APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2022/29 and 2022/30

Faherty J.
Pilkington J.
Allen J.

Neutral Citation Number [2022] IECA 272

BETWEEN

CATRIONA CUNNIFFE

PLAINTIFF/APPELLANT

AND

MICHAEL CUNNIFFE

AND

MARTINA WHYTE

DEFENDANTS/RESPONDENTS

JUDGMENT of Mr. Justice Allen delivered on the 30th day of November, 2022

Introduction

1. Patrick Joseph Cunniffe, late of Lisdeligney, Killimor, Ballinasloe, County Galway *("the deceased")* died on 30th September, 1987, intestate. He had been predeceased by his

wife, Sarah Mary, and was survived by four children, Martina, who is the second defendant, Padraic, Michael, who is the first defendant, and Catriona, who is the plaintiff and who is the appellant. At the time of their father's death Martina, the eldest, was twenty one years old and Caitriona, the youngest, was seventeen.

2. On 16th November, 1988, by agreement with her siblings, Ms. Martina Cunniffe, as was, obtained a grant of letters of administration intestate from the District Probate Registry at Galway. The inland revenue affidavit and the grant of administration showed the gross value of the deceased's estate as IR£253,428.00 and the net estate as IR£243,870.00. The estate comprised a residential farm estimated to be worth IR£91,000, stock in trade and instruments of husbandry estimated to be worth IR£28,181, household goods and a car with an estimate IR£10,000 and deposits and financial investments amounting in total to IR£126,186. The liabilities were shown as IR£9,558 for the deceased's funeral expenses and some farm debts. However, it soon after transpired there was a liability to the Revenue Commissioners for unpaid income tax, levies and interest which was eventually settled at IR£64,292, and which was paid on 31st March, 1990.

3. Following the deceased's death Michael took over the running of the farm. He was assisted for about a year by Padraic until Padraic moved to London.

4. At the time of her father's death Catriona was still in school. After completing her leaving certificate in 1988 she went to U.C.G. where she studied for a B.A. Her fees were paid by Michael who also provided her with an allowance during term time.

5. Since the deceased's death Michael has been in possession of the farm. The deceased's investments were realised between the date of his death and 2004 and the proceeds distributed. The last distribution was made in 2004.

6. By this action, which was commenced by plenary summons issued on 4th May, 2016 the plaintiff – who is a litigant in person – made a variety of claims arising out of the

administration of the deceased's estate, all of which, on the defendants' motion, the High Court found were statute barred. The plaintiff now appeals against that finding.

7. I pause here to observe that all the appearances are that there has been a great deal of input in the proceedings from a person who, although unqualified, holds himself out as a *"Litigation Consultant"* and a *"Business & Legal Affairs Consultant"*. On 30th January, 2017 the plaintiff signed a form of power of attorney – which I infer was prepared by this individual – purportedly appointing him as *"authorised intermediary"* for the purposes of the litigation and purportedly appointing him to attend before the High Court to deal with *"any motions or other interim orders"*. The document recites that the individual had been allowed to advocate and argue on behalf of many individuals and entities before the High Court over the course of his career, a claim which suggests that this person has been given a right of audience before the courts which he does not have. The document is described as a general power of attorney but purports to authorise the advisor to act for limited purposes. More to the point, the purposes of the purported appointment are not legally permissible.

8. There are a number of such unqualified individuals who intermeddle in the business of litigants in person. They hold themselves out as *McKenzie* friends, which they are not. They hold themselves out as competent to assist litigants in person, which in most cases they are not. I fully understand the difficulties faced by litigants who are unable to pay for legal representation and who do not qualify for legal aid but those difficulties are only compounded by *"assistance"* which gives rise to false hopes, and potentially exposes litigants to a liability for the opposing party's costs and, at a very minimum, is a waste of such little money as they may have.

The pleadings

9. By plenary summons issued on 4th May, 2016 the plaintiff claimed damages for a number of alleged wrongs, including breach of fiduciary duty, detinue, negligence, breach of warranty, breach of duty, breach of the provisions of the Succession Act, 1965, breach of trust, tort, personal injuries and *"negligent misstatement and/or misrepresentation as regards the handling of the plaintiff's interest in the estate of Patrick Joseph Cunniffe deceased while the plaintiff was a minor."*

10. On 11th December, 2017 the plaintiff delivered her statement of claim. The plaintiff pleaded the death intestate of her father and the fact that the second defendant undertook the administration of the estate. The plaintiff acknowledged that she was aware of the Revenue issue, which she pleaded had resulted in a *"substantial fine"* of *"approx. IR£80,000"*.

11. At para. 8 the plaintiff pleaded that:- *"It was agreed at the time within the family that it would have been the wish of the late Patrick Joseph Cunniffe that Michael Cunniffe, the first named defendant herein, would get the farm"* and that rather than legally transferring the land to Michael *"... it was proposed that if the matter was left rest for a certain period of time, and if his claim to the entire of the lands was not ultimately contested by any of his siblings, Michael Cunniffe, the first named defendant herein, could lay claim to the farm and assets with relatively little financial burden."*

12. The statement of claim continued at para. 9 to plead:-

> *"9. As part of this adopted strategy the plaintiff was always assured by both Michael Cunniffe and Martina Whyte, the first and second named defendants respectively, that the family home house would always be there for her regardless of title, possession, or ownership and that the plaintiff would be entitled to full access and possession of same as and when she opted to avail of same. Throughout the plaintiff's late teens, twenties and into her thirties, she always looked forward to getting back to the family home at Thornfort whenever she could. She considered it*

her home and although her parents had passed on, she looked at the bricks and mortar of the family home for the stability and sense of belonging that having a real family home provides.

10. This was not always the case and over a long period of time the plaintiff felt less and less welcome there, indeed at later times feeling like an unwelcome guest. The plaintiff considered Thornfort her primary residence up until approx. August 2004 regardless of any ongoing difficulties. At this stage the plaintiff had completed her Bachelor of Education and had always hoped to return to the family home on a more permanent basis after finishing her college degree. However between approx. 2003 and 2004 the plaintiff's brother Michael Cunniffe, the first named defendant herein, disconnected the water supply to the house which led to no available drinking water or water supply for the single toilet in the house. Michael Cunniffe, the first named defendant herein, also subsequently removed the solid fuel range cooker ultimately reducing the family home to a building site and making it entirely uninhabitable. In those following years the first named defendant Michael Cunniffe also butchered deer and sheep in the house and would leave the carcasses to hang in the back kitchen, through which one would have normally entered the family home. The plaintiff being a vegetarian and the first named defendant being well aware of this, this amounted to a deliberate attack on her core values. In September, 2004, the plaintiff realising the level of hostility which existed to her availing of the use of the family home at Thornfort moved to Killeeneen, Craughwell, Co. Galway and the family home now remains derelict. ...

