THE COURT OF APPEAL

Neutral Citation Number: [2019] IECA 195

Record No. 2017/436

High Court Record No. 2015/7223P

Peart J.
Baker J.
Costello J.

BETWEEN/

WILLIAM MULROONEY

PLAINTIFF/APPELLANT

- AND–

CHIEF SUPERINTENDENT CATHERINE KEHOE, THE GARDA COMMISSIONER, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS/RESPONDENTS

JUDGMENT of Ms. Justice Costello delivered on the 15th day of July 2019

Introduction
1. This is an appeal against the order of the High Court (Eagar J.) dated 27th July, 2017 dismissing the plaintiff's claim on the grounds that it is an abuse of process, that it fails to disclose any reasonable cause of action and that it is frivolous and vexatious. In addition, the High Court made an order that the plaintiff be restrained from instituting any proceedings against the defendants and others specified in the order in relation to the alleged amending of a lease dated the 1st April, 1999 by way of fraud.

History of previous legislation
2. As the basis for the decision of the High Court was the history of previous litigation in relation to the lease of 1st April, 1999 it is necessary to consider that history of previous litigation.

Prior litigation in relation to the lease of 1st April, 1999

3. On 1st April, 1999 Mr. Edward Malone, as lessor, and Mr. John Mulrooney (Mr. Mulrooney Snr), as lessee, leased 16.6 acres of land in the County of Kilkenny together with a milk quota of 14,924 gallons. On its face the lease was for a term of five years. Mr. Mulrooney Snr and his son, the appellant, maintain that the lease was unlawfully altered and that the term was for a period of three years not five.

4. By ordinary civil bill issued on 27th August, 2002 the lessor, Mr. Malone, sued Mr. Mulrooney Snr and the appellant for breach of the lease. The civil bill pleaded that on 16th April, 1994 the plaintiff had entered into a contract for a lease with Mr. Mulrooney Snr to lease the land and the milk quota for a term of five years and that in 1997 Mr. Mulrooney Snr assigned his interest in the lease to the appellant and that the appellant's name has been registered on Glanbia's register of milk quotas since 1997. At paras. 6 and 7 of the endorsement of claim it is pleaded:-

> *"6. On the 1st day of April 1999 the plaintiff entered into a contract to lease to the first named defendant, as servant or agent of the second named defendant, 16.68 acres of land situate at Garryduff, Piltown in the County of Kilkenny together with a milk quota of 14,924 gallons for five years at the rent of IR£6,461.40 (€8,204.28) per annum.*
>
> *7. In or about the month of April 2002 and in breach of the terms and conditions of the aforementioned lease, the defendants and each or either of them, their respective servants or agents wrongfully terminated the lease, in consequence whereof the plaintiff has suffered loss and damage."*

5. The plaintiff claimed damages which were based on the rent due for years 4 and 5 under the lease with credit for the manner in which the plaintiff had been able to mitigate his losses. The liquidated damages sum came to €12,436.82.

6. It is important to note that the appellant was a party to the proceedings and that he was sued in his own right.

7. Mr. Mulrooney Snr and the appellant issued third party proceedings against the auctioneering firm who negotiated the lease on the basis that the term of the lease had been falsified and wrongly extended from three years to five years. Mr. Mulrooney Snr and the appellant, who were legally represented at the time, defended the claim on the grounds that the lease was a three-year and not a five-year term and that the document relied upon by Mr. Malone had been unlawfully altered.

8. When the matter came on for hearing in the Circuit Court on the 9th March, 2005 the court was informed that Mr. Mulrooney Snr and the appellant had resolved the third party proceedings prior to the hearing of the action. The trial between the plaintiff and the defendants proceeded in the normal way and the trial judge found in favour of the plaintiff and ordered that the plaintiff do recover from the defendants jointly and severally the sum of €12,276.

9. The decision of the Circuit Court necessarily involved rejecting the allegation that the lease had been altered unlawfully. The compromise of the third party proceedings necessarily involved Mr. Mulrooney Snr and the appellant compromising their claim against the firm of auctioneers in respect of any allegation that they were responsible for an unlawful alteration of the lease.

