Neutral Citation [2013] IEHC 371

THE HIGH COURT

[2012 No. 8705 P]

BETWEEN

ANTHONY FREEMAN AND MIRIAM FREEMAN

PLAINTIFFS

AND

BANK OF SCOTLAND (IRELAND) LIMITED, SIMON DAVIDSON AND LLOYD DALEY & ASSOCIATES LIMITED

DEFENDANTS

Judgment of Mr. Justice Gilligan delivered on 31st day of May, 2013

1. By notice of motion issued on 17th January, 2013, the defendants seek "an Order pursuant to O. 19, r. 28 of the Rules of the Superior Courts dismissing the claim of the plaintiffs herein on the grounds that the claim as pleaded is frivolous and/or vexatious and the pleadings disclose no reasonable cause of action". Further, or in the alternative, an Order is sought "pursuant to the inherent jurisdiction of this Honourable Court dismissing the plaintiffs' claim herein on the grounds that the claim as pleaded is bound to fail". This application is grounded upon an affidavit sworn by Mr. Gary Collins on 16th January, 2013. The plaintiffs in these proceedings are litigants in person.

Background

2. The plaintiffs are husband and wife and were customers of Bank of Scotland Limited (BOSI) which, in 2010, was the subject of a cross-border merger with Bank of Scotland plc. In 2006 the plaintiffs applied for and were granted loan facilities on security of six properties, namely, *52 Huntstown Drive, Blanchardstown; 55 Huntstown Wood, Blanchardstown; 27 Willowood Lawn, Blanchardstown; 1 Drumcliffe Drive, Cabra; 15 Ventry Drive, Cabra 23 Dunsink Green, Finglas.* The plaintiffs set out in their statement of claim that the loans were for the refurbishment and upkeep of the properties. Unfortunately, the plaintiffs encountered financial difficulty and became unable to pay instalment repayments due and on 23rd August, 2011, the mortgage accounts were in arrears amounting to approximately €51,000. The Bank made a demand for payment and following a failure to pay the sums due, in February 2012 the first named defendant appointed the second named defendant as receiver over the properties. The receiver instructed the third defendant who sold a number of the properties and the net proceeds of sale were remitted to the Bank. The affidavit of Mr Gary Collins sets out the details of the mortgage accounts and the amounts currently outstanding after the sale of the properties.

3. The plaintiffs instituted proceedings by plenary summons dated 28th August, 2012. The procedural history of the proceedings is summarised in the grounding affidavit of Mr Gary Collins. By notice of motion filed on 7th September, 2012, the plaintiffs sought injunctive relief to restrain the first and second defendants from selling three of the named properties. On 29th November the proceedings were before Laffoy J. and counsel for the defendants indicated that they would be agreeable to undertaking not to dispose of the remaining two properties until the trial of the action. This was not accepted by the plaintiffs. The matter was again before this Court on 13th December, 2012, where Murphy J. confirmed that the defendant's motion to dismiss, together with the plaintiff's injunction, should issue returnable for 26th February, 2013.

4. The plaintiffs make a number of allegations against the defendants which can be summarised as follows - that the Bank was insolvent at the time of the cross-border merger and as a result, the appointment of the second named defendant as receiver was *ultra vires*; the first named defendant relied on repealed legislation in appointing the second named defendant as receiver and the appointment is therefore null and void; because some of the loans were securitised the Bank is not entitled to maintain against the plaintiffs any claim in relation to the loans or the security; the Bank acted in breach of two Central Bank codes of practice in completing the securitisation scheme; senior members of the Bank conspired to fraudulently obtain a cross-border merger; the Bank did not advance the plaintiffs a loan of money but instead misled and deceived the plaintiffs by 'creating currency'; the first named defendants have committed offences under the Criminal Justice (Theft and Fraud Offences) Act, 2001. It is further pleaded that the plaintiffs suffered defamation of character and damage to reputation. A number of allegations are also made against the second and third named defendants.

