

**THE HIGH COURT**

**[Record No. 2018/9261 P.]**

**BETWEEN**

**ARTHUR O'NEILL**

**PLAINTIFF**

**AND**

**CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 9,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 10,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 11,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 12,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 16,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 14,  
CELTIC RESIDENTIAL IRISH SECURITISATION PLC NO. 15,**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Barr delivered electronically on the 7th day of July, 2020**

**Introduction.**

1. The background to these proceedings can be summarised in the following way: in March and April 2007, the plaintiff availed of three loan facility offers from First Active plc: a loan of €230,000 on loan account 40463704 (hereinafter the '3704 loan'); a loan of €595,000 on account no. 40463908 (hereinafter the '3908 loan') and a loan for €1,100,000 on loan account no. 40472931 (hereinafter the '2931 loan').
2. The plaintiff maintains that it was agreed between him and First Active plc that each of these loans were to be repaid by way of interest only repayments for a period of 25 years. He stated that he was shocked and horrified to learn in 2012 that Ulster Bank, which had taken over the business of First Active plc, maintained that the interest only period was only for a period of five years from the time that the loans were taken out in March and April 2007.
3. According to Ms. Catherine Corbett, Head of Term Funding and Money Markets with Ulster Bank Ireland DAC, two of the plaintiff's loans (nos. 3704 and 3908) were sold by Ulster Bank Ireland Limited to the sixth defendant. This was done by way of securitisation, whereby the legal title to the loans remained with Ulster Bank Ireland Limited (now Ulster Bank Ireland DAC). That mortgage sale agreement was dated 20th November, 2008.
4. Ms. Corbett stated in her affidavit that by way of mortgage loan repurchase deed dated 13th May, 2015, Ulster Bank repurchased the beneficial interest in the loans, including the plaintiff's two loans, being loans numbers 3704 and 3908.
5. According to Ms. Corbett, the plaintiff's loan bearing no. 2931 was not securitised with the sixth defendant. She further states that the seventh defendant never had any dealings of any nature with any of the loans made to the plaintiff.
6. On 23rd July, 2015 a number of loans, including the plaintiff's three loans were sold by Ulster Bank to Promontoria Holding 152 BV.

7. The plaintiff states that in early 2017, a Mr. Ken Fennell was appointed receiver by Promontoria Finn Limited over three of his properties. In 2018, Mr. Fennell on behalf of Promontoria Finn Limited commenced proceedings against the plaintiff to recover possession of the properties.
8. On 23rd October, 2018 the plaintiff issued the present proceedings against the seven companies named in the title hereof. In his plenary summons, he claimed damages for breach of contract, negligence, negligent misrepresentation and negligent misstatement, concealment, fraud and deceit on the part of the seven defendants, their servants or agents.
9. As the first five named defendants had been put into liquidation, the plaintiff had to seek liberty from the court pursuant to s.678 of the Companies Act, 2014 to continue the proceedings against the first to fifth named defendants. That application was heard on 26th June, 2019, at which time the High Court (O'Connor J.) refused the plaintiff permission to continue his proceedings against the first to fifth named defendants.
10. On 20th September, 2019 the plaintiff issued his statement of claim in the present proceedings. In summary, the plaintiff made the case that his initial borrowings had been with Permanent TSB. However, he was approached by a representative of First Active, who offered to refinance his loans, by offering loans to him on the very attractive basis of each loan being a 25-year interest only loan. His primary allegation is set out in the following terms: -

*"Unfortunately, the day I signed the 25-year interest only loan on 04/04/2007, or shortly thereafter, First Active manufactured another separate loan offer with interest only for five years (and interest and capital repayment for 20 years).*

*Five years later in late March 2012 Ulster Bank switched me from the 25-year interest only repayment plan to capital and interest as per their manufactured false loan offer as mentioned above, (again this is missing because of the securitisation process).*

*All of this history as outlined above, was lost in the transfer of the loans in securitisation (SPV process) and is not in the remit of Promontoria Finn Limited, neither does the service provider Asset Link have access to this history and this gives rise to my claim against Celtic Residential Irish Securitisation plc 14 and 15.*

*Had my loans not been securitised I would be able to demonstrate that in 2007 I had a 25-year interest only loan contract and that the bank manufactured a new contract in 2012 putting me on interest and capital.*