10. Mr. Mulrooney Snr and the appellant appealed the decision of the Circuit Court to the High Court on Circuit. On 10th November, 2005 the High Court made an order that the appeal be struck out having been informed by counsel for the respective parties that the matter had been settled. This settlement necessarily involved settling the allegation that the lease had been unlawfully altered.

11. In 2008, the appellant brought proceedings in the Circuit Court against several defendants including Mr. Edward Malone, John Shee & Company (the solicitors who represented Mr. Malone in the Circuit Court proceedings), Shee and Hawe Auctioneers (the auctioneers involved in the creation of the lease and the third parties in the Circuit Court proceedings). On 11th November, 2008 these proceedings were dismissed as failing to disclose a cause of action and as being frivolous and vexatious. The endorsement of claim did not directly impugn the authenticity of the lease.

12. On 23th August, 2009 the appellant made a formal complaint to the gardaí. He alleged that the lease had been altered in a number of places where the number "five" had been altered from the original number "three" and where the date, "31st March, 2004", had been altered from "31st March, 2002". The appellant complained that as a result of these alterations the lease was *"unlawfully used against me"* in the Circuit Court proceedings of 2002. A member of the Technical Bureau of An Garda Síochána examined the original lease. D/Garda John Leonard issued a report on 29th June, 2010. As the appellant is highly critical of this report it is appropriate to quote the essential parts in full:-

> *"Purpose of examination:*
>
> *To examine the document and establish if the number "5" on the front page along the area of the "term years" has been altered.*
>
> *Examination equipment used:*
>
> *Stereo microscope:*
>
> *A stereo microscope is a microscope that captures two distinct images, one viewed by each eye, which the brain integrates into a three-dimensional view of the subject.*
>
> *Video Spectral Comparator:*
>
> *The Video Spectral Comparator is a piece of equipment incorporating various light sources (ultra-violet, infra-red, transmitted and blue/green lighting) and filters, which allows an examiner to differentiate inks and substances to visualise hidden security features or faded writing and to reveal alterations on a document.*
>
> *Result of examination*
>
> *I examined the number "5" on the front page along the area of the "term years" on the document. I found no evidence of any alteration or addition around this area. In my opinion this document has not been altered where the number "5" is displayed.*
>
> *Further examination:*
>
> *In my opinion this document has not been altered where the number "5" is displayed."*

13. In 2011, Mr. Mulrooney Snr instituted High Court proceedings (Record No. 2011/386P) ("the 2011 proceedings") against twenty-four parties including as defendants 21-24, the Department of Agriculture and Fisheries, the Garda Commissioner, the Garda Bureau of Fraud Investigation, and the Minister for Justice and Law Reform. The proceedings were predicated upon the fact that the lease was wrongfully altered from a three-year to a five-year lease. At para. 2 he pleaded that the allegation that the lease was altered *"has not been investigated by the gardaí despite my request"*. At para. 4 he pleaded that:-

> *"In 2008, due to my ill-health, my son, William notified the Gardaí of … the fact that the lease document had been altered from three years to five years."*

14. At para. 6 he pleaded that:-

> *"I made complaints to the Gardaí after the Circuit Court hearing, March 9th, 2005 and requested that they investigate the milk quota lease. Further complaints were made to the Gardaí in 2008. The Gardaí failed to provide a full report on the forensic tests which they allege was carried out on the three-year lease document which I allege was altered to five years".*

At para. 15, Mr. Mulrooney Snr pleaded:-

> *"My forensic document experts in the U.K. have examined a copy of the milk quota lease document and believe that the original lease document deserves further investigation".*

15. The appellant initially was not a party to the 2011 proceedings. However, Mr. Mulrooney Snr died on 17th July, 2013 and on 25th November, 2013 the appellant applied ex parte to continue to prosecute the proceedings in his own name. It was ordered that the proceedings be carried on and prosecuted with Mr. William Mulrooney as plaintiff, though in what capacity was never clarified.

16. One year later, on 27th November, 2014, by consent the plaintiff's claim, that of the appellant herein, as against the State defendants, 21-24, was struck out by the President of the High Court. The appellant agreed to this settlement of this action against the State defendants. The significance of this compromise, together with the compromise of the Circuit Court proceedings, in December 2005 will be considered below.

