THE COURT OF APPEAL

Appeal No. 2017/459

2017/464

Irvine J.
Baker J.
Donnelly J.

BETWEEN/

GRANT THORNTON (A FIRM) AND BY ORDER
GRANT THORNTON CORPORATE FINANCE LIMITED

PLAINTIFFS/
RESPONDENTS

- AND -

GERARDINE SCANLAN

DEFENDANT/
APPELLANT

JUDGMENT of Ms Justice Baker delivered on the 31st day of October, 2019

1. This is Ms Scanlan's appeal of two orders made by Gilligan J. on 27 July 2017, following delivery of a written judgment *Grant Thornton (A Firm) v. Scanlan* [2017] IEHC 648. The orders were made in three interlocutory motions: Two motions by the plaintiffs/respondents ("Grant Thornton"), one to strike out portions of the defence and counterclaim of Ms Scanlan, and the other to dismiss the defence and counterclaim for failure to obey a previous order; And a third, that of Ms Scanlan, in which she sought twenty separate reliefs, the central ones being for the purposes of the present appeals, her application that the Data Protection Commissioner (the "DPC") and Danske Bank A/S ("the Bank") be joined to the proceedings.

2. The motions were heard over two days and Gilligan J., having reserved his judgment, ordered that certain paragraphs of the defence and counterclaim be struck out and refused the relief sought by Ms Scanlan.

Background facts

3. The background facts giving rise to the present proceedings are relatively straight-forward but the proceedings themselves are complex and have resulted to date in a number of applications, orders and rulings by different High Court judges and by this Court.

4. The Bank obtained judgment against Ms Scanlan on 25 February 2016, following the delivery by Fullam J. of a reserved judgment, *Danske Bank A/S (t/a Danske Bank) v. Scanlan* [2016] IEHC 118, and he thereafter struck out associated proceedings against both the Bank and Stephen Tennant of Grant Thornton who had been appointed by the Bank as receiver on 15 August 2013 on foot of the powers contained in its security.

5. What gave rise to the present proceedings followed the making by Ms Scanlan of a data protection access request to Grant Thornton on 15 September 2015 and the furnishing by Grant Thornton to her of a compact disc ("the CD") containing certain information and data pertaining to her, but also what is accepted to have been confidential and personal data relating to third unconnected parties, and confidential proprietary information belonging to Grant Thornton. For the purposes of the proceedings and this judgment, that data not pertinent to Ms Scanlan will be referred to as the "confidential information".

6. Ms Scanlan refused the request made by Grant Thornton to return the confidential information and her refusal led to the institution of these proceedings on 27 November 2015, in which injunctive relief was sought requiring her to deliver up all data comprising the confidential information and restraining her from disseminating, communicating, or otherwise making use of that data. The proceedings also sought damages for breach of confidence, misuse of private information, breach of privacy, and breach of statutory duty. Ms Scanlan accepts, and had accepted for some time before the proceedings were instituted, that she did send some documents forming part of the confidential information to third parties, and she asserts that she was, and remains, under a legal obligation to do so and to inform the affected parties that she has the information and the manner in which it was disclosed to her.

7. On 27 November 2015 Grant Thornton obtained interim injunctive relief against Ms Scanlan. When the matter came on for hearing at interlocutory stage on 4 December 2015, Ms Scanlan consented to an order restraining her from making use of the confidential information or any part thereof pending the determination of the proceedings, and to an order to deliver up all documents and records comprising the confidential information and an order to destroy, erase, and delete any of the confidential information remaining in her possession.

8. Ms Scanlan now describes that order as "a gagging order", but she did hand over to Grant Thornton's legal advisors the CD and two USB sticks on which she had uploaded the information.

9. The order of 4 December 2015 was not appealed.

10. Thereafter, Ms Scanlan refused a request by the solicitors acting for Grant Thornton that the interlocutory orders be made permanent and the matter has proceeded to the point that a defence and counterclaim was delivered by her on 30 June 2016.

11. Ms Scanlan includes in her notice of appeal a challenge to an order of Gilligan J. made on 27 November 2015, which is manifestly out of time. The argument regarding that appeal was not advanced with any vigour at the hearing. For the purposes of this judgment, I will confine myself to the appeal from the orders of 27 July 2017.