5. All of these allegations are denied by the defendants. Counsel for the defendants submits that none of the matters pleaded, even if true, disclose a reasonable cause of action and that the plaintiffs' claim is therefore frivolous, vexatious and bound to fail. The plaintiffs contend that they have established a number of reasonable causes of action which would be better tried at a substantive hearing. I will now consider each of the plaintiff's claims in turn.

Securitisation and the codes of practice

6. Paragraph 11 of the plaintiffs' statement of claim submits that the "loans have been settled by a third party (Special Purpose Vehicle)" under a securitisation scheme. In the plaintiffs' supplemental affidavit dated 5th March 2013 it is alleged that "the first named Defendant sold the Plaintiff's loans for at least three, if not all of the mortgaged properties and the attached security to Wolfhound Funding 2008-1 Limited on 20th November 2008". According to the affidavit of Mr. Collins, the loans subject to securitisation were those in connection with the three properties at *15 Ventry Drive*, *23 Dunsik Green*, and *1 Drumcliffe Drive*. It is submitted by the plaintiffs that at all relevant times the power, custody and control of the loans was actionable only by Wolfhound. As a result, it is contended that the appointment of the receiver was invalid and the Bank is not entitled to maintain against the plaintiffs any claim in relation to the loans or the security. The plaintiffs also submit in relation to the securitisation scheme that the Bank acted in breach of two Central Bank codes of practice. The documents relied on are entitled *'Central Bank Code of Practice on Transfer of Mortgages'* and *'Central Bank of Ireland Asset Securitisation'*.

7. Paragraph 1 of the *Central Bank Code of Practice on Transfer of Mortgages* states that: –

> "A loan secured by the mortgage of residential property may not be transferred without the written consent of the borrower. When seeking consent from either an existing or a new borrower the lender must provide a statement containing sufficient information to enable the borrower to make an informed decision. This statement must be cleared in

> advance with the Central Bank of Ireland, must include a clear explanation of the implications of a transfer (including the borrower's future membership status where the lender is a building society) and how the transfer might affect the borrower. The borrower must be approached on an individual basis and given reasonable time to give or to decline to give his consent."

The plaintiffs submit that they have "never knowingly given written consent to the transfer of the mortgage, and were not provided with a statement containing sufficient information to enable the Plaintiff's to make an informed decision."

Paragraph 2 of the Code is as follows: –

> "When seeking a consent and where there is to be or where there may be an arrangement under which the original lender will service the mortgage as an agent of any transferee, the lender will confirm that the transferee's policy on the handling of arrears and in the setting of the mortgage interest rates will be the same as that of the original lender and that the original lender will handle arrears as its agent."

The plaintiffs say that in respect of Paragraph 2 "the first named defendant has never given confirmation, either in writing or verbally, of the Transferee's policy on the handling of arrears, interest rates or that the original lender would handle arrears as its agent".

8. The *Central Bank of Ireland Asset Securitisation* document sets out the conditions to be satisfied for transferred assets to be exempted from the calculation of a credit institution's capital adequacy position. Paragraph (i) requires that "the transfer does not contravene the terms and conditions of the underlying loan agreement and all the necessary consents have been obtained." The plaintiffs submit that the necessary consents were never requested by the Bank or provided by themselves.

9. The defendants contend that the securitisation of the loans does not alter the plaintiffs' obligations under the mortgage agreement and that their claim in this regard is bound to fail. The Court is referred to the case of *Wellstead v. Judge Michael White* where Peart J. held: –

> "…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 security and account to the transferee in due course upon recovery from the mortgagors."

10. The defendants submit that the plaintiffs provided consent to securitisation of the loans on a number of occasions. The affidavit of Mr. Gary Collins on behalf of the defendants states as follows: –

> "At all material times, the plaintiffs, in accepting the Offers of Mortgage Loans and in executing the Mortgage, consented to the securitisation of the loans. Clause 8 of the Terms and Conditions Leaflet incorporated into the Offers of Mortgage Loan, Clause 5.3 of the Mortgage, and Clause 18 of the Home Loan Mortgage Conditions provide for the express consent of the plaintiffs to transfer of the Mortgage, including transfer by way of securitisation."