11. In his statement of claim, the plaintiff alleges that the original paperwork surrounding the loan offer of 4th April, 2007 that he had depended on, has disappeared. He stated that had his loans not been securitised this would not have happened. He stated that the crux of the matter was that the false loan offer in 2012 was manufactured by an entity named

as Celtic Irish Residential Securitisation plc and that that was the basis of his claim against the defendants. In his prayer for reliefs, he sought a declaration that the original loan offer of 4th April, 2007, was the proper loan offer and that the second loan offer of 2012, was manufactured and not a proper loan offer. He also claimed damages for trespass, breach of contract and misrepresentation, together with general damages and "All discovery of all documents"; together with an unspecified claim for "other reliefs" and costs.

**The present application**

12. This is an application by the sixth and seventh named defendants seeking an order pursuant to O.19, r.28 of the Rules of the Superior Courts striking out the plaintiff's proceedings on the grounds that they disclose no reasonable cause of action against them, or on the basis that the cause of action is shown on the pleadings to be frivolous or vexatious. In the alternative, the plaintiff seeks an order pursuant to the inherent jurisdiction of the court striking out the proceedings as being an abuse of the process of the courts, as the action is bound to fail against the sixth and seventh named defendants.

**Submissions on behalf of the sixth and seventh named defendants.**

13. The application on behalf of the sixth and seventh named defendants was grounded upon the affidavits sworn by Ms. Catherine Corbett on 12th December, 2019 and 24th June, 2020. It is not necessary to set out the content of those affidavits in extenso; a brief summary will suffice. In her first affidavit, Ms. Corbett exhibited the documentation surrounding the creation of each of the loans by First Active plc in March and April 2007. She deposed to the sequence of events concerning the securitisation of two of the plaintiff's loans by Ulster Bank, as set out earlier in the judgment. In particular, it was accepted that Ulster Bank, which had taken over the business of First Active, had transferred the beneficial interests in two of the plaintiff's loans (being loans nos. 3704 and 3908) by way of securitisation to the sixth defendant. That had taken place on 20th November, 2008. She exhibited the relevant documentation. She stated that the sixth named defendant did not have any dealings with any other loan belonging to the plaintiff; in particular, loan 2931 was not securitised with it. She further confirmed that at no stage did the seventh defendant ever have any dealings of any nature with any loans belonging to the plaintiff.
14. Ms. Corbett went on to outline how, by way of mortgage loan repurchase deed dated 13th May, 2015, Ulster Bank repurchased the beneficial interest in the loans which had been transferred to the sixth defendant, including the plaintiff's loans ending in account numbers 3704 and 3908. She exhibited a redacted copy of the mortgage loan repurchase deed, which referred to these two loans. She went on to state that on 23rd July, 2015 the plaintiff's three loans were sold by Ulster Bank Ireland DAC to Promontoria Holdings 152 BV. She confirmed that Ulster Bank Ireland DAC, or the sixth defendant, did not retain any legal or beneficial ownership of any of the plaintiff's loans after that date.
15. In relation to the original loans which had been furnished by First Active plc to the plaintiff, Ms. Corbett stated that it was a term of each of the facility letters that the borrower would repay interest only for the first 60 months of the loan facility. Thereafter,

the loan repayments would cover both principal and interest. She stated that this was clearly stated in the letter of loan offer in each case, which had been accepted in writing by the plaintiff and his wife in each case. She exhibited the relevant documentation. In particular, the loan offer which was exhibited in each case showed that the amount of repayment on a monthly basis was set at a particular level for the first five years and then increased to a higher level from the fifth anniversary of the loan. In addition, the specific loan offer conditions stated as follows: -

*"First Active plc has agreed that the borrower(s) pay interest only for the first sixty months of this loan facility. Thereafter repayment will revert to capital and interest for the remaining term of the loan".*