The plaintiff agreed not to contest the claim of Michael Cunniffe to the farm and lands on the basis of this promise that the family home always being there for her."

13. If it is not absolutely clear from para. 8 of the statement of claim, it is from para. 9, that the plaintiff's case is that she agreed, in accordance with what it was agreed would have been their father's wish, that Michael would have the farm.

14. At para. 11 of the statement of claim the plaintiff pleaded that she was actively misled by the defendants *"in the years after her father's death"* and that the defendants *"materially misrepresented the actions being taken with regard to the estate and critically did so at a time when she was of minor age."* She went on to allege that the second defendant as legal personal representative and administrator did not consider the best interests and legal entitlements of the plaintiff and failed to ensure that the plaintiff was made aware of her strict legal rights under law or *" ... seek to have access to independent legal counsel particularly at a time when she was a minor."*

15. While the statement of claim alleged, generally, that the plaintiff had been misled, it was not said how she had allegedly been misled. While it was alleged, generally, that the second defendant had misrepresented the actions being taken in the course of the administration, no particulars were set out as to what had been said, or when, or how whatever it was was allegedly said differed to what the second defendant had in fact been doing. While it was alleged that the second defendant failed to ensure that the plaintiff was aware of her legal rights, it was not suggested that the plaintiff was not in fact aware of her legal rights. Inferentially at least, the premise of the plaintiff's pleaded agreement not to contest Michael's claim to the farm on the basis of the promise that the family home would always be there for her was that the plaintiff was aware of her legal rights.

16. I find it impossible to reconcile the plea that the second defendant failed to ensure that the plaintiff was aware of her legal rights with the later plea that while the plaintiff was still a minor, a consultation was held with the family solicitor at which:- *"After a brief discussion between all parties the solicitor met with the plaintiff on her own and asked her various*

questions with regard to her intentions <u>on her one quarter share of the estate</u> and as regards the proposal that the first named defendant Michael Cunniffe would be allowed full ownership and control of the lands". Emphasis added.

17. The statement of claim went on to plead – by way, it was said, of general background – that the first defendant had paid the plaintiff's university fees and an allowance during term time and that between 1990 and 1996 *"the second named defendant Martina Whyte would occasionally give the plaintiff money"*, but not *" ... anything more than covered the basic financial expenses for the education that she was legally and morally entitled to from her father's instructions ..."* and, specifically, no *" ... lump sum financial payment that could be deemed to be a legal settlement of her share entitlement in the estate of Patrick Joseph Cunniffe deceased."*

18. The statement of claim is not easy to follow, not least because the narrative is inconsistent. Variously, the case is made that the plaintiff was told that there was very little money, and that in her second year in U.C.G. she was given to believe that she had enough money for a deposit on a decent house in Galway. Variously, the statement of claim asserts a claim to a share of the estate, and a family arrangement that she would not take her share. Variously, the plaintiff claims that there was absolutely no effort taken to prioritise and protect her interest and legal entitlements, and that a private meeting was arranged with the family solicitor to discuss just that. Variously, the plaintiff claims that she was not provided with much documentation; that she did not understand what she was provided with; and that she *"felt"* that her sister was keeping her in the dark. Variously, the statement of claim alleges that the plaintiff was misled, and that the second defendant has failed to furnish an administration account. Variously, the plaintiff acknowledges that her brother paid her university fees and an allowance during term time, and alleges that she worked her way through college, paying full fees, accommodation and living expenses herself.

19. While the prayer to the statement of claim replicates the general indorsement of claim – that is, claims for damages for a number of alleged wrongs – there were included in the body of the statement of claim a claim for an account of the administration, a claim for a declaration that the family home at Thornfort is the sole property of the plaintiff, and a claim for an order or declaration for the payment to the plaintiff of her legal share and entitlement in the estate.

20. I pause here to say that the statement of claim did not lay the ground for any claim that the family home was her property. The plaintiff did not allege a promise to that effect.

21. By his defence delivered, on 19th June, 2018, the first defendant pleaded laches, the Statute of Limitations, estoppel by delay and acquiescence, and traversed. It was also pleaded that the plaintiff's claim was frivolous and vexatious and bound to fail.

22. By her defence, delivered on 26th July, 2018, the second defendant pleaded the Statute of Limitations and alleged that the plaintiff had been guilty of inordinate and inexcusable delay. Most of what had been alleged in the statement of claim was denied but the second defendant highlighted that the grant of letters of administration on 16th November, 1988 had come after the plaintiff had attained her majority.

23. The statement of claim had pleaded there was never any formal written agreement by the plaintiff to give the first defendant her *"portion and entitlement"* in the estate, nor was there ever any written formal promise from the first defendant that the plaintiff *"would retain her rights to the family home"*. Moreover, although it had not been expressly pleaded that the first defendant was the registered owner of the land, or when he had been so registered, the statement of claim alleged that the plaintiff was unaware of how he *"ultimately"* – whenever that might have been – came to be registered as the owner of the lands. The second defendant pleaded that there had been a deed of family settlement in 1995 and that thereafter

the lands had been transferred to the first defendant in 1995. Both events, it was emphasised, post-dated the plaintiff's majority.

24. The second defendant pleaded that the plaintiff had received her share of the estate pursuant to the terms of the family settlement. She identified six precise payments amounting in total to IR£61,461.58 which had allegedly been made to the plaintiff, the last of which was in the sum of IR£13,776.00 and was said to have been paid in 2004. She also identified a repayment by the plaintiff to the estate of IR£5,107 in respect of the settlement with the Revenue. The statement of claim, it will be recalled, had acknowledged some payments but had not given any figures or dates. The second defendant pleaded that the plaintiff had been paid, altogether, IR£56,354.58, had never been denied information on the administration, and had never expressed disquiet or dissatisfaction as to the administration of the estate prior to the institution of the proceedings.

25. I pause here to note that the figures in the second defendant's defence are fairly obviously wrong. They do not tally with the figures in the inland revenue affidavit – later substantially depleted by the Revenue settlement – and do not match those set out in the affidavit of her solicitor filed in support of the motion which had led to this appeal. But the plaintiff does not appear to have noticed the discrepancy and in any event, nothing turns on the detail.