11. Clause 5.3 of the Mortgage Agreement reads as follows –

> "The Borrower hereby irrevocably and unconditionally consents to the Bank at any time or time hereafter transferring, assigning, disposing or sub-mortgaging or sub-charging the benefit of this Mortgage and Charge…to any third person or body…as part of any loan, transfer and securitisation scheme on such terms as the Bank may think fit…without any further consent from or notice to the Borrower…"

C1 8 of the Terms and Conditions leaflet contains an almost identical provision and also states "Your Home Is At Risk If You Do Not Keep Up Payments On A Mortgage Or Any Other Loan Secured On It". [*sic*]

12. In relation to the Central Bank documents, the supplemental affidavit of Ms. Kathryn Harris dated 4th March, 2013, states that neither of the documents relied on by the plaintiffs is a statutory code of practice under the relevant legislation, being section 117 of the Central Bank Act, 1989. It is submitted that currently four such codes are issued under s. 117, namely, the *Consumer Protection Code 2012; Code of Conduct for Business Lending to Small and Medium Enterprises 2012; Code of Conduct for Business Lending to Small and Medium Enterprises 2009; and Code of Conduct on Mortgage Arrears*.

13. In relation to the *Central Bank of Ireland Asset Securitisation* document, it is contended that this is of no relevance to the plaintiffs' case and "is only relevant to the manner in which a bank treats securitised loans for regulatory capital adequacy purposes." In any event, it is submitted that even if it were applicable, which it is contended it is not, this is a voluntary, non-statutory code.

14. In relation to the *Code of Practice on Transfer of Mortgages* Ms. Harris states that: –

> "The voluntary (non-statutory) nature of the Code of Practice on Transfer of Mortgages was confirmed by the Central Bank to Bank of Scotland (Ireland) Limited in correspondence in 2008 in advance of the securitisation program whereby three of the six loans at issue in the proceedings were securitised".

15. A letter dated 14th May, 2008, from a Mr. Carl Rainey, then 'Director – Group Risk Division' with Bank of Scotland, to a Ms. Elaine Sheerin, Senior Regulator in the Central Bank's Banking Supervision Department, states that "*As part of the preparation work for the residential mortgage securitisation, we now set out below the steps we have taken to ensure that we are compliant with the requirements of the Central Bank Code of Practice on Transfer of Mortgages*" and goes on to state that –

> "every home loan originated by BOSI and BOS since 1999 has involved the obtaining of consent to securitisation in at least three documents: (1) a declaration contained in the application form which is signed by the borrower, (2) the terms and conditions which accompany the offer letter which is signed by the borrower, and (3) in the terms and conditions which accompany the mortgage itself which, again, is signed by the borrower."

The response from Ms. Sheerin dated 27th May, 2008, says that "*the Code of Practice (the Code) is a Voluntary Code and that it is the responsibility of banks to adhere to their commitments under the Code*". Following this, on 29th May, 2008, Mr. Rainey sent an email to a number of BOSI employees states that "*it is our responsibility to ensure compliance with all aspects of the Code…On the basis that we have assured ourselves that we are in compliance with Code, I feel we are in good shape to proceed*".

16. The legal status of the Central Bank codes has been considered in a number of recent cases and has led to what Hogan J. described in *Irish Life and Permanent Plc v. Duff & Anor.* [2013] IEHC 43 as "cross-currents of judicial opinion". In *Friends First Finance Ltd v. Cronin* [2013] IEHC 59 the defendant argued that the plaintiff had failed to comply with the Consumer Protection Code and that the loan agreements between the parties were unenforceable as a result. It was held that the defendant had no arguable case on this ground as he was not a "licence holder" or "person supervised" under the Code. Herbert J. went on to state that even where a breach did occur-

> "There is nothing in any of these statutes which expressly or impliedly would render the loan agreements illegal, invalid or unenforceable because of a breach by the plaintiff of any of these statutory provisions or of the Consumer Protection Code 2006."