17. The history of the 2011 proceedings against the other defendants is highly relevant to the issues raised on this appeal. Motions were brought on behalf of the first, fifth, sixth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth,

eighteenth and nineteenth defendants to have the pleadings dismissed on the basis that they were frivolous and vexatious or in the alternative, disclosed no cause of action. On the 25th November, 2013, Charleton J. in the High Court dismissed the proceedings as against the moving defendants. Mr. Mulrooney Snr appealed the matter to the Supreme Court, ([2013] IESC 20) and on 9th May, 2013 the Supreme Court (Denham C.J., Hardiman J. and Clarke J.) dismissed the appeal. Clarke J. concluded at para. 8 of his decision as follows:-

> *"Mr. Mulrooney is seeking, in these proceedings, to re-litigate an issue and a cause of action which he has already settled. The question of unlawful altering was put before the Circuit Court by Mr. Mulrooney and was alive at the time when he settled both the third party issue against Shee and Hawe and the claim brought against him by Mr. Malone. The question of the legal advice given to him which led to that settlement is a matter between him and his then lawyers and is not a matter which can affect the rights of the continuing defendants. While Mr. Mulrooney seeks to make, in these proceedings, an allegation of fraud, it was that very same allegation of fraud by virtue of unlawful altering of the lease that was before the Circuit Court and which he settled. He has, therefore, settled the allegation of fraud and cannot bring it again."*

18. In reaching this conclusion, Clarke J. held at para. 7.3:-

> *"Where a party settles proceedings then whatever cause of action was raised in those proceedings can no longer be the subject of litigation. A party has, by entering into an agreement to settle, given up their right to whatever claim might have been made in the proceedings in question."*

Clarke J. noted that there was there were two separate settlements which led to the ultimate disposal of the previous Circuit Court proceedings, the third party claim against the auctioneers and the claim brought by Mr. Malone. At para. 7.10, Clarke J. said:-

> *"Mr. Mulrooney is no longer in a position to attempt to re-litigate that very same allegation of unlawful altering which he has long since settled."*

19. Mr. Mulrooney had argued that if the original lease were examined by a forensic expert in the U.K. he might obtain evidence as to its unlawful alteration. Clarke J. dealt with this argument at paras. 7.12 to 7.15 of his judgment as follows:-

> *"7.12 … To whatever extent it might be open to a party to go back on a settlement reached because of the availability of fresh evidence (and the circumstances in which such a course of action could be adopted, if it is possible at all, would, undoubtedly, be extremely limited), it could never be open to a party to seek to rely on the availability of fresh evidence which could, with reasonable diligence, have been made available at a time when a previous action involving the same allegation came to a settlement. …The point which I seek to emphasise at this stage in this judgment is that the courts will never have regard to fresh evidence which could have been earlier obtained by reasonable diligence.*
>
> *7.13 The original of the lease was, of course, available, if required, at the time of the Circuit Court proceedings. An application could have been made to have that lease made available to an expert of Mr. Mulrooney's choosing. For whatever reason it was decided not to go down the road of having the lease examined forensically at that stage. However, Mr. Mulrooney nonetheless had made an allegation of unlawful altering.*
>
> *7.14 Any evidence which might now be obtained as to unlawful altering would clearly be evidence which could just as easily have been obtained at the time when Mr. Mulrooney made his allegation of unlawful altering in the Circuit Court proceedings. Having chosen to settle those proceedings, with that allegation in being, and without having sought then to have the document forensically examined, it is now far too late to seek to raise the issue again with the benefit of forensic evidence.*
>
> *7.15 The time to have obtained the forensic examination which Mr. Mulrooney now seeks is when he first made the allegation of unlawful altering in the context of the Circuit Court proceedings. Having failed to do it then and having settled those proceedings, he has now lost the right to seek to re-litigate the same question of unlawful altering which he has already settled. He is, in substance, asking not to be taken at his word when he settled those proceedings. The law does not allow him to depart from his word. He is bound by the settlement. The settlement binds him not to seek to re-litigate the issues which were then before the Circuit Court. Those issues clearly included the allegation of unlawful altering. Mr. Mulrooney is precluded from now seeking to make that allegation by virtue of his previous settlement of the proceedings and the trial judge was, therefore, correct to dismiss the proceedings as being an abuse of process."*

20. On 19th January, 2015 the 2011 proceedings were struck out against further defendants.

Events after the striking out of the 2011 proceedings against the State defendants

21. Subsequent to the dismissal of the 2011 proceedings, the appellant brought an action in 2015 against the solicitors who acted for Mr. Edward Malone, whom he had already sued in the 2011 proceedings. On 8th July, 2016 the High Court (Noonan J.) dismissed that action as frivolous and vexatious and granted an *Isaac Wunder* order against the plaintiff, the appellant herein.