26. On 2nd November, 2018 the plaintiff delivered a reply which asserted that the action originated from the time when the plaintiff was a minor and that the defendants were aware of that and had *"subsequently reneged on promises and assurances given as regards living in the family home".* The plaintiff portended a full trial following a full and comprehensive discovery process by which she would seek any and all relevant background documentation relating to the administration of the estate and *"in addition the referred deed of family settlement of 1995 which has been referred to in the defence of the second named defendant*

and any and all subsequent documentation lodged with the Land Registry Property Registration Authority to effect the transmission of ownership of real property in the name of Patrick Joseph Cunniffe …". Significantly, as I will come to, the plaintiff did not contest the fact of the deed of family settlement in 1995 or the registration of the first defendant as owner of the lands in the same year.

27. On the same day, 2nd November, 2018, the plaintiff delivered a reply to the defence of the second defendant. Again she pleaded that the action originated from a period of time when the plaintiff was a minor. As to the deed of family settlement, the plaintiff pleaded that she was a stranger to the assertion of the parties entering into a deed of family settlement in 1995 and that *"no definitive precise date of signature of such referred to deed in 1995"* had been identified. The plaintiff went on to say that notwithstanding the assertion as to the existence of a deed of family settlement in 1995 she had continued to live in the family home thereafter, particularly in the years 1996 to 1999 during periods when she had worked locally and during periods of unemployment. The plaintiff did not dispute that she had received the several sums referred to in the second defendant's defence but suggested that it was not clear whether these had come from the estate or from a separate account established for her by her father. It was pleaded that:-

> *"The plaintiff felt frustrated and wondered in later years if she was being 'drip-fed' her inheritance in order to further control her spending and potential to make independent life choices. Ultimately, the plaintiff not knowing the extent of what her inheritance was could never plan for the future or use what turned out to be an extensive sum to put a deposit down on a house of her own. Irrespective of how much the plaintiff ultimately received from the estate it was her rightful inheritance and not the second named defendant's own money to control and release at her own personal discretion."*

28. As she had in her reply to the first defendant's defence, the plaintiff, in her reply to the second defendant's defence, portended a full trial following a full and comprehensive discovery process by which she would seek any and all relevant background documentation relating to the administration of the estate *"in addition the referred deed of family settlement of 1995 which has been referred to in the defence of the second named defendant ..."* and so on.

The motions to dismiss

29. By notice of motion dated 17th April, 2019 the second defendant applied for an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts dismissing the action on the ground that it failed to disclose a cause of action; alternatively, an order pursuant to the inherent jurisdiction of the court dismissing the action as being frivolous and vexatious; alternatively an order striking out the proceedings *"for failure to comply with the requirements of the Statute of Limitation Act, (sic.) 1957, as amended."*

30. I pause here to say that the High Court judge dealt with the motion as a motion to dismiss the action as being statute barred. The judge identified three claims in the statement of claim: first, that following representations concerning the family home the plaintiff agreed not to contest the vesting of the lands in the first defendant, secondly, a claim against the second defendant arising out of the administration of the estate, and thirdly, a personal injury claim. There is no appeal against the accuracy of that analysis and no cross-appeal against the implicit rejection of the contention that the statement of claim did not disclose a cause of action or that the action was frivolous and vexatious.

31. The second defendant's motion was grounded on the affidavit of her solicitor, Mr. Matthew J. Shaw, who summarised the pleadings and the administration of the estate. Mr. Shaw explained that what he referred to as the cash assets of the estate had been term

investment products which had been allowed to reach maturity before distribution. He deposed that the plaintiff had been paid a total of IR£39,076.08 between August, 1988 and *"the early 2000's"*. Mr. Shaw pointed out that at least fifteen years had elapsed since the last payment, that 29 years had elapsed since the plaintiff had reached her majority, and that 22 years had elapsed since the deed of family settlement had been signed.

32. Mr. Shaw exhibited what he described as a deed of family settlement which, he said, had been drawn up and signed by all of the siblings. If very loosely the document exhibited could be said to have been a family settlement, it was not a deed at all but a form of disclaimer which was executed under hand, only. However, since everyone has referred to this document as a deed of family settlement, I will bite my tongue and do the same.

33. The document was dated *"the day of 198 ."* and appeared to have been signed by each of Martina – who signed herself Martina Cunniffe – Padraic, Catriona and Michael. The signatures of Martina, Padraic and Michael were witnessed by Brendan Whyte – to whom, it was common case, Martina was married in late 1995. Catriona's signature was not witnessed.

34. The disclaimer recited the death intestate of Patrick Joseph Cunniffe, the fact that he had been survived by his four children, and a decision of Martina, Padraic and Caitriona to disclaim all of their right title and interest in the estate to the intent that Michael would take as the sole remaining person entitled to inherit. According to the document, Martina, Padraic and Catriona did disclaim and in consideration of the disclaimer Michael agreed to pay IR£30,000 to each of Martina, Padraic and Catriona.

35. On 23rd May, 2019 the first defendant issued a similar motion to have the action dismissed pursuant to O. 19, r. 28, the inherent jurisdiction of the court, and the Statute of Limitations. The first defendant's solicitor, Mr. Michael Collins, exhibited a copy of the

disclaimer; pointed to the lapse of time between the death of the deceased and the date of issue of the summons; and averred that any stateable case was long since statute barred.

36. On 6th February, 2020 the plaintiff swore a long affidavit in reply to the affidavits filed on both motions, mostly, to that of Mr. Shaw. The affidavit was largely argumentative but the plaintiff did aver that she had continued to live in the family home until 2003 and *"continued to use the family home intermittently after that until 2013."* As she had in her statement of claim, the plaintiff made much of the fact that she was a minor at the time of her father's death and at the time of the second defendant's application for a grant of letters of administration. She emphasised that the first defendant was *"in full possession and control of the bulk of the assets as and from 30th September, 1987"*. The plaintiff acknowledged that she had been given a bundle of documents in 1995 with a note to say that she should hold onto it for future reference. She did not say what was in the bundle of documents, or whether she had held onto it, but said that the second defendant had failed to explain the contents of the documents to her.

37. As to the disclaimer, the plaintiff referred to this as a purported deed of family settlement and referred to her purported signature but she did not deny that what appeared to be her signature was her signature. She deposed that she had no recollection of having signed the document or of the circumstances surrounding it. The plaintiff suggested that the fact that the document was incomplete and undated and the fact that her purported signature had not been witnessed meant that it was not a legal or enforceable document by any means.