17. In *Zurich Bank v. McConnon* [2011] IEHC 75 the defendant also relied on the Central Bank *Consumer Protection Code*. In considering the consequences of breaching the Code, Birmingham J. said that sanctions might include cautions, reprimands, fines, and disqualification, but stated –

> "Entirely lacking is any suggestion that a breach of the Code renders the contract null and void or otherwise exempts a borrower from the liability to repay… there is no suggestion that the lender is prohibited from seeking repayment from its borrower."

The defendant in that case submitted that the Code forms an implied term of the contract. Birmingham J. held that there were a number of fundamental difficulties with this argument and ultimately concluded that: –

> "I can see no basis for suggesting that any alleged breach of the Code exempts the borrower from repaying his loan."

18. In *Stepstone Mortgage Funding Limited v. Fitzell* [2012] IEHC 142 the defendants went into arrears and were informed by the lender that it was not prepared to offer them an alternative repayment arrangement. They were told that they were not entitled to appeal that decision as provided for by the Code of Conduct on Mortgage Arrears as it did not apply to their case. The Master of the High Court determined that this contention was incorrect and so on appeal Laffoy J. in this Court considered the proper application of the Code of Conduct on Mortgage Arrears. Laffoy J. referred to a passage from Breslin on *Banking Law* (2nd Ed.) as an accurate statement of the jurisprudence of the Superior Courts on the status of the Code. The relevant passage is as follows: –

> "The Central Bank has promulgated Codes of Practice for credit institutions pursuant to its powers under s. 117 of the Central Bank Act 1989. Breach of the code is not a criminal offence and the Act does not spell out any particular consequences in civil law arising from a breach. Breach of a direction by the Central Bank to comply with particular provisions of the Code is a criminal offence. A key question is whether or not these provisions are merely 'soft law', i.e. devoid of legal effect such that a breach of a provision in the Code of Practice will not sound a remedy in civil law for damages. In the unlikely event that the Codes of Practice have been incorporated into the bank customer bargain then they apply. Whether a particular requirement is deemed to be an implied term in that contract depends on the particular term sought to be implied, and the circumstances of the case - but the test is not an easy one to meet. It is submitted that the Codes of Practice appear more likely primarily to arise in the context of the analysis of the bank's duty of care and whether the bank has in a particular case met reasonable standards."

Laffoy J. held that in proceedings for possession of a primary residence which came before the Court after the Code came into force, the lender must demonstrate compliance with the Code. Laffoy J. found that the Code had not been complied with and the lender was not entitled to possession because the borrowers had not been advised of their right to appeal in the manner required by the Code.

19. In the recent case of *Irish Life and Permanent Plc v. Duff & Anor.* [2013] IEHC 43, the Circuit Court had made an order for possession in favour of the plaintiff which was appealed by the defendants. It was claimed that ILP had not complied with the *Code of Conduct on Mortgage Arrears*. Hogan J. on appeal in this Court said it was "*necessary to consider the somewhat troublesome issue of the precise legal status of the Code of Conduct."* He noted that the Code was promulgated under s.117 of the Central Bank Act 1989 and that the Central Bank could invoke administrative sanctions in relation to the Code. Hogan J. reiterated the comments of Birmingham J. in *Zurich Bank* as set out above, and added that "*s.117 of the 1989 Act contains no mandatory sanction of voidness*". However, he did observe that the remarks of Birmingham J. were "*in all strictness merely obiter dicta."* Hogan J. followed the reasoning of Laffoy J. in Fitzell and found that the Code of Conduct was applicable to the facts of the case. It was held that the lender had not complied with Clause 6 of the Code and accordingly "*it would not be appropriate for me to exercise a judicial discretion in favour of granting an order for possession*."