16. Ms. Corbett denied that any of the documentation was missing, or had been erased, or altered, either as alleged by the plaintiff, or at all. She pointed out that in the statement of claim the plaintiff made a serious but somewhat vague allegation that at some point a second fraudulent loan offer was manufactured by either First Active plc, Ulster Bank or the sixth or seventh named defendants. However, the plaintiff failed to give any particulars as to how such allegation could be made. Ms. Corbett stated that that allegation was completely unsubstantiated insofar as it related to the present defendants. She stated that there was no basis for such allegation, as the sixth or seventh named defendants had not had any direct dealings with the plaintiff or his wife.
17. In her second affidavit, Ms. Corbett reiterated that the sixth and seventh defendants were not party to any of the loan agreements; they did not enter into any agreement or contract with the plaintiff (or any loan holder); they did not provide a service to the plaintiff (or any loan holder) and did not have any dealings with the plaintiff (until these proceedings).
18. She pointed out that it was clear from paras. 42 and 43 of the first affidavit sworn by the plaintiff that his motivation for issuing the proceedings was for the purpose of obtaining discovery of documents from the sixth and seventh defendants, which he hoped would be of assistance in his defence of the proceedings being brought against him by Mr. Fennell on behalf of Promontoria Finn Limited. She stated that that was an abuse of the process of the court, as the proper procedure for obtaining documents from an unconnected third party was by way of an application for third party discovery. Furthermore, she stated that it was obvious from the content of his affidavits that he was using the present proceedings as a means of obstructing or frustrating the proceedings which were already in being seeking repossession of his properties. She stated that that was also an abuse of the process of the courts.
19. Ms Corbett noted that the plaintiff had raised an issue in relation to the redacted extract from the repurchase deed, wherein there was a third loan from a customer in County Wexford, which had been repurchased from the sixth defendant by Ulster Bank. Ms. Corbett exhibited a further copy of the relevant extract from the repurchase deed showing that that loan was a loan ending in the digits "4020" and therefore did not relate to the third loan that had been taken out by the plaintiff.

20. The plaintiff had also raised a point that a charge in favour of Deutsche Trustee Company Limited was shown on documentation in the Companies Registration Office as still being in existence. However, Ms. Corbett stated that that charge had been satisfied and the plaintiff's three loans had been sold to Promontoria Holding 152 BV on 23rd July, 2015 and that all documents that required completion had been finalised. She stated that she was satisfied that the documentation on the CRO website was not up-to-date and would be simply remedied by the filing of a form C6, which she was in the process of arranging. Finally, in relation to the allegation that the loan documentation as exhibited by her, may have been altered, or fraudulently produced, Ms. Corbett exhibited all of the documentation that was on file in relation to the three loans issued to the plaintiff by First Active plc, including the exact bundle of documents as signed by the plaintiff and Ms. Susan Dempsey and furnished by their solicitor Ensor O'Connor, along with the solicitor's undertaking, the draw down request and their solicitor's covering letters, in each case.
21. In her legal submissions on behalf of the sixth and seventh defendants, Ms Ruigrok BL began by stating that the sixth and seventh defendants would consent to an amendment of the title of the proceedings, whereby the sixth defendant should be correctly named as "Celtic Residential Irish Mortgage Securitisation No. 14 Designated Activity Company" and the seventh defendant should be "Celtic Residential Irish Mortgage Securitisation No. 15 Designated Activity Company".
22. Counsel stated that where a defendant was seeking to have a plaintiff's action struck out either pursuant to O.19, r.28, or pursuant to the inherent jurisdiction of the court, the burden of proof lay upon the defendant to establish that the plaintiff did not have a stateable cause of action against the defendant. She accepted that the jurisdiction to strike out proceedings, either pursuant to the rules or pursuant to the court's inherent jurisdiction, was a power which should be exercised sparingly and only when the court was satisfied that there was a clear case to justify the exercise of such discretion: see *Barry v. Buckley* [1981] IR309; *Salthill Properties Limited & Anor. v. Royal Bank of Scotland plc & Ors.* [2009] IEHC 207 and *Harold v. Nua Mortgages Limited* [2015] IEHC 15.
23. In relation to the issue of securitisation, counsel referred to the dicta of Peart J. in *Wellstead v. Judge White & Ors.* [2011] IEHC 438 where he stated as follows in relation to securitisations schemes:
- "...there is nothing unusual or mysterious about a securitisation scheme. It happens all the time so that a bank can give itself added liquidity. It is typical of such securitisation schemes that the original lender will retain under the scheme, by agreement with the transferee, the obligation to enforce the security and account to the transferee in due course upon recovery from the mortgagors."*
24. Counsel noted that the views expressed by Peart J. had been adopted by Kearns P. in *Harold v. Nua Mortgages Limited*, who noted that that approach also accorded with the approach of the English Court of Appeal in *Paragon Finance plc v. Pender* [2005] 1 WLR 3412, where the Court of Appeal was of the view that all the special purpose vehicle