38. Before issuing the second defendant's motion, Mr. Shaw had written to the plaintiff on 3rd January, 2019 suggesting that the claim was baseless and inviting her to discontinue the action. The plaintiff did not reply to that letter but by letter dated 25th February, 2019 requested that the second defendant make voluntary discovery of six categories of documents each of which was said to go *"to the heart of the case"*. The request for voluntary discovery

did not suggest or seek to show that the documents sought were relevant to the issues disclosed by the pleadings or necessary for the fair disposal of the action or for saving costs and it is not useful to dwell on the relevance or necessity of the discovery sought. However, as I will come to, the plaintiff would make much of the fact that she made a request for discovery which was not acceded to. On 28th May, 2019 the plaintiff issued separate motions for discovery by each of the defendants.

The first High Court judgment

39. The defendants' motions were heard together by the High Court (Meenan J.) on 20th February, 2020 and judgment was reserved. In a written judgment delivered on 13th May, 2020 [2020] IEHC 241 Meenan J. found that the claims which he had identified were *prima facie* statute barred but adjourned for further consideration an issue which had not been pleaded by the plaintiff but which had been raised in the course of her submissions as to whether she was entitled to rely on s. 71 of the Statute of Limitations, 1957.

40. In an admirably clear and concise judgment, Meenan J. summarised the background and the pleadings before, as I have said, identifying the three claims brought by the plaintiff. The judge characterised the case pleaded in respect of the family home as a claim of misrepresentation. By reference to the case pleaded – that the first defendant had taken a number of steps in 2003 to make the house uninhabitable – the judge found that any cause of action arose in 2003, or possibly 2004. The summons only having issued in May, 2016, he said that that claim was clearly statute barred by s. 11(2) of the Act of 1957.

41. The judge found that the claim against the second defendant as administrator was a claim in respect of the estate of the deceased or to a share or interest in such estate, the time limit for which, by s. 45 of the Act of 1957, as amended by s. 126 of the Succession Act,

1965, was six years from the date when the right to receive the share or interest accrued. Meenan J. noted that the identification of the precise date on which the plaintiff's right had accrued might be difficult but accepted the defendants' submission that it could not have been any later than the date in 2004 when the last distribution was made. That date being substantially upwards of six years prior to the issue of the proceedings, any such claim was *prima facie* statute barred.

42. As to the claim for personal injury, the judge concluded that it was clear from the statement of claim that the claim being made was that the plaintiff's upset and personal injury stemmed from the events of 2003 and 2004, so that it, too, was statute barred.

43. As to the claim for damages for personal injury, the judge found that it was clear from the statement of claim that from the plaintiff's point of view, things started to go wrong from at the latest 2003 or 2004 and the plaintiff's upset and alleged personal injury stemmed from the events of those years. The judge noted that she had not attempted to rely on the *"date of knowledge"* provisions of the Statute of Limitations (Amendment) Act, 1991. There is no appeal against the judge's conclusion that the personal injury claim was also statute barred.

44. The judge disposed shortly of the plaintiff's reliance on the fact that she was a minor at the date of her father's death. The plaintiff attained her majority on 23rd July, 1988, after which the relevant time limits applied. There is no appeal against that finding. Nor could there be. The reference in the written judgement to September, 1988 is clearly a mistake.

45. While there had been no plea to that effect in the reply delivered to each of the defences, the judge noted that the plaintiff had referred in her written submissions to s. 71 of the Statute of Limitations, 1957 which, in the case of an action based on the fraud of the defendant or in a case in which the right of action is concealed by fraud, postponed the running of time until such time as the plaintiff has discovered the fraud or could with reasonable diligence have discovered it. That, he said, was an issue which would have to be

resolved. The judge directed an oral hearing on the issue whether the plaintiff was entitled to rely on s. 71 and directed that the plaintiff should, within six weeks, provide to each of the defendants (i) full and detailed particulars of the fraud she was relying on, (ii) when the alleged fraud occurred and who allegedly perpetrated it, (iii) the date or dates on which the plaintiff allegedly discovered the *"fraud"*, and (iv) the circumstances in which the plaintiff discovered the fraud alleged.

The alleged "fraud"

46. As directed by Meenan J. particulars of the alleged fraud – or at least particulars of what it was the plaintiff contended amounted to fraud – were provided by letter dated 24th June, 2020, as follows:-.

> *"(i) Full and detailed particulars concerning the fraud she is relying upon for the purposes of s. 71 of the Act of 1957;*
>
> *Fraud on the part of both of the defendants in this action and particularly firstly the fraud of the second named defendant Martina Whyte in her position as administrator of the estate of the late Patrick Joseph Cunniffe deceased where she was in breach of her oath for administrator to the High Court furnished as part of her application for grant of administration to the estate of the late Patrick Joseph Cunniffe deceased which issued to her as Administrator on 16th November 1988. The actions of the second named defendant also led to my right of action being concealed until 23rd day of April 2019 when on receipt of a letter dated 18th day of April 2019 from Kelly Caulfield Shaw Solicitors acting for the second named defendant it enclosed a grounding affidavit of Matthew J Shaw solicitor exhibiting a copy of a purported but disputed undated deed of family settlement in which a signature purporting to be*

mine appears on the second page thereof but which document I have absolutely no prior knowledge of whatsoever or the actual contents of same referred to. Not only did I not have any prior knowledge of the existence or the contents of this disputed deed of family settlement my right of action as regards the existence of same was concealed not just in the many years leading up to the point of issuing of the High Court proceedings but critically for almost 3 years after the issuing of such proceedings.

As regards the first named defendant he at all times acted in concert with the second named defendant in order to ultimately deprive me of my legal entitlements to the estate of my late father and more particularly by way of proof of their mal (sic.) fides both defendants acted in concert with regard to a premeditated scheme to evade the payment of substantial Capital Taxes to the State by utilizing a section 49 adverse possession application to the Land Registry in order to have the first named defendant registered as owner of the balance farm lands in the estate without having to incur any capital tax liability on the aggregated total inheritance he had effectively received from the estate.

(ii) When this alleged fraud occurred and who perpetrated it;

In the absence of myself the plaintiff having access to all of the requested documentation in the respective motions for discovery against both defendants and because it would be necessary to have an expert report carried out on the disputed deed of family settlement, it would be impossible for me to precisely give dates but as of now it is possible for me to say that the alleged fraud by both defendants occurred between the dates 30th September 1987 and April 2019.

(iii) The date or dates upon which the Plaintiff discovered the 'fraud';

The Plaintiff did not discover the fraud until 23rd April 2019.