22. The appellant remained steadfastly dissatisfied with the forensic examination of the lease by the Document and Handwriting Section of the Garda Technical Bureau. The first named respondent met the appellant on 6th February, 2015 to explain the steps that had been taken by the gardaí. The first named respondent, in an effort to assuage any worries the appellant continued to have, agreed to have the document forwarded again *"for clarification"* to the Garda Documents and Handwriting Section of the Technical Bureau. The appellant characterises this offer to re-examine the lease as a concession that the original examination and report were inadequate, incomplete and therefore negligent. This is the basis upon which he instituted these proceedings.

23. The appellant argues that the second report of D/Garda John Leonard which issued on 23rd March, 2015 in fact bolsters his case in this regard. He is equally critical of this second report and it is therefore appropriate to set out in full its terms:-

> *"Purpose of examination:*
>
> *To examine the document and establish if there was any alteration in the following pages:*
>
> - *Was there any evidence of alteration or addition on page 1 to the number "5" along the area of the "term years"*

- *Was there any evidence of alteration or addition on page 3 to the number "5" underneath the heading "**TERM**"*

- *Was there any evidence of alteration or addition on page 13 to the number "5" and to the date "March 2004" in the middle paragraph of the page.*

Equipment used:

Video Spectral Comparator:

The Video Spectral Comparator is a piece of equipment incorporating various light sources (ultra-violet, infra-red, transmitted, and blue/green lighting) and filters, which allows an examiner to differentiate inks and substances, to visualise hidden security features or faded writing and to reveal alterations on a document.

Stereo microscope:

A stereo microscope is a microscope that captures two distinct images, one viewed by each eye, which the brain integrates into a three-dimensional view of the subject.

Observations:

I examined this document and found it to be a 16-page document and is to be printed using mainly a toner based printer. The last two pages are photocopies and do not contain original handwriting. Page 1 contains a wet ink stamp impression dated 26th May, 1999 and two other wet ink stamp impressions both dated 27th May, 1999.

Page 1, 10 and 13 contain corrective fluid on some entries. Using transmitted light I am able to establish what the original entries were.

Results of examination

I examined the number "5" and the word "five" along the area of the "term years" on page 1. I found no evidence of any alteration around this area. In my opinion this page has not been altered where the number "5" and the word "five" along the area of the "term years" is displayed.

I examined the number "5" underneath the heading "TERM" on page 3. I found no evidence of any alteration around this area. In my opinion, this page has not been altered where the number "5" underneath the heading "TERM" is displayed.

I examined the number "5" and the date "March 2004" in the middle paragraph of page 13. I found no evidence of any alteration around this area. In my opinion, this page has not been altered where the number "5" and the date "March 2004" is displayed.

Conclusion

- *In my opinion page 1 has not been altered where the number "5" and the word "five" along the area of the "term years" is displayed.*

- *In my opinion page 3 has not been altered where the number "5" underneath the heading "TERMS" is displayed.*

- *In my opinion page 13 has not been altered where the number "5" and the date "March 2004" is displayed."*

The appellant's case
24. The appellant sues the respondents in negligence in relation to the investigation of his complaint that the lease was unlawfully altered and in particular that the examination actually carried out in 2010, and the subsequent refusal to carry out further examination, amounted to negligence on the part of the defendants. He pleads that the forwarding of a copy of D/Garda Leonard's report of 29th June, 2010 to the solicitors for Mr. Edward Malone breached the principles of constitutional justice and occasioned him irreparable loss and damage. He says that as a result of the negligence of the respondents in relation to the examination of the alleged unlawful alterations of the lease, he has suffered reputational damage and *"continuing and unascertained financial loss and damage"*. In reply to particulars dated 23rd November, 2015 the loss and damage claimed was not further clarified other than the fact that he had asserted that they were *"wholly separate from any other proceedings invoking the alteration of the lease."*

