

THE HIGH COURT

[2022] IEHC 453
[2019 7478 P]

BETWEEN

CLEARSCAPE PROPERTY DEVELOPMENTS LIMITED

PLAINTIFF

AND

BENNETT TARMACADAM LIMITED

DEFENDANT

JUDGMENT of Ms. Justice Emily Egan delivered on the 22nd day of July, 2022

Introduction

1. This action concerns land at Rosslare Strand, County Wexford ("the property") which the defendant, Bennett Tarmacadam Ltd ("Bennett"), purchased from Allied Irish Banks Plc ("AIB") in or about February 2019.
2. The plaintiff, Clearscape Property Developments Ltd ("Clearscape"), is the former owner of the property. In these proceedings, Clearscape seeks a declaration that the purported transfer of the property to Bennett is invalid, void and of no effect, a declaration that Clearscape is the full owner of the lands and damages. Clearscape registered a *lis pendens* against the property in the Central Office in October 2019.
3. In the present application, Bennett seeks an order dismissing the proceedings pursuant to O. 19 r. 28 of the Superior Court Rules ("the Rules") or alternatively pursuant to the inherent jurisdiction of the court, on the basis that no reasonable cause of action is disclosed. Bennett also seeks an order pursuant to s. 123 of the Land and Conveyancing Law Reform Act, 2009 and/or pursuant to the inherent jurisdiction of the court vacating the *lis pendens* registered by Clearscape on the basis that these proceedings are not being prosecuted *bona fide*. In the event that the proceedings are not dismissed, Bennett also seeks an order for security for costs pursuant to s. 52 or s. 390 of the Companies Act, 2014 and/or pursuant to O. 29 r. 1 of the Rules.
4. At the conclusion of the hearing, and on notice to Bennett, Clearscape furnished the court with a draft Amended Statement of Claim which if permitted it proposes to deliver. Bennett, whilst correctly observing that it was unsatisfactory that the amended pleading was produced in an informal manner at such a late stage, did not object to the court considering it *de bene esse*. I have therefore had regard to the draft Amended Statement of Claim in adjudicating upon this application.

Summary of factual background

5. The factual background is averred to in the affidavit of Owen Doyle ("Mr Doyle") who is the director and sole shareholder of Clearscape. He is not however a plaintiff in this application and no application has been made to join him to the proceedings. This causes some difficulty because, as will become apparent, many of the arguments advanced by Mr Doyle would be more properly advanced in proceedings in which he was suing as co-plaintiff.

6. Mr Doyle has been profoundly deaf as a result of a childhood accident in respect of which he received a substantial sum in settlement of personal injuries proceedings. Mr Doyle states that he is a vulnerable person and is heavily dependent on his father, Adrian Doyle, who has always managed his settlement monies. Mr Doyle maintains that he was coerced by his father into a number of property transactions, including the purchase of the property by Clearscape in 2007 for €910,000. Slightly less than a third of this purchase price was funded by Mr Doyle personally from his settlement monies and the remainder was financed by a loan from AIB to Clearscape, which loan was secured upon the property by a deed of mortgage in favour of the bank. Mr Doyle also alleges that he was coerced by his father into providing a personal guarantee in respect of Clearscape's liabilities. Mr Doyle maintains that he acted without independent legal advice and did not understand the nature and meaning of any of the forgoing transactions. Mr Doyle also alleges that, unknown to him, his father procured Clearscape to enter into a development agreement ("the development agreement") with Bennett in respect of the property. Mr Doyle and Clearscape maintain that Adrian Doyle had a very close relationship with Michael Bennett, the director of that company.
7. Pursuant to the terms of the development agreement, eight residential units were to be built on the property. On the sale of each unit, the building costs of each unit were to be repaid to Bennett and one eighth of Clearscape's borrowings to AIB were to be repaid. On completion of the entire development, profits or losses would be shared equally between Clearscape and Bennett. To this end, planning permission for the development of the residential units had been secured in August 2009. Although one residential unit was built and sold in 2014 for €249,520.81, it does not appear that the majority of the development proceeded at that time and repayments were not made to AIB. In due course, AIB sought full repayment of the loan. In 2014 and 2015, Bennett issued several invoices to Clearscape in respect of building costs incurred to that date. There is a dispute between the parties as to the entitlement of Bennett to issue these invoices. In any event, these invoices were not discharged by Clearscape and Bennett issued proceedings on foot thereof in January 2016 ("the 2016 proceedings"). At the same time, Bennett registered a *lis pendens* on the folio of the property. Neither Mr Doyle nor Clearscape were aware of the existence of the proceedings, which were never served on Clearscape, or of the registration of the *lis pendens*.
8. In June 2018, as Clearscape remained in default of its repayment obligations, AIB appointed a receiver over the property. In November 2018 the property was placed on the market at a guide price of €70,000. It is common case that the *lis pendens* registered by Bennett against the property negatively impacted on the property's sale price. It appears that Bennett was the only interested party and ultimately purchased the property for €80,000 in December 2018. Clearscape asserts that this sale was at a gross undervalue. It pleads that, at the time of the delivery of the original Statement of Claim in October 2020, one of the residential units on the property was advertised for sale at €495,000. It therefore appears that Bennett has constructed residential units on the property and has entered into sale agreements in respect of one or more such units. No information is to hand as to the building costs expended or sale prices agreed. Bennett