*(iv) The circumstances under which the plaintiff discovered the 'fraud' alleged***;**

On 23rd day of April 2019 when on receipt of a letter dated 18th day of April 2019 from Kelly Caulfield Shaw Solicitors acting for the second named defendant it enclosed a grounding affidavit of Matthew J Shaw solicitor exhibiting a copy of a purported but now disputed undated deed of family settlement in which a signature purporting to be mine appears on the second page thereof but which document I have absolutely no prior knowledge of whatsoever or the actual contents of same referred to and nor was my signature witnessed unlike those of my other siblings referred to in the document. It is my case that (a) the signature on this document is not mine and was forged by a third party or (b) if it was ultimately proven to be my signature then the second named defendant Martina Whyte deliberately mislead me into signing a document I had absolutely no knowledge of until seeing same for the very first time on 23rd April 2019.

47. I pause here to say that I do not see what the alleged fraud was. There is no suggestion that the plaintiff was misled as to what her rights were. There is no indication as what, if any, impact the deed of family settlement had on the plaintiff's rights or the institution of the action.

48. It is no part of the plaintiff's case that the deceased had any property other than that disclosed in the inland revenue affidavit. The claim against the second defendant is variously that she did not pay the plaintiff her quarter share of the estate and that she failed to ensure that the plaintiff would have the use of the family home in lieu of the difference between her quarter share and the money which she was in fact paid. On her own case, the plaintiff was

aware from very soon after her father's death that she was not to be paid her quarter share. It makes no sense that the plaintiff might have first discovered her right of action nearly three years after she issued her plenary summons. The proposition that the defendants might have concealed a cause of action based on the 1995 agreement is impossible to reconcile with the fact that the plaintiff contested the validity of that agreement. As I will come to, the plaintiff agreed with the High Court judge that the *"fraud"* she was relying on was that the deed was undated, that her signature had not been witnessed, and that she had first learned of it in April, 2019.

49. Any irregularity in the manner in which the lands came to be registered in the name of the first defendant – and I emphasise that there is not a scintilla of evidence of any such irregularity – is a matter between the defendants and the Revenue Commissioners and does not impact on the plaintiff's position and the plaintiff did not pursue the alleged tax evasion point.

50. The trial of issue as to the alleged fraud or fraudulent concealment was delayed by reason of the COVID-19 restrictions and eventually came before Meenan J. on 14th January, 2022.

51. In the meantime, on 24th June, 2021 – fully sixteen months after the written judgment and very nearly one year after the particulars had been delivered and shortly before the case was listed for mention before the High Court on 29th June, 2001 – the plaintiff filed a further affidavit by which she sought to revisit the issues which had already been decided by the High Court; specifically, as to when the plaintiff had vacated the family home and the ruling that the defendants' motions to dismiss should be heard and determined before the plaintiff's discovery motions. The judge had sixteen months earlier ruled that the fraud claim should be dealt with on oral evidence and had something like two years earlier given his ruling as to the

sequencing of the motions and at the case management hearing ruled out reliance on this further affidavit.

52. On 5th January, 2022 the plaintiff filed a further affidavit, which she had sworn on 20th December, 2021 which was largely argumentative and which largely repeated what had been said in the affidavit of 24th June, 2021.

53. I will need to return to these affidavits in due course but before I put them aside for the moment, I want to identify something which may give further insight into the *"assistance"* which the plaintiff has had with this litigation. In her affidavit of 24th June, 2021, the plaintiff referred to and exhibited a post office book in the name of her mother from the 1960s which showed a closing balance on – it looks like 27th February, 1970 – of twelve shillings and some pence which the National Treasury Management Agency was prepared to pay out to whomever was entitled. The photocopy is unclear but it does not matter how many pence. As I have recently had the occasion to do, I should explain for the benefit of younger readers that there were twenty shillings in a pound, and twelve old pence in a shilling. Following the euro conversion, the post office deposit is worth about 76 cent.

54. Mrs. Cunniffe, it will be recalled, pre-deceased the deceased. The post office book was said to show that the administration of the estate of the deceased had not been completed and that the Statute of Limitations could not be said to have run until this had been done. In other words, the suggestion was that not only was the plaintiff's claim to the estate of the deceased not statute barred, her right to receive the share or interest had not yet accrued. This, of course, is fundamentally inconsistent with her claim that she has not been paid whatever it is she claims she has not been paid, as well as with the judge's finding – which has not been appealed – that any cause of action ran from the date on which the property the subject of the claim came into the hands of the legal personal representative.

55. At the hearing before Meenan J. on 14th January, 2022 the plaintiff brought with her to court an eleven page document intended to serve either as a script for an oral submission or a written submission, which the judge took away and read with a view, as he said, to identifying those parts of the submission which met the various directions which he had given. The plaintiff's written submission touched on the so-called deed of family settlement but in the main it more or less sought to repeat the points made in the plaintiff's affidavit of 24th June, 2021 – which the judge had ruled out – and, indeed, made reference to that affidavit and the exhibits to it. When the hearing resumed the judge did not say anything about the written submission – save that he had read it – and he gently and firmly steered the plaintiff to the issue which was properly before the court which, by reference to the particulars, was said to somehow arise out of the deed of family settlement.

56. The plaintiff submitted, as was the fact, that the so-called deed of family settlement was undated and that her signature was not witnessed. She swore that she had first seen it in April, 2019. Theretofore, as far as the plaintiff understood, there was a verbal agreement within the family that the family home would be there for all of the siblings and the plaintiff had a right to live there. That, said the plaintiff, was the fraud she was relying on. She acknowledged that she had signed the document but suggested that she might have done so blindly, not knowing the contents of it. The plaintiff said that she could not say if the document had been signed prior to her attaining eighteen years of age but acknowledged that it could be inferred from the fact that the signatures of the other parties had been witnessed by Mr. Whyte that it had been executed in the nineties. The appellant said that she could not remember signing the document but doubted, when it was put to her, that she had signed it in the parlour of the family home.

57. The second defendant gave evidence that the document had been signed at about Easter 1995 in the parlour of the family home. She said that she was to be married in the

following December and wanted to finalise the administration of the estate before then. She explained that the document had been prepared in April, 1989 but that the administration had been halted in May, 1989 when the Revenue investigation commenced.

58. The second defendant was cross-examined briefly by the plaintiff. The plaintiff asked why the second defendant had not drawn up a fresh deed of family settlement with the current date, to which the answer was that it had been an oversight. The plaintiff – who in the meantime had had a handwriting expert examine the document – acknowledged that she had signed the document but said that she had no recollection of being in the parlour. Having no recollection of having signed the document, the plaintiff could not really contest the second defendant's evidence as to its provenance and purpose and she did not.

59. At the conclusion of the evidence the plaintiff submitted that if the court were to accept that the agreement was a valid document, she would ask for the monies promised in it which she had not received.