acquired, under an uncompleted agreement to transfer the legal charge, was an equity in the mortgage. Paragon remained the legal owner and as registered proprietor of the charge, retained all the powers of a legal chargee, including the right to possession, nor was it necessary to join the special purpose vehicle to the proceedings. Ms. Ruigrok BL submitted that in the circumstances of this case, it was only the beneficial interests that had been transferred to the sixth defendant in respect of two of the plaintiff's loans for the period 2008 to 2015. The plaintiff would not have been aware of any such transfer; for all intents and purposes, he would have continued to have dealt with Ulster Bank during that period. Once the loans had been repurchased by Ulster Bank, they resumed both legal and beneficial ownership of the loans and of the mortgages which had been created as security and the sixth defendant dropped out of the picture completely. It was submitted that in these circumstances, the plaintiff had no cause of action against the sixth defendant, nor could there be any liability on the part of the sixth defendant.

25. Finally, counsel submitted that while the court had to give certain leeway to the plaintiff as a lay litigant, nevertheless, the fact that a party chose to represent himself in litigation before the courts, did not confer on him a right to be treated in a way that was unfair or disadvantageous to the other party to the litigation: see dicta of Clarke J. (as he then was) in *ACC Bank plc v. Kelly* [2011] IEHC 7 and in *Burke v. Judge Mary O'Halloran & Ors.* [2009] IEHC 343.
26. Counsel submitted that having regard to the content of the two affidavits put before the court by the plaintiff, it was clear that he was using this litigation as a means of (a) obtaining documents from the defendants to these proceedings, which he hoped to use in his defence of the proceedings being brought against him by Mr. Fennell on behalf of Promontoria Finn Limited and (b) he was using these proceedings as a means of frustrating or obstructing the action being brought by Mr. Fennell. It was submitted that neither of those goals was an appropriate use of the processes of the court. In short, it was submitted that the plaintiff was bringing an action which he knew to be unstateable against the present defendants, for reasons that constituted an abuse of the court's processes and which rendered the proceedings frivolous and vexatious. In those circumstances, it was submitted that the court should grant the relief sought on behalf of the sixth and seventh defendants.

**Submissions by the plaintiff.**

27. The plaintiff swore two affidavits in response to the present application; the first was sworn on 31st January, 2020 and the second on 22nd June, 2020. The essence of his response is set out at paras. 23 *et seq.* of his second affidavit, wherein he states that in the early part of 2007 he met a Mr. Paul Hendrick, Manager of the First Active plc branch in Waterford, who offered to refinance three loans that the plaintiff had at that time with Permanent TSB. The plaintiff maintained that Mr. Hendrick was very anxious to enter into this refinancing arrangement and in an effort to entice the plaintiff and his wife to enter into such loans, he offered a 25-year interest only facility. The plaintiff stated that he was very pleased with this arrangement.