The respondents' motion
25. The solicitors for the respondents wrote requesting the appellant to withdraw the proceedings on the basis that they were bound in fail in light of the decision of the Supreme Court in the 2011 proceedings but the appellant refused so to do. Accordingly, the respondents issued a motion seeking an order pursuant to Ord. 19, r. 28 of the Rules of the Superior Courts or, alternatively, pursuant to the inherent jurisdiction of the court, dismissing the appellant's claim against the respondents on the grounds that it is an abuse of process, or in the alternative that it fails to disclose any reasonable cause of action against the respondents or that it is frivolous and/or vexatious. In the alternative, an order was sought pursuant to the inherent jurisdiction of the court dismissing the appellant's claim against the respondents on the ground that the claim has no reasonable grounds of success or alternatively is bound to fail. In addition, an Isaac Wunder type order was also sought.

Decision of the High Court
26. The trial judge identified the arguments of the respondents in support of the motion. He set out the appellant's complaints and response to those arguments on pp. 15-20 of the judgment. Some of the complaints relate to persons other than the respondents. As they cannot ground a case against the respondents, it is not necessary to consider those further in this judgment. Insofar as the case against the respondents is concerned, the trial judge identified that the appellant argued that there was an inadequate investigation of the lease in 2010; that the first named respondent accepted this when she agreed to have the lease re-examined; that the second examination was equally inadequate; Charleton J. in the High Court was in error when he held that the original lease was examined by Detective Sergeant Courtney who concluded that there was nothing to indicate that it was a forgery. This factual

error was relied upon by the Supreme Court. In truth the lease was examined by D/Garda Leonard who only examined the first page and this report was incorrectly summarised by the letter of Detective Sergeant Courtney which was proffered to Charleton J. It followed that neither decision was binding upon the appellant. The appellant also argued that the pleadings might be saved by an amendment to include a claim of misfeasance in public office. Counsel for the appellant emphasised the fact that the area of law was evolving due to the impact of decisions of the European Court of Human Rights and therefore the Court should be particularly slow to strike out the proceedings on the basis that there were bound to fail.

27. The trial judge considered the question of whether the prosecution of the proceedings amounted to an abuse of process. He referred to the unanimous decision of the Supreme Court in the 2011 proceedings and quoted para. 8.1 of the decision of Clarke J. which I have cited above. He then observed:-

> *"It is quite clear that despite the legal submissions on behalf of the plaintiff, this is exactly the case – these proceedings raise the same issue."*

28. He then proceeded to illustrate how this was so from pp. 21-28 of his judgment. In particular, he held that the issue of fraud was the same fraud as had been alleged in the Circuit Court proceedings. At page 29 of his judgment he said:-

> *"53. The Court has considered in detail the plenary summons and the relief sought by the plaintiff. These proceedings relate to the same issues raised by the plaintiff in previous proceedings issued in the Circuit Court.*
>
> *54. The plaintiff seeks to question the finality of the Supreme Court's judgment by suggesting he could amend his pleadings to include misfeasance.*
>
> *55. The Court is satisfied that the manner in which the plaintiff has pleaded his claim in these proceedings constitutes frivolous and vexatious proceedings. The Court has no hesitation in dismissing the plaintiff's claim against the defendants on the grounds that it is an abuse of process, on the grounds that it fails to disclose any reasonable cause of action, and that it is frivolous and vexatious.*
>
> *56. The Court is further satisfied that the claim has no reasonable grounds of success or alternatively it is bound to fail."*

The appeal

29. The appellant argued that these proceedings raise different issues to those in the Circuit Court proceedings. He emphasised that the case in negligence dates from February 2015 and therefore submits that the matter cannot be governed by prior litigation. He also argued that the proceedings could be saved by an amendment to include a plea of misfeasance in public office and that the trial judge failed to address this argument adequately or at all in his judgment. He said the trial judge failed properly to apply the test whether the case was bound to fail. Counsel for the appellant again emphasised the evolving jurisprudence in the area of duty of care owed by police to victims of crime in conjunction in particular with the evolving *jurisprudence* in relation to the European Convention on Human Rights.