The second High Court judgment

60. The High Court judge gave an *ex tempore* judgment on the fraud issue. He said that the plaintiff's case was that the fraud concerned the deed of family settlement which, first, was undated, secondly her signature had not been witnessed, and thirdly that she had not had independent legal advice. He found that the suggestion that the plaintiff first learned of the deed of family settlement in April, 2019 was entirely inconsistent with the fact that it had been referred to in the defence and the reply. The judge summarised the evidence which had been given by the second defendant which, as he said, had not been seriously contested, and which he accepted. He found that the allegation of fraud by the plaintiff had not been substantiated in any way and that the plaintiff was not entitled to rely on s. 71 of the Statute

of Limitations. It followed, he said, that the defendants were entitled to orders in the terms of the notices of motion that the plaintiff's claims were statute barred.

The appeals

61. By identical notices of appeal filed on 9th February, 2022 the plaintiff appealed against the judgment and order of the High Court dismissing her action against each of the defendants.

62. It is said, first, that the judge erred in law and in fact in directing that the appellant had to prove fraud in order to obviate the effects of the Statute of Limitations and failed to take into account that the appellant, in order to prove fraud, would require discovery of all documentation associated with the administration of the estate and the registration of the first respondent as owner of the lands.

63. Secondly, it was said that the judge erred in law in his decision on the admissibility of what was referred to as the purported undated deed of family settlement, and then proceeded to decide that the appellant was not entitled to payment of the IR£30,000 under the deed on the basis of the Statute of Limitations. In her notices of appeal, the appellant insisted – as she had in the High Court – that she had not had sight of the deed of family settlement until it was exhibited in the affidavits filed in support of the motions to dismiss.

64. Thirdly, the appellant protested that the second defendant had not filed an affidavit as to the facts and circumstances surrounding the administration of the estate and, more critically, the *"inception and completion"* of the deed of family settlement. The appellant protested that the judge had allowed the second defendant to give evidence as to the facts surrounding what she referred to as the disputed family settlement, of which she had had no prior notice by affidavit.

65. Fourthly, it was said that the High Court judge erred in finding as a fact that the doctrine of promissory estoppel did not apply to the respondents' promise that she would have *"a right of residence"* in the family home for her lifetime and that the appellant had effectively abandoned that right many years prior to the litigation when in fact she had continued to have access to and the use of the family home until 2014.

The contested affidavits

66. In support of her appeal the appellant filed a twenty page written submission with a 48 page appendix. The appendix comprised, in the main, the two affidavits – sworn on 22nd June, 2021 and 20th December, 2021 – which had been filed between the delivery of the written judgment of the High Court on 13th May, 2020 and the time when the fraud issue came before the court. The High Court had not permitted the appellant to rely on those affidavits and the respondents' solicitors had objected to their inclusion in the books of appeal but – as she had in her submissions to the High Court – the appellant tried to forestall the risk that she would not be allowed to rely on them by quoting extensively from the affidavits in her written submissions.

67. The books of appeal included the index to a 48 page appendix which the appellant had wished to have included but not the material in the appendix. It was evident from the index that what the appellant wished to put before the court were the two contested affidavits, a copy of her submission to the High Court on 14th January, 2022, and a copy of a Reiki Second Degree Certificate dated April, 1995 – which was not before the High Court but which the appellant wished to argue would provide her with an alibi for the time at which the second respondent had said that she – the appellant – had signed the deed of family arrangement. At the oral hearing of the appeal the appellant produced a booklet of all of the

material. As to the appellant's submissions to the High Court, counsel for the respondents conceded that these ought to have been in the books of appeal. Rather than ruling there and then on the issue as to whether the remainder of the material was properly before the court, the court decided to receive all of the material *de bene esse* and to rule on the question later.

68. In his written judgment on 13th May, 2020, the High Court judge had directed that particulars of the alleged fraud be delivered by letter, and that was done by the appellant's letter of 24th June, 2020. The transcript of the hearing before the High Court on 14th January, 2022 shows that the judge had previously ruled that the fraud issue was to be decided on oral evidence and that the appellant was not entitled to rely on these affidavits and the hearing proceeded on that basis. There was no appeal against the directions given as to the progress and hearing of the fraud issue and the affidavits included in the appendix to the appellant's written submissions were not opened to the High Court. This being an appeal, the appellant is not entitled to rely on any material which was not before the High Court. The appellant in her written submissions sought to argue that the failure of the judge to allow her to read these affidavits into the record was extremely damaging to her case but this was not a ground of appeal. In any event – by reference to the quotations in the written submission – most of what the appellant had to say in these two affidavits was argumentative and repetitious and sought to revisit the decision long before made and acted on that the motions to dismiss would be decided before the discovery motions.

69. Similarly, the Reiki certificate was not before the High Court and is not properly before this court. In any event, the appellant's attempt to prove an alibi for the time at which she signed the deed of family settlement – and sign it she did – is misconceived. The evidence of the second respondent was that the appellant signed the document *"around Easter time 1995"* and not, as the appellant variously contends, *"over the Easter holiday period in 1995"* or *"at the Easter holiday weekend"*.

The arguments on the appeal

70. On the oral hearing of the appeal the appellant read out and later handed in a seventeen page script that was largely based on the written submissions which she had previously filed.

71. The appellant's written submission starts with an observation that the adjudication by the High Court on what the appellant refers to as the merits of her claim was not assisted by the COVID-19 interruptions and suggests that in the interim a lot of the underlying nuances of the case were lost. In that the appellant is obviously mistaken. In his judgment of 13th May, 2020 the High Court judge found that the appellant's claims were *prima facie* statute barred. The only issue left over was whether the running of time against the appellant had been postponed by fraud or fraudulent concealment.

72. The appellant in her written submissions suggests that the judge made a major error in his judgment of 13th May, 2020 in finding that she had vacated and finally stopped using the family home in 2004 when – she would now say – she actually continued to have the use of it until 2014. Part of the respondents' answer to this is that the appellant did not appeal against the judgment of 13th May, 2020 but only against the judgment and order of 14th January, 2022. The appellant counters that there was no order made before 14th January, 2020 so that she could not have appealed any earlier than she did. On this issue, I am satisfied that the appellant is correct. On the view he took of the case – against which there is no appeal – the judge could not finally dispose of the motions to dismiss without deciding whether the running of time had been postponed by fraud or fraudulent concealment. The appellant was perfectly within her rights to raise any issue she wished arising out of either the written judgment or the later oral ruling.

73. The first respondent submits that the High Court judge determined in his written judgment that the claims were statute barred. Well, he did, and he didn't. While the judge spoke of the claims being statute barred, the substance of the judgment was that the claims were *prima facie* statute barred. The object of the further hearing was to allow the appellant to make and to make out – if she could – the case first hinted at in her submissions on the first hearing that the running of time had been postponed by fraud or fraudulent concealment such that the action had been brought in time. That said, the appeal against the findings in the written judgment is limited to the findings said to have been made in respect of the occupation of the house.