12. Ms Scanlan's motion sought that the Attorney General, the DPC, and the Bank be joined as parties, albeit the motion does not identify the capacity in which she seeks that they be joined, and the nature of the role which she proposes for each of the proposed parties

was a matter of some argument at the hearing of the appeal. The application to join the Attorney General was refused. As the notice of appeal does not include any claim that the trial judge erred in refusing to join the Attorney General to the proceedings, Ms Scanlan is not entitled to pursue this ground of appeal.

13. However, it must be said that Ms Scanlan's paperwork is voluminous and for the avoidance of doubt and because she has pleaded such broad grounds of appeal, I do wish to make some observations regarding the points she makes.

14. In her supplemental submissions prepared as a working document for the purposes of making oral submissions at the appeal, Ms Scanlan seeks to argue that a "constitutional injustice" has been suffered by her. She argues in reliance, *inter alia*, on Articles 29.4.6, 40.1 and 40.3 of the Constitution that her constitutional rights ought to be vindicated by the Attorney General and that his Office has a general obligation to assert or protect public rights. She argues that the rights she asserts in the proceedings are rights which, as she puts it, "belong to the public as a whole" and are not exclusively rights of a private character.

15. The data protection rights from the then relevant Data Protection Act 1988, as amended, are rights that vest in all citizens. However, the claims in the present proceedings are private law claims and the fact that what is asserted are rights which belong to all citizens or to a cohort of citizens, does not make the proceedings, in their nature, public law proceedings or those in which the Attorney General has a role.

16. The arguments are without substance and ought to be dismissed.

17. Her primary focus was on the refusal of her application to join the DPC and the Bank. She mostly grounds her appeal on an allegation that the orders of the trial judge must be set aside on the grounds of objective bias, and I turn now to analyse the arguments, facts and legal principles.

The allegation of bias

18. The application to set aside the orders of the trial judge, framed as an appeal, rely on what Ms Scanlan describes as "a longstanding business relationship" with a named senior counsel who had acted for the DPC in unconnected litigation, of which the wider public was generally aware as a result of its legal importance, concerning Facebook, which was heard in the High Court before Costello J. in the spring and summer of 2017. She alleges that the trial judge also had a business relationship with another named individual who holds an executive position in a financial entity which she asserts purchased certain distressed properties from a number of banks, including the Bank, and is what she describes as "the proposed landlord" of Grant Thornton. She says that the trial judge, the named senior counsel, and the named individual, were parties to a property investment syndicate, the precise details thereof were not explained to this Court. What Ms Scanlan argues is that there exists or existed a business relationship between the trial judge and certain persons who themselves have a business relationship with Grant Thornton or, in

the case of the named senior counsel, is said to have acted for a party which she seeks to join to the proceedings.

19. In the course of his judgment, the trial judge noted that Ms Scanlan had withdrawn an application to prevent counsel then and now acting for the Grant Thornton to continue to represent that firm, and it would seem that Ms Scanlan may have believed that counsel, who has the same surname as the counsel to whom she later refers, might have acted or continued to act for the DPC in other and unrelated proceedings.

20. Ms Scanlan does not suggest that the trial judge has a close personal relationship with either of the two individuals but argues for a tenuous business connection between the trial judge, those individuals, and a possible issue in the present proceedings.

21. No evidence was before this Court on the appeal regarding the factual matters on which Ms Scanlan wishes to rely in support of her argument that the decision of the trial judge ought to be set aside on the grounds of objective bias. That must mean, in my view, that the argument may not be advanced, and it would not be appropriate or in accordance with any rules of procedure or fairness that Ms Scanlan be entitled to rely upon submissions she makes to an appellate court as forming a factual basis for her argument.

22. Further, as the matter was not raised before the trial judge, he personally had no opportunity to consider the facts on which Ms Scanlan purports to now rely.

23. However, I do wish to make some observation regarding the argument of bias and I do so because I consider that the matters she raises are deeply unfounded and scandalous, and because I consider that the proper administration of justice requires some comment by this Court regarding her argument which touches on the independence and objectivity of a senior member of the judiciary who is now retired.