20. It is apparent from the case law that the status of the Central Bank codes issued under s. 117 and those relied on by the plaintiffs is not absolutely clear and may be dependent on the circumstances of each particular case. I am satisfied that the issues relating to the relevant Codes, their role, and the consequences of any alleged breach are interlinked with the issue of securitisation. It is not for this Court at this point in time to express any view as to the plaintiffs' prospects of succeeding on this ground. What must be decided at this stage is whether or not the plaintiffs' claims are of sufficient substance that it is appropriate to allow them to proceed with the action. In *Aer Rianta v Ryanair* [2004] IESC 23 Denham J made it clear that the jurisdiction to strike out proceedings under O19, r 28 is one that the Court should be slow to exercise. In relation to the Court's inherent jurisdiction, it was established by Costello J in *Barry v. Buckley* [1981] 1 I.R. 306 that where the court is satisfied that a claim is bound to fail "it would be a proper exercise of its discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to the defendant". That jurisdiction can only be exercised upon the closest scrutiny and in clear cases and the Court will only exercise this jurisdiction where it is satisfied that there is nothing meritorious in the plaintiffs' claim. In essence, the defendants have to satisfy the court on the balance of probabilities that the plaintiffs' case has no foundation in law. The view of this Court is that the securitisation issue and that of the relevant Codes are inextricably intertwined and, having carefully considered the submissions of both parties, the Court could not therefore come to a conclusion based on the present state of the law as outlined above that the plaintiffs' claim is bound to fail or has no foundation in law. Right of access to the Courts must be preserved if at all possible and for that reason the plaintiffs' must be allowed to proceed on this ground.

The cross-border merger – insolvency and fraudulent misrepresentation

21. It is submitted by the plaintiffs that the Bank was insolvent, in breach of liquidity laws and in breach of its license when the cross-border merger was effected in December, 2010 and as a result the Bank's appointment of the second named defendant as receiver was *ultra vires*. Paragraph 9 of the statement of claim also alleges that senior personnel in the Bank conspired with others to fraudulently obtain the cross-border merger between Bank of Scotland Ireland and Bank of Scotland plc. It is alleged that such persons misled the High Court and the Scottish Court of Sessions as to the Bank's solvency and eligibility for a merger. It is contended that a consolidated balance sheet for Bank of Scotland (Ireland) for the period ending December 31st, 2009 was used in support of

the cross-border merger in order to convince the Courts that the Bank was solvent and satisfied the necessary legal requirements at the time, rendering the action of appointing the receiver null and void.

22. Counsel for the defence contends that this is not a reasonable cause of action for a number of reasons. Firstly, it is submitted that there is no solvency requirement in relation to cross-border mergers and that the relevant UK legislation makes express provision for disapplication of the Insolvency Act where the company is the subject of a cross-border merger. S.73(2)(d) of the Insolvency Act 1986, says the protections afforded to creditors by the Act do not apply to a proposal for a cross-border merger, while s.74(6) says that an order may not be made in relation to an administrators conduct "*if it would impede or prevent the implementation of…a cross-border merger*". Article 4 of Directive 2005/56/EC sets out the conditions relating to cross-border mergers and there is no reference to a solvency requirement. Secondly, the defendants assert that a cross-border merger can not be challenged once the Order approving the merger is made. In the present case, orders approving the merger were made in the High Court by Kelly J on 22nd October, 2010, and by the Scottish Court of Session on 10th December, 2010. The grounding affidavit of Mr Gary Collins states that "*the cross-border merger occurred under the supervision of the High Court in Ireland and the Court of Session in Scotland, which said courts were satisfied that the relevant requirements were satisfied*" and that as a result the plaintiffs cannot seek to contend that the cross-border merger was somehow deficient or invalid. It is submitted that the contracts entered into by the plaintiffs remain enforceable by the Bank as a result. Under Directive 2005/56/EC, as transposed into Irish law by the European Communities (Cross-Border Mergers) Regulations 2008, the effect of the order approving the cross-border merger is that all of the assets and liabilities of the transferor company shall be transferred to the acquiring company and that "*every contract, agreement or instrument to which a transferor company is party shall…be construed and have effect as if the successor party had been a party thereto instead of the transferor company*". Article 17 of the Directive further states that "*A cross-border merger which has taken effect as provided for in Article 12 may not be declared null and void*". Counsel for the defendant also relies on Regulation 16(3) of the UK Companies (Cross-Border Mergers) Regulations 2007 which states –

> "After the consequences of the cross-border merger have taken effect (see regulation 17), an order made under this regulation is conclusive evidence that –
>
> (a) the conditions set out in paragraph (1) have been satisfied
>
> (b) the requirements of regulations 7 to 10 and 12 to 15 (pre-merger requirements) have been complied with."