Discussion

30. The trial judge accepted that the maintenance of these proceedings constitutes an abuse of process and that the proceedings are bound to fail by reason of the previous settlement of both the Circuit Court proceedings and the 2011 proceedings and the judgment of the Supreme Court in the 2011 proceedings. The issue for determination on this appeal, is whether this is correct.

31. The appellant's case is that there was a negligent investigation of an alleged forgery. If the appellant cannot establish that the lease was unlawfully altered, he cannot establish that the respondents were negligent in failing, through proper forensic investigation, to uncover this alleged unlawful alteration of the lease. To put it another way: if the lease has not been altered, there can be no case in negligence against the respondents in these proceedings. Accordingly, it would be essential for the appellant to prove in these proceedings that the lease was altered in the manner he alleges. This is precisely what the Supreme Court says that he may no longer litigate. The fact that these respondents are different to the defendants in the 2011 proceedings (or indeed the parties in the original Circuit Court proceedings) does not alter this express finding of the Supreme Court. This finding of the Supreme Court is based upon the fact that the appellant (and Mr. Mulrooney Snr) settled their claims based upon the alleged unlawful alteration of the lease in 2005 with the third party and with the plaintiff, Mr. Malone. Since the judgment of the Supreme Court of the 2011 proceedings, the appellant settled his claim against the 2011 State defendants in the 2011 proceedings by consent, which claim included the same allegation of unlawful altering of the lease. Precisely the same principles and reasons apply now to his claim against the respondents as applied in 2013 to the claim against the defendants in the 2011 proceedings.

32. The appellant argued that the law in the area of the duty of care owed by police investigating alleged crimes is evolving. This may well be so. It is relevant to the question of the scope of any duty of care the respondents may owe to the appellant when investigating the alleged unlawful alteration of the lease. The difficulty for the appellant is that the case has not been dismissed for want of a duty of care and therefore this evolving *jurisprudence* is in fact irrelevant to the issue whether the continuation of the proceedings is an abuse of process. Regardless of the scope of the alleged duty of care owed by the respondents to the appellant in this case, the trial will necessarily involve re-visiting whether or the not the lease has been unlawfully altered. This the appellant may not do. It follows that this argument does not avail the appellant.

33. It was submitted that the proceedings might be saved by an amendment to permit the appellant to plead misfeasance in public office against the respondents. Counsel for the appellant relied on the decision in *Sun Fat Chan v. Osseous Ltd* [1992] 1 I R 425 to the effect that an amendment to the proceedings should be permitted if it would save proceedings which otherwise did not disclose a reasonable cause of action or which were bound to fail.

34. The respondents argued in reply that this principle can have no application or a very limited application, where there had been prior multiple proceedings brought and disposed of either by a final court on appeal or by consent. I agree with the submissions of counsel for the respondents. While undoubtedly any court will exercise the jurisdiction to strike out proceedings on the basis that they constitute an abuse of process or are bound to fail only in exceptional circumstances, nonetheless, as has been clear since *Barry v. Buckley* [1981] IR 306, it is in fact the duty of a court to grant such an order where the continuance of the proceedings would, in fact, constitute an abuse of process. I agree that the suggestion that these proceedings could be saved at this late stage by an amendment to plead misfeasance in public office at the end of the whole series of litigation going back to 2002 would in itself amount to condoning an abuse of process. On this basis alone, I would not be minded to allow any amendment based upon a mere assertion that such a cause of action existed without any attempt whatsoever to substantiate the plea.

35. Furthermore, the misfeasance alleged would be the malicious failure properly to investigate the alleged unlawful alteration of the lease. To repeat myself, all roads lead to Rome. This is precisely what the appellant may not do.

36. The simple fact is that the time for bringing forensic evidence to show that the lease was unlawfully altered was in the Circuit Court proceedings before the appellant settled his litigation with the third party or the plaintiff, Mr. Malone. It is far too late to seek to litigate this point which was settled twice in the Circuit Court proceedings and with the State defendants in the 2011 proceedings. There must be finality to litigation in order to protect the rights of defendants as well as plaintiffs. The appellant cannot go back on his agreements. It follows necessarily that the continuance of these proceedings would amount to an abuse of process. For these reasons I dismiss this appeal.