74. On the substance of the issue as to when the promise as to the use of the family home was allegedly broken, the appellant's submission on the appeal acknowledges that the she was not living in the house after 2004 but suggests that between then and 2014 she visited the house and did some work in the garden. Not the least difficulty with the suggestion that the appellant continued to have the use of the house after 2004 is that it is not the case pleaded. In any event, the substance of the claim is that the appellant was deprived of the use of the house in and from 2003 or 2004. The corollary to the suggestion that time did not begin to run until 2014 is that the appellant had no cause for complaint for so long as she was allowed to visit the house and potter about in the garden. Never mind that that is not sensible, it is not the case which the appellant made.

75. The issue brought before the High Court on the respondents' motions was whether the claims made against them were statute barred. As far as the family home was concerned, the claim was that a promise had been made soon after the death of Mr. Cunniffe that the family home would always be there for the appellant but that the house had been rendered entirely uninhabitable in 2003 or 2004 by the disconnection of the water and the removal of the range. The case pleased was that the appellant considered Thornfort (the family home) to be her

primary residence up until approximately August 2004. If it was not to be inferred from that that thereafter the appellant did not consider the house to be her home, the case she was making was put beyond doubt by the plea that:-

> *"In September, 2004, the plaintiff, realising the level of hostility which existed to her availing of the use of the family home at Thornfort moved to Killeeneen, Craughwell, Co. Galway and the family home now remains derelict."*

76. The case which the appellant was making was underlined by the plea in the reply she delivered to the second defendant's defence in which she pleaded that after the first respondent had made the house entirely uninhabitable she had gone in and removed items she deemed valuable to her such as their late mother's wedding dress and their parents' wedding album. It is true, as I have observed, that the appellant in her affidavit of 6th February, 2020 filed in answer to the motions to dismiss, deposed that after 2003 she had *"continued to use the family home intermittently … until 2013"* but that was not the case which she had pleaded. The case pleaded was that the contract which she had made shortly after her father's death to forego any claim to the land had been broken in 2003 or 2004 when the house had been rendered uninhabitable.

77. The plaintiff as a litigant in person may perhaps be forgiven for her misunderstanding but the High Court judge did not find as a fact that the appellant had vacated the house in 2004. Rather, he examined the claims made by the appellant in her statement of claim which, in the case of the house, was – at para. 18 – that *" … the plaintiff states that she continued to live in the family home for extended periods until 2003, at which point she alleges that the first defendant took a number of steps to make the home uninhabitable."*

78. Incidentally, the suggestion in the first respondent's written submissions that the judge made a number of findings of fact is also based on a misunderstanding of what he in fact did. The judge did not decide that the alleged promise in relation to the appellant's use

of the house was broken in 2004 – or even that the alleged promise had been made – but rather, by reference to the statement of claim, that the claim based on the alleged promise which had allegedly been broken in 2004 was statute barred.

79. As to the appellant's discovery motions, the appellant argues that the High Court judge erred in his finding that the motions to dismiss should be heard prior to the discovery motions on the basis that if the motions to dismiss were successful the discovery motions would be moot. She suggests that *"as a matter of course"* he should have dealt with the discovery motions first *"…as full discovery would be a normal prerequisite for a plaintiff to be able to 100% litigate an issue of fraud against the defendants."* Again, the appellant is mistaken.

80. As a matter of basic principle, discovery is available where the documents sought are relevant to the issues to be decided and the disclosure is necessary for the fair disposal of the action and for saving costs. The first step in every case is to identify the issues to which the documents sought are said to be relevant. The issue brought before the High Court by the respondents' motions was whether the appellant's claims were statute barred. That necessitated an examination of the statement of claim to ascertain what the claims were and when the causes of action accrued. The issue which arose when the appellant sought to rely on s. 71 of the Act of 1957 was whether any of the claims could be said to be based on fraud, or whether the existence of any cause of action had been concealed by fraud. If the High Court had heard the appellant's discovery motions and *a fortiori* had made orders for discovery the costs would have been greatly increased. The appellant was not entitled to discovery to facilitate an examination of the conduct of the administration, generally, or the transfer of the lands to the first respondent, generally, with a view to establishing what case she might have. That would have been a classic fishing exercise.

81. The appellant argues that the effect of the respondents' motions was to put the focus on extremely narrow issues and to kill her case at what she calls the interim stage and without the benefit of access to full discovery. In that she is correct. The object of the respondents' motions was to stop the case in its tracks because the claims were statute barred. If the issue whether the appellant's claims were statute barred could be said to have been extremely narrow, it was a fundamental issue. If the appellant's claims were statute barred, it would have been at best futile to have allowed it to continue and it was right to bring the action to an end. To have heard the appellant's discovery motions and to have ordered the respondents to make the discovery sought before the motions to dismiss were heard would have been to risk a waste of time and costs.

82. As to the hearing before the High Court on 14th January, 2022, the appellant in her written submissions asserted that she had been blindsided by the fact that the fraud issue was heard and determined on oral evidence but agreed at the oral hearing of the appeal that it was plain from the written judgment that the later hearing would be on oral evidence. She further complained that the evidence of the second respondent had not been *"telegraphed"* to her in advance of the hearing: but inasmuch as the object of the hearing was to establish whether the appellant could make out a case of fraud, it had been the appellant who had dictated the agenda. In her particulars of 24th June, 2020 the appellant had put in issue the circumstances in which – if at all – she had signed the deed of family settlement and cannot have been surprised by evidence that she had signed it and of the circumstances in which she had come to sign it. In any event, as I will come to, the deed of family settlement was not relevant to whether the appellant's claims were statute barred.

83. In her submissions on the appeal the appellant had a good deal to say about the 1995 agreement. The fact of the matter is that the appellant acknowledged that she signed this document and her insistence that she first saw it when it was exhibited in 2019 was utterly

irreconcilable with the admitted fact that she had signed it. The appellant continued to try to make much of the fact that the document was undated and her signature was not witnessed but the fact of the matter was that the evidence of her sister as to the time at which and the circumstances in which the document was signed was unchallenged.

84. In her written submissions on the appeal, the appellant devotes five pages to the evidence given to, and accepted by, the High Court as to the time at which and the circumstances in which the 1995 agreement came to be signed. Without dwelling on the detail, the appellant – by the way, by reference to accounts of events which were not put to the second respondent in the High Court and are not in evidence – would question the accuracy of her sister's recollection as to the precise date and place at which the agreement was signed without resiling from her admission that she did sign it.