28. The plaintiff stated in his affidavit that it was with shock and surprise that he learnt in 2012 that Ulster Bank were demanding repayment of both capital and interest from him. He stated that this was not what he had understood to be the position at all. He did not accept the various loan offers and accompanying documents, which had been exhibited in Ms. Corbett's affidavits. He stated that at all times, it had been his understanding that he had a 25-year interest only loans. He did not specify when it was anticipated that the principal sum would be repaid under that arrangement.
29. The plaintiff stated that when he had received documentation from Ulster Bank in 2012, notifying him that he would have to make larger repayments on a monthly basis to cover both principal and interest, he went looking for the documentation that he had concerning the loans that he had taken out. He had only managed to unearth a small amount of documentation in relation to one loan, being loan no. 2931. This documentation was exhibited at AON3 to his second affidavit. The first document which he had in relation to this loan, was a document headed "Loan Offer – Consumer Credit Act 1995". It was markedly different to the same document which had been exhibited by Ms. Corbett at exhibit CC8 to her affidavit sworn on 12th December, 2019.
30. In particular, under the heading "Important Information as at 04/04/2007", wherein ten items were listed on the document exhibited by Ms. Corbett, at item 4 thereof, there were two lines; the first of which stated "Amount of each instalment from 04/05/2007: €4,125.00"; there was a line directly beneath that which read "Amount of each instalment from 04/05/2012: €6,959.24". In the document which the plaintiff had exhibited at AON3, only the first line was recorded at item 4. In addition, the asterisks that appeared after various of the items in the numbered sequence from 1-10 in the document exhibited by Ms Corbett, did not correspond with the explanation of the asterisks that appeared in the plaintiff's document. He further pointed out that in the page headed "Loan Offer Letter" the loan type was stated to be "Lifetime ECBR plus 0.75% for term 80% LTV, interest only". Further down that page the monthly loan repayment was stated to be €4,125.00 from 04/05/2007. There was no mention of any increase occurring as and from 2012.
31. In the page headed "Specific Loan Offer Conditions" exhibited by the plaintiff, there was only one page; whereas in the document exhibited by Ms. Corbett, there were two pages, wherein on the second page there was reference to the fact that First Active plc had agreed that the borrower(s) would pay interest only for the first 60 months of the loan facility and that thereafter, repayment would revert to capital and interest for the remaining term of the loan.
32. Finally, in relation to the page headed "Loan Acceptance" which was dated 4th April, 2007, the page which was exhibited by the plaintiff, was markedly different to that which bore the same date and was marked "Original", as exhibited by Ms. Corbett. The signatures of both the plaintiff and his wife as appearing on both documents were dated 13th April, 2007. However, there were marked differences in layout and composition between the two documents.

33. The plaintiff submitted that the documents, which had been exhibited by him at AON3, clearly showed that the documents which were relied upon by Ulster Bank and subsequently by Promontoria against him, were fraudulent documents that had been substituted at some stage after he had accepted the loan on 13th April, 2007.
34. The plaintiff submitted that having regard to the very serious divergence between the documentation that he had exhibited and the documentation exhibited by Ms. Corbett in relation to the loan bearing number 2931, and having regard to the fact that he had only obtained sight of a lot of relevant documentation as a result of the within proceedings, it could not be said that his proceedings were frivolous or vexatious, or legally unsustainable, or an abuse of the court processes, but had been to the contrary, in so far as the defendants had released loan documentation, which Promontoria Finn Limited had withheld from him. He stated that such loan documentation was crucial to his defence of the action being brought against him by the receiver appointed by Promontoria Finn Limited. He stated that the defendants would have more relevant information on record, that would be valuable to him, which could only be obtained if these proceedings before the court were allowed to continue to a plenary hearing.
35. The plaintiff stated that the sixth and seventh named defendants were inextricably connected with his three loans as set out in the history to those loans and therefore the proceedings should not be struck out. He stated that by analogy with the case law where a plaintiff seeks to obtain summary judgment against a defendant and where a defendant only has to cross a low threshold so as to be able to have the matter referred to plenary hearing: see *Aer Rianta CPT v. Ryanair Limited* [2001] IESC 94 and *Harrisrange Ltd v. Duncan* [2002] IEHC 14; similarly, a plaintiff should only have to cross a low threshold to establish his right to continue with his action to a full plenary hearing. He submitted that he had crossed that threshold by virtue of the matters set out in his affidavits.

**The law.**

36. The law in this area is well settled. The court has a jurisdiction pursuant to O.19, r.28 of the Rules of the Superior Courts to strike out pleadings in the following circumstances: -

*"The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."*
37. The court also has an inherent jurisdiction to strike out proceedings. In *Barry v. Buckley* [1981] IR 306, Costello J. stated that the "*jurisdiction exists to ensure that an abuse of the process of the courts does not take place*" and where a claim is bound to fail "*it would be a proper exercise of its discretion to strike out proceedings whose continued existence cannot be justified and is manifestly causing irrevocable damage to the defendant.*"
38. While the two jurisdictions overlap, the difference between them was explained by McGovern J. in *Osborne v. KBC Ireland plc & Ors.* [2016] IEHC 220, as follows:



*"Where an application is brought to dismiss proceedings as disclosing no reasonable cause of action under the provisions of O. 19, r. 28, the court must accept the facts as asserted in the pleadings setting out the plaintiff's claim. The difference between applications under the inherent jurisdiction of the court and applications to dismiss under O. 19, r. 28, is that the court can look at the factual basis of the plaintiff's claim in the former category of application: see, Salthill Properties Limited and Cunningham v. Royal Bank of Scotland plc and Ors. [2009] IEHC 207; and, Manning v. The National House Building Guarantee Company Limited and Anor.[2011] IEHC 98, which both followed Barry v. Buckley [1981] 1 I.R. 306."*

39. It is well settled that the power of the court to strike out proceedings is one that must be used sparingly and the right of access to the courts should be preserved wherever possible: see *Harold v. Nua Mortgages; King v. Trinity College* [2011] IEHC 202.
40. In *Salthill Properties Limited v. Royal Bank of Scotland plc*, Clarke J. (as he then was), made it clear that in resisting such an application, a plaintiff does not have to establish that he has a *prima facie* case against the defendant. In the course of his judgment he pointed out that it would often only be possible for a plaintiff to establish that he has such a *prima facie* case, once the proceedings have been allowed to continue for an appreciable period of time and when the necessary pre-trial steps such as interrogatories and discovery had been obtained. In an application to strike out proceedings, the onus of proof lay on the defendant. Clarke J. described the nature of what must be proved in order to be successful in such an application, in the following terms.

*"It is clear from all of the authorities that the onus lies on the defendant concerned to establish that the plaintiff's claim is bound to fail. It seems to me to follow that the defendant must demonstrate that any factual assertion on the part of the plaintiff could not be established. That is a different thing from a defendant saying that the plaintiff has not put forward, at that time, a prima facie case to the contrary effect."*

41. In *Aer Rianta c.p.t. v. Ryanair Limited* [2004] 1 IR 506, Denham J. (as she then was) summarised the jurisdiction under O.19, r.28 in the following terms at p.509:

*"The jurisdiction under O.19, r.28 to strike out pleadings is one a court is slow to exercise. A court will exercise caution in utilising this jurisdiction. However, if a court is convinced that a claim will fail such pleadings will be struck out"*.

42. Thus, the burden lies on the defendant to establish either that there is no reasonable cause of action disclosed on the pleadings, or that pursuant to its inherent jurisdiction, the court should dismiss the proceedings on the basis that on the evidence before the court the proceedings are frivolous and vexatious and have no prospect of success.
43. The fact that one party may be a lay litigant, means that the court must give some leeway to them when either bringing, or defending, an action. However, the court cannot lean so far in favour of the lay litigant that he or she gains an unfair advantage over the

opposite party. In *ACC Bank plc v. Kelly* [2011] IEHC 7, Clarke J. quoted with approval the helpful summary of the issues and principles which arise where a case is being brought by a lay litigant, as set out in an article by Evan Bell (a Master of the Queen's Bench and Matrimonial Division of the Court of Judicator for Northern Ireland) in 2010 *Judicial Studies Institute Journal* No. 1, where the author stated as follows: -

*"It is the court's duty to minimise the self-represented litigant's disadvantage as far as possible, so as to fulfil its task to do justice between the parties. However, the court should not confer upon a personal litigant a positive advantage over his represented opponent nor is it the position that the party with the greater expertise must be disadvantaged to the point at which they have the same expertise effectively as the other party. That would be a perversion of what is required, which is a fair and equal opportunity to each party to present its case."*

44. In *Burke v. Judge Mary O'Halloran & Ors.*, Clarke J. returned to the issue of proceedings which are brought or defended by a lay litigant and stated as follows:

*"...it does have to be noted that a party who chooses to represent him or herself is no less bound by the laws of evidence and procedure and any other relevant laws, and by the rulings of the court in that regard, than any other party. Where a party chooses to represent him or herself and where that party fails to abide by directions of the court concerning the manner in which the case should be conducted in accordance with procedural, evidential and any other relevant law, then the court must take whatever action is appropriate to deal with any such failure."*

45. Finally, in relation to the nature of securitisation, the court accepts the statement of law set down by Peart J. in *Wellstead v. Judge White & Ors.*, and the statement of the law by the English Court of Appeal in *Paragon Finance plc. v. Pender*, as adopted by Kearns P. in *Harold v. Nua Mortgages*, referred to earlier in this judgment.