24. I observe too, and this is a matter of some consequence in the conclusions to which I come, that Ms Scanlan brought a motion to the Court of Appeal on 17 November 2017 for an order "setting aside all orders and determinations" made by the trial judge grounded upon an affidavit of 15 November 2017, in which she made an identical argument of objective bias to that advanced now in the appeal. The motion was heard by the Court of Appeal and Ryan P. dismissed the application in an *ex tempore* ruling in January 2018, taking the view that the Court of Appeal had no jurisdiction to entertain the motion. That order was not included by Ms Scanlan in her book of appeal.

25. In essence, the argument made by Ms Scanlan is that the trial judge, whom she expressly commends as not having conducted himself in anyway "untoward", ought not to have engaged upon a hearing of her applications because he had a business relationship with counsel who is known to have acted in a high profile litigation on behalf of the DPC, a party sought to be joined to the proceedings. That argument is based on a supposition not founded on any credible facts that the DPC would be likely brief that senior counsel were it to be joined in the present proceedings.

26. With regard to the refusal to join the Bank, she argues that the decision of the trial judge falls for objective bias because of a business relationship between the trial judge, this named senior counsel, and another named individual. She extrapolated this business connection from a search in the PRA and asserts that the trial judge was a shareholder or co-owner in a business venture with that named senior counsel and the named business man between 2003 and late 2014.

27. Certain matters of principle must be stated. A judge operating under the Irish Constitution swears a solemn Oath of Office to act without fear or favour for any person. Because of the size of the State and its relatively small legal population, a judge is likely to know either personally or professionally some or many of the barristers, senior counsel, and solicitors who appear before him or her. A personal or business connection does not, of itself, create a perception of objective bias and something more is required, as was clearly identified by the Supreme Court in *Goode Concrete v. CRH Plc* [2015] IESC 70, [2015] 3 IR 493.

28. The Supreme Court held, at paras. 54 and 55, that the test is an objective one in the light of how a reasonable person would view the likely impartiality of the judge:

> "54. The test to be applied when considering the issue of perceived bias is objective. It is whether a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge, or any party; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts.
>
> 55. The test to be applied when considering issues of perceived bias is important in protecting the administration of justice, and necessary to preserve public confidence in the judiciary. Thus, the issue is not simply a matter as between parties, but it is an issue for consideration in relation to the manifest impartial administration of justice in the State, and the confidence which the people rest in the judiciary."

29. The apprehension, therefore, is not that of a party, nor is it that of the judge, but rather, the more exacting standard of whether a reasonable person with sufficient information would lack confidence in the impartiality of the process.

30. The principle is well established from *Bula Ltd v. Tara Mines Ltd (No. 6)* [2000] 4 IR 412, and the earlier cases of *Orange Ltd v.Director of Telecoms (No. 2)* [2000] 4 IR and *O'Ceallaigh v. Fitness to Practise Committee of An Bord Altranais* [2011] IESC 50. Fennelly J. in *O'Callaghan v. Mahon* [2007] IESC 17, [2008] 2 IR 514, at para. 80, sets out one element of the test which is particularly apposite in the instance case:

> "objective bias is established, if a reasonable and fair minded objective observer, who is not unduly sensitive, but who is in possession of all the relevant facts,

reasonably apprehends that there is a risk that the decision maker will not be fair and impartial".

31. I accept the argument of the respondents that it cannot be credibly contended that a reasonable and fair-minded objective assessment of an alleged business relationship between the trial judge and the named senior counsel and the named business man would lead an objective, informed, and reasonable person to reasonably apprehend that the trial judge lacked impartiality or that there was a risk that, objectively speaking, he would not approach the matter in a fair and impartial manner.

32. Certain factors must be noted. Neither of the named individuals are parties to the proceedings, nor are they officers or employees of either of the parties sought to be joined or of any of the existing parties to the proceedings. At its height, the assertion by Ms Scanlan is that the named business person is a "customer" of Grant Thornton. With regard to the named senior counsel, the assertion is that he has acted for the DPC in other and unrelated High Court litigation and has or had a "business" association with the trial judge in entirely unconnected matters which, even on Ms Scanlan's assertions, ended some three years before the trial judge heard the applications and delivered his written judgment.

33. I consider that a reasonably well informed objective observer would have regard to the fact that no complaint was made by Ms Scanlan in the course of the hearing, no suggestion was made then, or is made now, that the trial judge had any personal or material interest in the outcome of the motions, or that he had any material or any personal interest or connection with the parties sought to be joined or their direct employee or beneficial owners.