alleges that, as a result of the *lis pendens* registered by Clearscope, it is at risk of losing purchasers for the property and thereby suffering financial loss.

The Pleadings

The Amended Statement of Claim

9. Six separate, but to some extent interlinked, allegations are advanced by the Amended Statement of Claim:
 1. Wrongful application for planning permission: Clearscope pleads that Bennett applied for planning permission in respect of the property when it had no *locus standi* so to do.
 2. Invalidity of the development agreement: Clearscope pleads that the development agreement between Bennett and Clearscope was invalid.
 3. Invalidity of the mortgage deed and deed of appointment of the receiver: Clearscope pleads that the deed of mortgage/charge with AIB was *void ab initio* and that, as a result the receiver did not have power of sale. It therefore pleads that the sale of the property to Bennett was void.
 4. Breach of contract/wrongful demand for payment: Clearscope pleads that Bennett acted in breach of the development agreement by wrongfully calling on Clearscope to immediately pay the sum of €516,041.81 to Bennett for the construction works undertaken on the whole property despite only one of the residential units having been sold at this juncture. Clearscope therefore contends that Bennett acted in breach of contract in issuing the invoices in 2014 and 2015 and claim damages in respect thereof.
 5. Malicious prosecution: Clearscope pleads that Bennett acted wrongfully in commencing, but never serving or prosecuting, the 2016 proceedings; and in registering a *lis pendens* against the property at a time when it was aware that AIB were considering taking action in respect thereof. It is pleaded that the 2016 proceedings were instituted maliciously, that the *lis pendens* was registered without reasonable and probable cause and that as a result the property value was diminished to the detriment of Clearscope and the benefit of Bennett. Clearscope therefore seeks damages for malicious prosecution/abuse of the process of the courts.
 6. Declaration that the transfer is void: Clearscope pleads that as a result of the foregoing the purchase of the property by Bennett was at a gross undervalue, was not an arm's length transaction and that the transfer of land on foot thereof is invalid, void and of no effect.

The affidavits

10. Michael Bennett's affidavit filed on 15th July 2021 avers that Bennett had no involvement whatsoever in any dealings as between Mr Doyle and his father. Mr Bennett observes that although Mr Doyle alleges that his father coerced him into a number of transactions

concerning the purchase of the property by Clearscape, no specific allegations are made against Bennett in relation to any of the above. In such circumstances, the appropriate plaintiff in respect of such allegations would be Mr Doyle himself (and not necessarily Clearscape) and the appropriate defendant would be Mr Doyle's father (and not Bennett). Mr Bennett avers that any allegation that the mortgage with AIB is void or defective or that the receiver was not validly appointed or acted outside his powers of sale in relation to the property, are matters as between Clearscape and AIB and/or as between Clearscape and the receiver and could not provide a basis for a claim against Bennett.

