

THE HIGH COURT

[2017 No. 11481 P.]

BETWEEN

JOHN JOSEPH DUNNE

PLAINTIFF

AND

JILL RAFTER AND THE GOVERNOR AND COMPANY OF THE

BANK OF IRELAND AND RONAN HANNIGAN

DEFENDANTS

**EX TEMPORE JUDGMENT of Ms. Justice Reynolds delivered on the 15th day of May, 2019**

1. This is an application brought by the second named defendant ("the bank") seeking to strike out the plaintiff's proceedings on the grounds that same are frivolous and vexatious and disclose no reasonable cause of action as against the bank.
2. By way of background, it is contended on behalf of the bank that the within proceedings were launched solely to obstruct the intended sale by the plaintiff's estranged wife of certain lands to satisfy her debts to the bank.
3. There is a long protracted history to these proceedings culminating in previous orders in related family law proceedings and more recently, a ruling of Ni Raifteartaigh J. delivered on the 13th of June, 2018 wherein the *lis pendens* registered in respect of each of the properties, the subject matter of these proceedings, was vacated.
4. Whilst an appeal was lodged in respect of that Order, it was subsequently withdrawn by the plaintiff.
5. No substantive step has been taken by the plaintiff in these proceedings since the statement of claim was delivered in excess of twelve months ago.
6. The first named defendant, the plaintiff's estranged wife, is the sole registered owner of the said lands. She took out mortgages with the bank in respect of the properties and subsequently fell into default on her repayments. The bank obtained judgment for approximately €1.7m in 2011 and is anxious to sell the properties to satisfy the debt.
7. The plaintiff accepts that he is not a party to the mortgages and discloses in his proceedings that he had no banking relationship with the bank at all.
8. In his pleadings he seeks, *inter alia*, declarations that the mortgages were "unlawful" and "void". In addition, he seeks damages for "egregious negligence, negligent and/or fraudulent misrepresentation and collusion by the defendant".
9. Firstly, it is clear that he was not a party to any contract with the bank and has no *locus standi* to seek such declaratory relief.
10. Secondly, where there was no contractual relationship between the plaintiff and the bank, any claim that he has for negligence must fail in circumstances where the bank has no duty of care to the plaintiff.
11. In relation to the plaintiff's claim in respect of fraudulent misrepresentation, the law is well settled that all allegations of fraud must be pleaded with particularity. The plaintiff fails to identify or particularise any misrepresentation made by the bank in support of this plea and as already stated, the bank had no duty of care to the plaintiff at all. The bank's sole duty of care was to the first named defendant, who is supportive of the bank's application herein.
12. Finally, the plaintiff's plea of collusion must fail in circumstances where it is not a valid cause of action.
13. The plaintiff has failed to engage with the factual evidence relied upon by the bank in seeking the relief claimed in the within application. No replying affidavit was filed and counsel who appeared on his behalf indicated to the Court that his instructions were limited to the fact that he could not consent to the relief claimed.

**Conclusion**

14. It is clear from the *Keohane v. Hynes* decision [2014] IESC 66, as relied upon by the bank that:

*"If it is clear to a court that a case is bound to fail, then the court has jurisdiction to prevent that abuse of process by dismissing the proceedings".*

15. This Court has already set out the reasons why the plaintiff's case is bound to fail and therefore must strike out the proceedings in their entirety on the grounds that they are frivolous and vexatious and amount to an abuse of process.