34. Further, the orders he made were procedural orders, and what was in issue was the application of well-established rules of practice and procedure which did not engage any unusual discretionary or equitable principles requiring the exercise of novel or untrammelled legal territory.

35. I have regard too to the observations of Dunne J., with whose judgment the other seven members of the Supreme Court agreed, in *O'Driscoll v. Hurley* [2016] IESC 32, where she said that, in some cases, an invitation to a judge to recuse himself or herself is "forum shopping plain and simple". I would make a similar observation with regard to an application that an order made by a trial judge be impugned on the grounds of an ascertained, unsubstantiated, and tenuous, business connection with parties who themselves have a tenuous and professional relationship with the litigation or with procedural matters that have arisen in the course of the litigation.

36. The objection made here is not merely what Dunne J. describes, quoting from *Ebner v. Official Trustee in Bankruptcy* (2000) 205 CLR 337, as "insubstantial", but it is unsubstantiated. We have not been invited to make a finding that the application made by Ms Scanlan is an abuse of process, and, accordingly, I do not propose to approach the matter on that basis, but I must have regard to the fact that these proceedings, to date,

have engaged a great amount of judicial time, and that the application sought to be made now re-visits an application already made to the Court of Appeal in November 2017 which was dismissed.

37. For these reasons, my view is that the application to set aside the orders of the trial judge on the stated ground of objective bias must be dismissed, and is not one made on any ground which has been substantiated or which could reasonably be advanced.

The refusal to join Danske Bank

38. The appeal against the refusal to join the Bank to the proceedings is made on the basis that the Bank was the "primary data controller" within the meaning of the then relevant Data Protection Act 1988, of the data in respect to which the proceedings are brought and that the Bank "benefited" from withholding that data in the course of the earlier debt proceedings heard by Fullam J.

39. The application to join the Bank was made on the grounds that the Bank had appointed Mr Tennant as receiver, and Ms Scanlan has not sought to challenge the conclusion to which the trial judge came, that the fact that the Bank had previously obtained judgment against Ms Scanlan and appointed the receiver, and that the previous proceedings had long concluded and been definitively determined meant that it had no role to play in the claim.

40. It is now argued by Ms Scanlan that the Bank was the "controller" of the data wrongfully sent to her and that it should be joined to the proceedings in the light of its statutory obligations as controller to protect that data.

41. In the course of argument on the appeal, Ms Scanlan submitted that the Bank is, accordingly, the "only party with requisite standing" to bring the proceedings, and in those circumstances she seemed to concede that her application was that the Bank be joined as a plaintiff. Apart altogether from the question of whether a party can be joined by a defendant as plaintiff without his or her consent, I consider that the question of the joinder of the Bank to the proceedings may fairly be dealt with by reason of the fact that, if Ms Scanlan is correct in her assertion that the Bank is the only or primary person or body with standing to bring these proceedings, then that is a matter which goes to her defence of the proceedings and does not require that the Bank be a party, whether as plaintiff, defendant, or notice party.

42. When the matter was argued before the trial judge, the approach of Ms Scanlan was to argue that the Bank as primary data controller failed in its duty to ensure compliance with the legislation, although she later asserts in her grounding affidavit, at para. 13, that the Bank and Grant Thornton "conspired to remain silent and conceal facts" from Fullam J.

43. I agree with the finding of the trial judge that no cause of action is asserted against the Bank in these proceedings, or, as he put it, "the Bank has no role". Insofar as the argument that the Bank be joined is based on the alleged concealment of facts in the receivership or judgment process, that is not a matter which arises in the present

proceedings, and, taking the application of the appellant at its height, if the focus were to be on the matters pleaded in the defence and counterclaim delivered on 18 December 2017, no role was asserted and no relief sought against the Bank which might require it to be a party.

44. Insofar as the appeal concerns the refusal of the trial judge to make the declaration sought at paras. 10 and 11 of the notice of motion that the Bank conspired with Grant Thornton to mislead her, or to mislead Fullam J., these are not orders that are capable of being made on interlocutory motion and do not arise on the pleadings.

45. With the leave of the court, the Bank furnished written and oral submissions on the appeal and Irvine J. gave leave to intervene and the appellant expressly made no objection.

