for lending to S.M.E.'s rendered a loan invalid. He distinguished *Fitzell* and *Duff* on the basis that these decisions related to claims for repossession of family homes.

29. It seems to me that there is a world of difference between suggesting, that a failure to comply with the Code may be relevant to how a court will exercise its discretion whether to grant possession of a family home or not, and on the other side of the coin a suggestion that a failure to comply with a non-statutory voluntary code provides a cause of action, so as to allow a borrower invalidate a transaction and secure an exemption from repaying monies that he has borrowed.

Appointment of receiver to plaintiff's properties

30. The arguments that the plaintiff seeks to make in this regard have evolved somewhat with the passage of time. Initially, the argument appeared to be that there was no entitlement to appoint a receiver absent an application to court. Given the terms of the loan and mortgage documentation, any such argument would have faced formidable, indeed insurmountable difficulties.

31. However, the plaintiff's position has, as I have indicated evolved somewhat. In his fourth affidavit, delivered on the 21st March, 2014, the plaintiff argued that in circumstances where the mortgages made reference to the Conveyancing Acts 1881 to 1911, which have been repealed by the Land and Conveyancing Law Reform Act 2009, the power of sale does not arise and contends that the appointment of the receiver "was in contravention of the repealed Act and thus unlawful". This leads the plaintiff to seek an order for the immediate dismissal of the receivers and an order to have all money "stolen" by the receivers returned to him. It seems to me to be clear that what the plaintiff is seeking to do is to bring himself within the *Start Mortgages v. Gunn* [2011] IEHC 275, line of authority. The difficulty for the plaintiff is that in *Start Mortgages v. Gunn,* Dunne J. was dealing with the right to apply for possession in a summary manner and as we know, she held that the right to apply for an order for possession summarily under s. 62(7) of the Registration of Title Act 1964, which was repealed by s. 8 of the Land Conveyancing Law Reform Act 2009, only survives in circumstances where the monies secured by the charge became due and demand was made prior to the 1st December, 2009.

32. The relevance of the *Start Mortgages v. Gunn* decision on the entitlement to appoint a receiver under a deed of mortgage or charge was considered by Laffoy J. in *Kavanagh and Lowe v. Lynch* [2011] IEHC 348. Laffoy J. commented:-

> "On this point, it seems to me that there is a clear distinction between the impact of the repeal of s. 62(7) of the Act of 1964, which provided a statutory remedy to the owner of registered land to apply to court in a summary matter for possession of the land when repayment of the money secured by the charge had become due, as found by Dunne J. in *Start Mortgages Limited & Ors v. Gunn & Ors*, and the impact, if any, of the repeal of the Act of 1881 on the drafting device universally availed of by draftsmen of security documents of conferring powers on mortgagees by incorporating

> statutory provisions in force at the time of creation of the security, with or without variation. As I have found, in the latter situation, the ascertainment of the rights and liabilities of the parties to the security document is a matter of construction of the document and the repeal of the statutory provisions does not have the impact advocated by counsel for the defendants."

33. Feeney J. reached a similar conclusion in the case of *McEnery v. Sheahan* [2012] IEHC 331, indeed it must be said that the judgment of Feeney J. goes considerably further than the defendants in the present case require.

34. Furthermore, it seems to me that there is a more fundamental objection to what the plaintiff is seeking to do. It is one thing to say that the repeal of a statute may avail a party by providing a shield against certain procedures when invoked, but it is an altogether different matter to suggest that the repeal provides a sword capable of striking down agreements freely entered into and obliterating an obligation to repay loans that were drawn down. Indeed, the distinction between arguments that may serve as a shield and provide a defence in particular circumstances and what arms a plaintiff on the offensive is not confined to this right to appoint a receiver aspect of the case, but is of a general application in the context of this case.

Contention bank is or was insolvent or has failed to prove its solvency
35. The contention that the bank is or was insolvent or has failed to prove its solvency, again, assuming in favour of the plaintiff for the purpose of this exercise that this is or was the situation, something which is of course firmly denied by the bank, this does not have any impact or effect on the validity or enforceability of the loan arrangements and mortgages entered into between the plaintiff and the bank and certainly would not provide the plaintiff with a cause of action. The obligation to repay remains in full force and effect whether the bank is solvent or insolvent.

Alleged fraudulent misrepresentation
36. In the statement of claim served by the plaintiff, damages are sought to include "all payments and interest unlawfully stolen" by the bank and also sought are damages for theft, deception, breach of duty/care, misrepresentation, causation, fraud, non performance, collusive self enrichment through fraud, breach of contract, deceit, dishonest/insolvent trading, false pretence, intent to fraud, breach of promise, intent to induce reliance, attempted damage by perjury, attempted extortion and counterfeiting.

37. These allegations of extraordinary seriousness are scattered about with abandon, but are not particularised. Order 19, r. 5(2) of the Rules of the Superior Courts provides:-

> "In all cases alleging misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be set out in the pleadings."

38. In *Keaney v. Sullivan* [2007] IEHC 8, Finlay Geoghegan J. commented that the court had an inherent jurisdiction to strike out a claim for failure to comply with O. 19, r. 5(2) and in that case she proceeded to strike out claims. A similar approach was taken by Edwards J. in *Bula Holdings v. Roche* [2008] IEHC 208, where Edwards J. made an order striking out the proceedings on the basis that the pleadings were frivolous, vexatious and scandalous and that the particularisation of the claims of fraud, deceit, conspiracy and attempted perversion of the course of justice is so inadequate and deficient that no reasonable cause of action was disclosed. For my part, if I thought there was any possibility that the gross deficiencies in the pleadings which are apparent were simply the result of poor draughtsmanship by a lay litigant who did not realise what was expected of him, I would be minded to amend. However, it seems to me that these allegations if seen in the context of the proceedings as a whole, and those proceedings are appended to this judgment that it is clear that the allegations are made without any sense of probity or responsibility whatever.

The bank, its servants or agents, fraudulently misrepresented matters in relation to a property development in Birmingham in order to unjustly enrich the bank and its employees and agents.
39. The key allegation here is that the defendant bank funded the Cornerstone Development Project in Birmingham and funded the plaintiff's acquisition of units and that this gave rise to a conflict of interest. Again, I assume in favour of the plaintiff that he will be able to establish that K.B.C. funded the development in Birmingham. I am making that assumption in the plaintiff's favour, notwithstanding the wholly unsatisfactory state that the plaintiff has left the evidence in. His assertion that K.B.C. funded the development by Cornerstone is based on the fact that he says that he has seen an email which he sent, which referred to that fact, but which he was not able to produce. The bank, for its part, denies that it funded the development. Cogent as the denial is, I will assume that the plaintiff would be able to prove that K.B.C. funded the Birmingham development. However, even if that were so, it would still not provide the plaintiff with a cause of action. I can see no stateable case or stateable argument which would preclude a bank that had participated in the funding of a residential development from lending to the purchaser of individual units. The arguments that the plaintiff seeks to advance in this regard are bound to fail.

40. In summary then, in my view, the pleadings are indeed frivolous and vexatious in the sense that phrase is used in authorities such as *Farley v. Ireland*, (Unreported, ex tempore, Supreme Court, 1st May, 1997), judgment of Barron J, but also in the everyday use of that phrase. The proceedings are unmeritorious, so unmeritorious indeed as to amount to an abuse of process and are bound to fail. Accordingly, I will accede to the defendants' application and strike out the proceedings, doing so pursuant to O. 19, r. 28 of the Rules of the Superior Courts and also pursuant to the inherent jurisdiction of the court.