85. Part of the appellant's second ground of appeal was that if the 1995 agreement was admissible, the appellant should have had judgment against the first respondent for the IR£30,000 plus interest which she calculated at €118,893.40. That money, it was said, had not been paid and the respondents were said to have acknowledged that such money as had been paid had been paid in furtherance of the administration of the estate of Mr. Cunniffe.

86. It will be recalled that the case pleaded by the appellant was that there had been nothing in writing. It necessarily follows that there was no claim advanced on foot of the 1995 agreement. So much of the appellant's submission as is based on the enforceability of the 1995 agreement is inconsistent with her case that it is null and void. It does rather appear that the 1995 agreement does not reflect the manner in which the administration was dealt with. According to the agreement, the first respondent was to have <u>all</u> of the assets of the estate, from which he was to pay each of his siblings IR£30,000, but it is common case that distributions had theretofore been and were thereafter made (including to the appellant) from the deceased's deposits and investments.

87. It is obvious on the face of the document that the deed of family settlement is not a deed. It is no less obvious that the document does not reflect either version of the alleged agreement. If an action had been brought in time against the first respondent, an interesting question might have arisen as to whether all of the parties might have been entitled to plead *non est factum* or to have claimed rectification or whether the first respondent was entitled to credit for the money paid to the appellant in respect of the entitlement which she had disclaimed but that is entirely academic.

88. The appellant did not claim that she had disclaimed her share in her father's estate or that the first respondent owed her IR£30,000 on foot of the 1995 agreement. The suggestion in the second ground of appeal that the High Court judge decided that the appellant was not entitled to payment of the IR£30,000 on the basis of the Statute of Limitations is just wrong. The judge did not decide that the appellant was not entitled to payment of the IR£30,000 plus interest – whether on the basis of the Statute of Limitations or other – for the simple reason that it was not part of her claim.

89. I have given consideration to all of the arguments made by the appellant in the hope of explaining fully why she has lost her appeal. But the truth is that as far as the issues before the High Court, and this court on the appeal, are concerned, the deed of family settlement was a blind alley.

90. To go back to the beginning, the appellant's case was that (1) she had not been paid all of her share of her late father's estate, (2) that the respondents had reneged on an agreement in relation to the family home, and (3) that she had suffered personal injuries by reason of the alleged conduct of the respondents. The deed of family settlement was first introduced into the equation by the respondents, who relied on it – in part – in their defence of the claims. However, the respondents did not rely on the deed of family settlement for the purpose of their argument that the claims were statute barred.

91. The High Court judge having decided – by reference to the pleadings – that the claims were *prima facie* statute barred allowed the appellant the opportunity to show – if she could – that by reason of s. 71 of the Statute of Limitations, the claims were not statute barred. In doing so, the judge allowed the appellant as a litigant in person very considerable latitude. In her submissions on the motion to dismiss filed on 20th February, 2020 the appellant threw out the suggestion that she relied on s. 71 of the Statute of Limitations without any indication of what the alleged fraud or fraudulent concealment might have been, or, indeed, that she had any understanding of what s. 71 provided.

92. The first respondent would make much of the fact – and it is the fact – that the appellant made no allegation of fraud in her pleadings or in the affidavit which she filed in response to the motion to dismiss. However, there is no cross-appeal against the decision of the judge to direct the second hearing so as to allow the appellant the opportunity to make the case – if she could – that her claims were not after all, as they appeared to be, statute barred.

93. As far as the motions to dismiss were concerned, it was the appellant who introduced what she described as the purported deed of family settlement. The particulars of the alleged fraud delivered on 24th June, 2020 did not disclose any alleged fraud. The appellant cannot have been misled by a document of which – on her case – she had no knowledge until three years after she issued her summons. Nor could it sensibly have been said that the respondents concealed the existence of any of the causes of action which – on the appellant's case – were the subject of proceedings issued three years prior to her first knowledge of the document. Having introduced the deed of family settlement into the motion to dismiss, the appellant then sought to make the case that it was invalid, variously on the basis that she had not signed it, that if she had signed it she might have been a minor at the time she signed it, and that even if she had not been a minor, the document was invalid because it had not been dated and her signature had not been witnessed. None of this went to the issue before the

High Court which was whether any of the plaintiff's causes of action were based on fraud or had been fraudulently concealed. It certainly had nothing to do with the date on which the appellant had been prevented from using the family home.

94. The transcript of the hearing before the High Court shows that the case the appellant made – as was evident from the face of the document – was that the document was undated and that her signature had not been witnessed and that she had had no independent legal advice before she signed it. The appellant's declared object in bringing up the issue of fraud was to defeat the Statute of Limitations but she was not able to articulate how the deed of family settlement, or the alleged infirmities in it, or the absence of independent legal advice, might have done so.

95. The High Court judge found that the evidence adduced by the appellant fell *" ...very, very, very far short of establishing any type of fraud at all ..."*. In that, the judge was undoubtedly correct. The only issue before the High Court on 14th January, 2022 was whether the appellant could show that the running of time for the bringing of her action had been postponed. The appellant having failed to do so, it followed, as the judge found, that the respondents were entitled to the orders sought.

Conclusions

96. The legislative policy of the Stature of Limitations is to prevent the litigation of stale claims.

97. This action was commenced on 4th May, 2016. The claims made went back to the date of the parties' father's death on 30th September, 1987 – nearly thirty years previously – and events of 2003 and 2004 – eleven or twelve years previously.

98. The appellant's claims (1) that she had not been paid all of her share of the estate, (2) that the respondents had reneged on an agreement that she would be entitled to reside in the former family home, and (3) that by reason of the matters complained of she had suffered personal injury, long predated the issue of the plenary summons.

99. The appellant, as a litigant in person, was afforded very considerable indulgence by the High Court judge in being allowed the opportunity to show – if she could – that the running of time had been postponed by fraud but could not articulate, much less prove, that it had.

100. The appellant has failed to show any error on the part of the High Court judge.

101. It follows that her appeal must be dismissed.

102. Provisionally, it seems to me that the respondents, having been entirely successful on the appeal, are entitled to an order for their costs. If the appellant wishes to contend for any other order she may give notice to the respondents' solicitors and the Court of Appeal office within 21 days of the electronic delivery of this judgment, in which case the panel will reconvene for a brief hearing. If the outcome of any such hearing is that the indicative view as to costs is confirmed, the appellant will be liable for those costs, also.

103. As this judgment is being delivered electronically, Faherty and Pilkington JJ. have authorised me to record their agreement with it.