46. Counsel argues that the attempt to join the Bank amounts to an attempt to mount an as-yet unarticulated collateral attack on the judgment and order of Fullam J. which must be seen as final and not open to challenge. I agree with that observation and it is another basis on which the appeal is to be dismissed.

47. For these reasons, I am of the view that the appeal of the refusal to join the Bank should be dismissed.

The application to join the Data Protection Commissioner

48. The application to join the DPC was made on the basis that the DPC failed to take action under the Data Protection Act 1988 to compel Grant Thornton to comply with its statutory obligations. On the facts, it seems that this is incorrect, as the DPC has commenced an enquiry of the alleged data breach and that enquiry and investigation is ongoing. The order was refused as the trial judge concluded no cause of action was demonstrated against that Office and no relief is sought against her.

49. The notice of appeal pleads that the DPC has displayed “an ongoing tolerance” of the failure or neglect on the part of Grant Thornton to comply with its obligations under the Data Protection Act 1988, and that the Office of the DPC failed, refused, and neglected to engage its statutory function.

50. Ms Scanlan argues that the approach of the DPC to her pleaded disclosure to third parties of personal data is wrong at law. By a letter dated 20 April 2016 and sent by e-mail the Information Officer of the DPC, in response to e-mails from Ms Scanlan as to the correct approach she should adopt to the information which she received incorrectly, informed as follows:

> “[A] private individual who receives personal data in error from an organisation, would not be considered a data controller under the Data Protection Acts 1988 & 2003. Therefore there is no statutory process for individuals on how to handle this information or penalties for failing to be aware of data protection protocol and I can also confirm that it is not referenced in the Acts.”

51. Ms Scanlan argues that the sole body with statutory power and duty to enforce the legislation is the DPC and that the view expressed by her Office is incorrect in law and that she is, in law, a controller for the purposes of the Data Protection Act 1988.

52. Gilligan J. clearly had some concern as to the precise role proposed for the DPC in the proceedings, as is apparent from para. 20 of his judgment, where he noted that no cause of action was pleaded against the DPC nor any relief sought against her. The trial judge made reference to the application that the DPC be joined "in some way" to the proceedings.

53. The relevant legislation is s. 7 of the now repealed Data Protection Act 1988, which provides:

> "For the purposes of the law of torts and to the extent that that law does not so provide, a person, being a data controller or a data processor, shall, so far as regards the collection by him of personal data or information intended for inclusion in such data or his dealing with such data, owe a duty of care to the data subject concerned: […]"

54. The section creates or affirms the existence of the tort of failing to deal with data in accordance with the duty of care. Section 7 has the effect that a data controller or processor owes a duty of care to a data subject. The statement of claim pleads that Ms Scanlan breached that duty of care to the data subject and that the confidential information belonged to Grant Thornton and, *inter alia*, seeks the private law remedy of injunction and damages under s. 7 of the Data Protection Act 1988.

55. Ms Scanlan's counterclaim, in turn, seeks damages pursuant to s. 7 of the Data Protection Act 1988 for what she pleads is the unlawful processing by Grant Thornton of her data. That too is a private law remedy.

56. The appellant has not made at any case that would warrant the joinder of the DPC to that action which is a private law action pursuant, *inter alia*, to s. 7 of the Data Protection Act 1988 and is separate and independent of any investigation or enforcement by the DPC against the controller under her statutory powers.

57. In the course of argument, Ms Scanlan approached the matter by urging that the DPC ought to be joined as *amicus curiae* and that her statutory role as an independent regulator with statutory powers of enforcement required her presence in the proceedings.

58. The Supreme Court considered an application for leave to appear as *amicus curiae* in *H. I. v. Minister for Justice, Equality and Law Reform* [2003] 3 IR 197. There, the United Nations High Commissioner for Refugees sought leave to appear as an *amicus curiae*. Keane C.J. described an *amicus curiae* as "traditionally disinterested in nature and intended exclusively to assist the court in its determination of a particular point of law", at p. 200. He acknowledged that an amicus would not be expected to be wholly disinterested in the outcome of litigation because non-governmental agencies and public

bodies have been permitted to appear to assist the court, both as a result of the statutory provisions and in the inherent jurisdiction of the court. The requirement was that the person have a "*bona fide* interest in the issue" and which cannot be "characterised as a meddlesome busybody", at p. 203.