In the case of *RE C L Nye* [1971] Ch 442 (CA), where an issue arose as to the date of creation of a charge, it was held that the date of creation in the register was conclusive evidence and the court can not go behind that. Counsel for the defendant submits that this case is authority for the proposition that the order approving the merger cannot be challenged even if it is incorrect, which, it should be noted, this Court does not accept that it is.

23. In relation to the alleged fraudulent misrepresentation, counsel for the defendants asserts that this is an "*unfounded allegation of a most grave nature that is not grounded in fact and…ought to be dismissed*". Again, the Court is referred to the order of Kelly J. approving the merger which states –

> "The Court doth certify pursuant to Regulation 13 of the European Communities (Cross-Border Mergers) regulations 2008 that the applicant has completed properly each of the pre-merger requirements in respect of a cross-border merger with Bank of Scotland plc."

24. The Court accepts the submissions of the defendant that there was no solvency requirement in this case in relation to the cross-border merger. In addition to this, the merger occurred under the supervision of the Commercial Court and the Scottish Court of Sessions and this Court will not interfere with the orders made approving the merger. The cross-border merger has been declared valid and such validity cannot be challenged. The appointment of the receiver was therefore not *ultra vires* as a result of any solvency issues. The Court is of the view that the particularisation of the alleged fraud and misrepresentation is wholly inadequate and deficient to establish a reasonable cause of action. For that reason, the claims in relation to insolvency at the time of the merger and the alleged fraudulent misrepresentation are struck out as being frivolous, vexatious and bound to fail.

Repeal of legislation

25. The plaintiffs submit that the appointment of the receiver is null and void as the Bank relied on repealed legislation and was therefore not entitled to make the appointment. Counsel for the defendants submits that this allegation is misconceived and that the Bank's entitlement to appoint a receiver is a contractual one arising from the mortgage agreement.

26. In *Kavanagh v. Lynch* [2011] IEHC 348 the validity of the appointment of a receiver was at issue. In that case, the deed of mortgage had incorporated certain provisions of the Conveyancing Act, 1881 which were subsequently repealed by the Land and Conveyancing Law Reform Act 2009. Laffoy J. held that the power to appoint the receiver was conferred on the Bank by the construction of the deed of mortgage and that this had not been altered by the commencement of the Land and Conveyancing Law Reform Act 2009. For that reason, the arguments in relation to repealed legislation did "not have the impact contended for by counsel for the Defendants". Laffoy J went on to state as follows –

> "Accordingly, in my view, the considerations which arose in *Start Mortgages Ltd. v. Gunn and others* [2011] IEHC 275 in consequences of the repeal of s. 62(7) of the Registration of Title Act 1964 (the Act of 1964) by s. 8 of the Act of 2009 do not arise in relation to the power of Permanent to appoint Mr Lowe as receiver."

27. Clause 8.1 of the Home Loan Mortgage Conditions states that-

> "At any time after the Bank has demanded repayment of the Debt or following a request by the Borrower and insofar as the law allows, the Bank may:
>
> (a) appoint a receiver over all or part of the property"

28. The Court accepts the submission that the entitlement of the bank to appoint a receiver was a contractual matter conferred on the Bank by the deed of mortgage and is unaltered by the repeal of legislation. The plaintiffs' challenge to the validity of the appointment of the receiver on this ground is therefore struck out. However, the appointment of the receiver is also challenged by the plaintiffs in relation to the securitisation and Central Bank Codes issues. As set out above, these claims remain to be determined and so the appointment of the receiver remains at issue on those grounds.