Isaac Wunder order

37. The trial judge concluded that it was appropriate to make an order restraining the appellant from instituting any proceedings in relation to the alleged amending of the lease by way of fraud. While the appellant appealed this order in full, in truth the objection was to the scope of the order. The trial judge ordered:-

> *"…that the plaintiff be restrained from the institution of any proceedings whatsoever, whether by summons or notice of motion or by application to the Court against the defendants in this case,* ***or any other defendants against whom the plaintiff has previously initiated pleadings****, in relation to the alleged amending of the lease by way of fraud, the subject matter of the proceedings.*
>
> *For clarity, this Court includes in this Wunder order the names of the defendants in this case, these being Chief Superintendent Catherine Keogh, the Garda Commissioner, Ireland and the Attorney General. Further, this Court states that the plaintiff is precluded from bringing proceedings on this subject matter, in relation to the alleged amending of the lease by way of fraud against: John Shee and Company solicitors; Kieran Cleary; Sinead Cleary; Oliver Ryan Purcell Solicitors; Lynch and Partner Solicitors; Kieran O'Carroll; Michael O'Brien; Clionna Cleary; Randal Hill; David Humphreys; Frank Quirke; Kevin Byrne; Jack Hickey; David Kennedy; Victor Shee; David Shee; J.J. Shelly; Shee & Hawe Limited; Edward Malone; Glanbia Foods Society Limited; the Minister for Agriculture & Food; the Garda Commissioner; the Garda Bureau of Fraud Investigation; the Minister for Justice and Law Reform, and any other public bodies including the Courts Service."*

38. In reaching his decision, the trial judge considered the principles upon which such orders are made. The trial judge referred to the decision of Keane C.J. in *Riordan v. An Taoiseach* [2001] IESC 83 where the Chief Justice referred to:-

> *"… an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. The court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation."*

39. The trial judge noted that such orders appear to be compatible with Article 6 of the European Convention on Human Rights and that in imposing an Isaac Wunder order the Court is required *"to strike a balance between the constitutional right of the individual of access to the courts and the onus on the Court to prevent vexatious litigation and litigation which is an abuse of process."*

40. It is thus clear that the trial judge correctly identified the principles to which he was required to have regard in deciding whether or not to grant such an order and the scope of any such order, if granted. At para. 63 the trial judge expressly referred to the fact that the appellant has sought to re-litigate matters which have already been litigated and settled by him and his father. The trial judge considered that these legal proceedings were vexatious and in the exercise of his discretion he imposed an *Isaac Wunder* order in the terms quoted.

41. I am satisfied that it was within his jurisdiction to make an order in those terms. The trial judge was acting on the inherent jurisdiction of a High Court judge to control the Court's own processes. He was exercising his discretion both whether, and to what extent, he should make such an order. As an appellate court, this court shows great deference to the exercises of discretion of a trial judge, particularly in respect of quintessentially discretionary orders of this kind. I am satisfied that there was no error in principle by the trial judge in making the order in the terms he did. There was ample justification for making an order of this scope in order to protect those parties who were subject to repeated vexatious litigation by the appellant. The appellant had twice sued Mr. Malone's former solicitors and had twice sued the Garda Commissioner. Mr. Malone's former solicitors were obliged to incur the further expense of applying for and obtaining an order dismissing the second proceedings against them and seeking an *Isaac Wunder* order from the court. Given the history of the litigation in relation to the lease, there was every reason to believe that an order of a more limited scope might not have prevented the mischief the court sought to limit. In addition, it was open to the trial judge to have regard to the scarcity of court resources and to the fact that if the appellant seeks to re-litigate this issue he does so by availing of court time which would otherwise be available to other litigants. In the circumstances, the High Court judge had a basis for exercising his discretion in the manner in which he did. It is important to emphasise that there is no absolute bar on the appellant bringing proceedings at some future date in relation to the lease if he is in a position to satisfy the President of the High Court or such other judge nominated by him that it is appropriate to grant him leave to institute such proposed proceedings.

42. For these reasons I dismiss the appeal in relation to the scope of the *Isaac Wunder* order also.