### **Conclusions**

46. Applying the principles of law set out above, I have reached the following conclusions in this case. It is common case between the plaintiff and the sixth and seventh defendants, that at least two of his three loans were the subject of securitisation with the sixth named defendant in 2008 and were repurchased by Ulster Bank in 2015. These were the loans ending in account numbers 3704 and 3908. Insofar as the plaintiff may have thought that his third loan was also the subject of securitisation with either the sixth or seventh defendants, that was based on the indication that there was another loan to a County Wexford customer which was part of the repurchase deed in May 2015. However, it is clear from the second affidavit filed by Ms. Corbett, that that loan related to a different account and was not one of the loan accounts held by the plaintiff.
47. Insofar as the seventh defendant is concerned, the evidence of Ms. Corbett that that defendant never had any dealings with any of the plaintiff's loans by way of securitisation or otherwise, has not been contradicted by the plaintiff. He has produced no evidence to suggest that this company had any dealings with any of his loans. In the circumstances,

I am satisfied that the plaintiff has no cause of action against the seventh named defendant.

48. The evidence of Ms. Corbett that the plaintiff's loan bearing account number 2931 was not securitised in the sixth defendant, has not been contradicted in any way by the plaintiff. In the absence of any evidence to suggest that that loan was the subject of securitisation with the sixth defendant, the court is satisfied that it did not form part of the securitisation process that was effected in November 2008. Accordingly, the plaintiff has no cause of action against the sixth defendant in respect of this loan. This is significant, given that the documents which he has produced in evidence and which differ substantially from the documents exhibited by Ms. Corbett in her affidavit, related to that loan.
49. Insofar as the plaintiff asserts that the repurchase of the securitised loans was not completed in May 2015 as averred to by Ms. Corbett, due to the fact that documentation in the Companies Registration Office suggests that there is still a charge outstanding in favour of Deutsche Trustee Company Limited, that has been dealt with in Ms. Corbett's second affidavit, wherein she has stated that the charge in favour of that company was satisfied and that the error in this regard is simply due to the fact that the documentation on the CRO website is not up-to-date and this will be corrected in the very near future.
50. The core of the plaintiff's action is that he originally had a contract with First Active plc, whereby he was given three loans on an interest only basis for 25 years. He states that some entity, either First Active plc, Ulster Bank, or the sixth or seventh defendants, or Promontoria, have produced documentation concerning the creation of the loans which is fraudulent and misleading, in that it suggests that he was offered and accepted an interest only period of five years and that thereafter, he would have to make repayments of both capital and interest for the balance of the term of the loan. He states that the documentation which he has exhibited in his second affidavit and which has been referred to *in extenso* earlier in this judgment, sets out the true position in relation to his three loans, although the documentation exhibited by him only refers to one loan, being that ending in the 2931.
51. In his pleadings the plaintiff makes vague allegations of serious wrongdoing against a number of parties, only two of whom are defendants in these proceedings. However, he does not provide any particulars of the serious wrongdoing or fraud or deceit or forgery, which he alleges was carried out by the sixth or seventh named defendants. This is in clear breach of the provisions of O.19, r.5(2) of the Rules of the Superior Courts which provide that in all cases alleging misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be set out in the pleadings. In essence, all he has put before the court is a bare allegation that some person or entity, possibly the sixth or seventh defendants, were responsible for creating the documentation which was exhibited by Ms. Corbett, which he alleges fraudulently set out the terms of the loans, which were not the true terms that he had agreed with First Active. Other than

that bare allegation, there is no evidence at all that the sixth or seventh defendants engaged in such activity.