The 'creation of currency'

29. At para. 10 of the statement of claim, the plaintiffs allege that the "first named defendants misled and deceived the plaintiffs by offering what the plaintiffs understood to be a 'loan of money', when in fact the first named defendants did not 'lend' the funds, they instead ***created*** the funds with the Plaintiff's signatures on a loan application" [Emphasis in original]. In support of this argument the plaintiffs seek to rely on the affidavit of a Mr. Walker F. Todd which discusses what he calls "a common misconception about the nature of money" and states –

> "In a fractional reserve banking system like the United States banking system, most of the funds advanced to borrowers (assets of the banks) ***are created by the banks themselves*** and are not merely transferred from one set of depositors to another set of borrowers." [Emphasis in original]

30. This affidavit was sworn in unrelated proceedings in the United States. This Court has no knowledge of those proceedings, the facts and issues of the particular case, and the context in which the affidavit was made and accordingly the Court attaches no weight to it. 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.

31. It is also important to note that the funds in question, regardless of how they were allegedly 'created', were drawn down by the plaintiffs and, as stated in the statement of claim, were spent on the refurbishment and upkeep of the properties or however else the plaintiffs saw fit. The nature of the loan agreement between the parties was clear and unambiguous and was willingly signed for by the plaintiffs who were aware of their obligations and responsibilities. For that reason, I am of the view that the plaintiffs' claim in relation to the 'creation of currency' argument is frivolous, vexations and bound to fail and is therefore struck out.

Alleged offences under the Criminal Justice (Theft and Fraud Offences) Act 2001

32. The plaintiff's make a number of allegations of criminality against the defendants. Paragraph 14 of the statement of claim alleges that the first named defendant "due to an internal systems error on their part, has taken monies lawfully belonging to the plaintiffs, in direct contravention of the Theft and Fraud Act 2001". The plaintiffs fail to identify how this allegation gives rise to a reasonable cause of action in the present proceedings. Criminal allegations under the 2001 Act are a serious matter and are to be dealt with by An Garda Síochána and the Director of Public Prosecutions. This Court will not interfere with or circumvent the role of these authorities by entertaining any discussion or making any determination in relation to these claims. For that reason, the only proper course of action for the Court to take is to strike out this claim.

Allegations against the second and third defendant and alleged defamation

33. As already stated, the plaintiffs' challenge to the validity of the receiver's appointment remains at issue in relation to the securitisation and codes of conduct issues. As the allegations against the third named defendant are linked to the validity of the appointment of the receiver, it follows that the plaintiffs' claims against the third named defendant in relation to its duty of care and role in selling the property at 55 Huntstown Wood should be allowed to proceed.

34. Having already dismissed the plaintiffs' claims in relation to alleged offences under the Criminal Justice (Theft and Fraud Offences) Act 2001, the claims at paragraph 14 of the statement of claim against the second named defendant in relation to such alleged criminality must also be struck out.

Conclusion

35. I must stress that the jurisdiction to strike out proceedings is not one that the Court exercises lightly. Right of access to the courts should be preserved if at all possible and in arriving at my decision the benefit of any doubt always lay with the plaintiffs, who, like many property-owners throughout the country, find themselves in a very unfortunate situation. However, I have carefully considered the pleadings, affidavits and submissions made by both parties and have come to the conclusion that only the issues as raised by the plaintiffs' in relation to securitisation and alleged non-compliance with Central Bank Codes meet the low threshold required in allowing these issues to proceed to be litigated. The remaining heads of claim as advanced by plaintiffs must be struck out pursuant to the inherent jurisdiction of the court on the basis that they are frivolous and vexatious and have no prospect of succeeding.

36. In these circumstances and in the interest of justice it appears appropriate that the plaintiff should deliver an amended statement of claim setting out the appropriate pleas in respect of their allegations in relation to the securitisation and Central Bank codes issues, as well as the remaining claim in relation to the third named defendant. It is appropriate that this claim should be advanced and in the circumstances, the court is disposed to making any appropriate order to assist in the management of the matter.