59. In *L. C. v. Director of Oberstown* [2016] IEHC 705, Eagar J. refused an application of the Irish Human Rights and Equality Commission to be joined to proceedings at first instance and where he regarded it as more appropriate that any application to be joined would be made at appellate stage, and that approach seems to be the one now adopted in practice.

60. In *Fitzpatrick v. F.K.* [2006] IEHC 392, [2007] 2 IR 406, at para. 4.6, Clarke J. considered that one consideration must be whether the proposed *amicus* would introduce a perspective which might otherwise not be placed before the court in a legal debate on an issue of significant public importance (see also Delany and McGrath, *Delany and McGrath on Civil Procedure* (4th ed., Round Hall, 2018) paras. 6127 *et. seq*.)

61. The decisions of the Superior Courts regarding the joinder of an *amicus curiae* have been given in the context of an application by the proposed *amicus* that he, she, or it be joined, or, more accurately, be permitted to make representations to assist the court. The application is more accurately an application to appoint an *amicus curiae* to assist the court, rather than that the nominated person or body be joined as a party to the proceedings, the relief sought by Ms Scanlan.

62. No case law has been opened by Ms Scanlan to support a proposition that the DPC be joined as *amicus* in these proceedings, when the DPC herself has not sought to intervene or to make a submission to the court. The jurisdiction is one that is to be sparingly exercised (see *H. I. v. Minister for Justice*, at pp. 203 and 204, *Schrems v. Data Protection Commissioner (No.2)* [2014] IEHC 351, [2014] 2 ILRM 506, at para. 13, and *EMI Records (Ireland) Ltd v. UPC Communications Ireland Ltd* [2013] IEHC 204, at para. 66).

63. It is apparent, from the correspondence from her Office to Ms Scanlan, that no further engagement by the DPC with Ms Scanlan is envisaged. In those circumstances, I cannot accept the argument of Ms Scanlan that the DPC should be joined as a party to the proceedings or be compelled to act to make submissions to the Court as *amicus*.

64. Counsel for the DPC was permitted to make submissions to the Court in the same manner in which this was done on behalf of the Bank.

65. The argument made on behalf of the DPC is, in my view, correct. The action here is a private law action by which the controller, or the agent of the controller, to adopt for a moment the characterisation for which Ms Scanlan contends, has sought the return of certain confidential information disclosed in error to Ms Scanlan. The cause of action is a private law injunction and damages for negligence and breach of contract. The statement of claim pleads particulars of breaches of the Data Protection Act 1988 and that the actions of the defendant are in breach of s. 2(1)(a) and s. 2(1)(c) and of s. 2A and s. 2D

and s. 22 of the Data Protection Act 1988. The pleas are of wrongful or unfair processing of the data, or processing in a manner incompatible with the purpose for which it was obtained, and thereafter disclosing that data to another person without authority and refusing or failing to return it.

66. Further, I accept the argument of counsel for the DPC that her Office is independent and is already engaged in an investigation following the alleged data breach to which these proceedings relate. I accept that the joinder of the DPC would, in those circumstances, be inappropriate, not merely because the investigation is pending and live, but also because the joinder of the DPC is unnecessary in the circumstances.

67. In the circumstances, it seems to me that no case is made out which would justify the joinder of the DPC to the proceedings, whether as *amicus curiae* or otherwise. No cause of action has been asserted against the DPC and the trial judge was perfectly correct in that conclusion. That the DPC does not seek to be joined as *amicus* is another factor which must weigh strongly in any consideration of the appeal.

68. For all the reasons stated, I would dismiss the appeal of Ms Scanlan against the orders refusing the joinder of the two named parties.

Appeal against order striking out parts of counterclaim and defence

69. No specific ground of appeal is directed to the order of the trial judge that portion of the defence and most of the counterclaim be struck out, although it could be said that Ms Scanlan's argument that the trial judge's orders ought to be set aside on the grounds of objective bias encompasses an appeal against these orders. For the reasons stated above, I do not consider that this ground has any substance.

70. The appeal of those orders of Gilligan J., insofar as they may be encompassed within the general grounds of appeal pleaded, should, for that reason, be dismissed.

Conclusion

71. I would dismiss the appeals and affirm the order of the High Court.