52. This Court cannot determine which of the two sets of loan documentation concerning loan 2931 is genuine. To resolve that conflict it will be necessary for a court to hear oral evidence from the plaintiff and the person who completed the documentation on behalf of First Active plc and possibly evidence from the plaintiff's solicitor at the time and possibly from a handwriting expert. It will also be necessary for the court to hear evidence from Mr. Hendrick in relation to the negotiations leading to the conclusion of the original loans with First Active. This court cannot make any finding in relation to the plaintiff's allegations as to the representations which were allegedly made to him by Mr. Hendrick, to the effect that his loans would be on an interest only basis for 25 years.
53. The plaintiff and the sixth and seventh defendants are in agreement that there was never any contract, agreement, or contact between the sixth and seventh defendants and the plaintiff prior to the institution of these proceedings.
54. There is no evidence before the court that could persuade it that, even on the most favourable interpretation of the pleadings, the affidavits or the documents exhibited thereto, the plaintiff may have a stateable cause of action against either the sixth or seventh defendants. As already noted, the seventh defendant never had any dealings with any of his loans. The sixth defendant never had any dealings with the plaintiff personally in relation to the two loans which were included in the bundle of loans that it purchased from Ulster Bank in 2008. It sold the beneficial interest in those loans back to Ulster Bank in May 2015. It is accepted by the plaintiff that Ulster Bank sold the loans on to Promontoria Holding 152 BV in July 2015. If the plaintiff's assertions about the terms of his loans are established in evidence, he may have a good defence to the proceedings seeking to recover possession of the mortgaged properties which has been brought against him by the receiver appointed by Promontoria Finn Limited. However, there is nothing in the pleadings, or on the facts as deposed to by the plaintiff in his two affidavits, or in the documentation exhibited thereto, which suggests that there was any wrongdoing, or liability, on the part of the sixth or seventh defendants, their servants or agents.
55. At most, the sixth defendant acquired the beneficial interest in two of the loans (being loans 3704 and 3908) in November 2008 and resold the beneficial interest therein back to Ulster Bank in May 2015. Except for the bare allegation made by the plaintiff in his statement of claim, there is no basis for suggesting that they may have had any involvement in the creation of any allegedly fraudulent documentation concerning the creation of the loans in 2007. A plaintiff cannot defeat an application such as this, by merely making a bare allegation of wrongdoing in the statement of claim; there must be some evidential basis on which the court could come to the conclusion that the plaintiff may have a stateable cause of action against the defendant named in the proceedings. That is absent in this case.

56. I am satisfied that the submission made by counsel on behalf of the sixth and seventh defendants, to the effect that the true purpose of these proceedings is an attempt by the plaintiff to flush out documentation which he hopes will be of benefit to him in resisting the action being brought against him by Mr. Fennell on behalf of Promontoria Finn Limited, is correct. Indeed, the plaintiff seems to accept as much at paras. 42 and 43 of his second affidavit.
57. It is not permissible to bring court proceedings against someone as a means of obtaining documentation which might be helpful in some other proceedings in which a person may be involved. The Rules of the Superior Courts provide for obtaining documents from relevant third parties by making an application that they should make non-party discovery. That is the appropriate way in which to obtain documentation which a person feels may be in the possession of a third party and may be of benefit to them in litigation in which they are involved.
58. Nor is it permissible to maintain proceedings against a person or entity, simply as a means of frustrating or obstructing other proceedings being brought against the plaintiff by an independent third party. I am satisfied that there is considerable force in the submission made by counsel on behalf of the sixth and seventh defendants, that the plaintiff is using the present proceedings as a means of frustrating or obstructing the action for possession of the mortgaged properties being brought by Mr. Fennell on behalf of Promontoria Finn Limited. To use these proceedings as such a vehicle, is an abuse of the processes of the court.
59. Having regard to all the circumstances of the case and even allowing for the fact that the plaintiff is a lay litigant and that there is a low bar for him to cross in order to defeat the defendant's application herein, I am not satisfied that on the matters set out in his pleadings, or on the most favourable construction of the facts deposed to in his affidavits, the plaintiff has established a stateable cause of action against either the sixth or seventh defendant. I must find that the proceedings herein are frivolous and vexatious. Accordingly, I dismiss the plaintiff's action against the sixth and seventh defendants both pursuant to the provisions of O.19, r.28 and pursuant to the inherent jurisdiction of the court, as failing to disclose any stateable cause of action against the sixth or seventh defendants and on the ground of their being frivolous and vexatious.
60. Accordingly, the order of the court will be as follows:
- (a) Amend the title of the sixth and seventh defendants to that given earlier in this judgment;
  - (b) Dismiss the plaintiff's action against the sixth named defendant; and
  - (c) Dismiss the plaintiff's action against the seventh named defendant.