11. Mr Bennett avers that Bennett did not apply for planning permission until after it had acquired the property in 2019. Although Bennett was intimately involved and indeed assisted Clearscape in its applications for planning permission, this was to advance both parties' interests under the development agreement.
12. Insofar as concerns the development agreement, Mr Bennett avers that this was entered into in good faith and on the basis that it represented a fair commercial bargain for both parties. Clause 5 of the development agreement is of significant relevance and provides as follows:

"5 Proceeds of Sale

On Completion of the sale of each residential unit, the Owner (Clearscape) and the Developer (Bennett) agree to disburse the proceeds of sale of each unit as follows:-

5.1 The building cost of each residential unit shall be repaid to the Developer.

5.2 1/8th of the Site Cost shall be paid to the Bank (AIB) to reduce Bank Borrowings on the Site.

5.3 On completion of the development of the Site, the profits/losses arising after completion of the development of the Site shall be shared equally between the Owner and Developer."

13. In this regard, "Site" means the property upon which the Works are to be erected. "Site Cost" means the cost of acquisition of the site and all interest accrued thereon. "Works" means the construction of a development of an eight-house residential housing scheme including the constructions of all necessary services including ware, sewage, surface water drainage and utilities. Clause 7.1 is also of relevance and provides that Bennett "at its own cost" shall construct and complete or procure the construction and completion of the whole of the Works in accordance with the terms of this agreement.
14. Mr Bennett avers that in 2014 the first house built on the property was sold and that AIB agreed to release the charge over that portion of the property in return for the payment of the proportion of the purchase monies identified in the development agreement. Mr Bennett avers that Bennett had carried out very considerable expenditure on the site involving the development of the site and the construction and fit out of the first house. It is averred that on 31st July 2014 Bennett issued an invoice to Clearscape "for all works

completed to date on the site" in the sum of €516,041.81 inclusive of VAT. A second invoice deducting the sale price of the first residential unit from the amount owing was subsequently issued on 7th October 2015 in the amount of €266,520.81. During the hearing, I requested clarification on the meaning of "*all works completed*" in the invoice of 31st July 2014 and was informed that the works referred to appeared to relate to the site as a whole and not merely to the site of the particular residential unit sold.

15. Mr Bennett avers that arising from Clearscape's failure to pay the said invoice, a plenary summons issued on 21st January 2016 asserting a lien over the property. Bennett does not dispute the plaintiff's averment that this summons was never served on Clearscape or that Clearscape was unaware of the registration of the *lis pendens* over the property until after it had been sold to Bennett.
16. Mr Bennett avers that in November 2018 AIB placed the property for sale on the open market by private treaty through auctioneers based in Wexford with whom Bennett had no prior connection. Mr Bennett observes that the receiver was likely to have had considerable difficulty in marketing the property in circumstances where Bennett had issued proceedings in relation to the property and registered a *lis pendens* over it. In addition, he says that any purchaser would have been exposed to the considerable risk and expense inherent in seeking further planning permission in respect of the property, developing residential units on the property and marketing same for sale. I note however that planning permission had previously been granted to Clearscape for the development of residential units in 2009 and that the duration of the planning permission had then been extended in January 2015 until February 2018 (subject to certain conditions including the lodgement of a bond by the developer). Therefore, whilst it is true to say that the planning permission had expired by the time the property was sold to Bennett, there must nonetheless have been a reasonable expectation that a further application for planning permission would succeed.
17. Mr Bennett avers that the purchase of the property was an arm's length transaction. He avers that any allegation that the sale was conducted at an undervalue is primarily to be made against AIB and/or the receiver and not as against Bennett. He also maintains that this aspect of the claim is in the nature of a professional negligence action against the receiver which can only be prosecuted on foot of expert evidence.
18. With respect to security for costs, Mr Bennett exhibits abridged financial statements of Clearscape demonstrating that the company's liabilities exceeded its assets in 2016, 2017 and 2018, i.e. prior to the purchase by Bennett of the property. The balance sheets for the years in question demonstrate that the company's assets, which consisted of the subject property, were valued at €490,000 but that these assets were exceeded by the loan amount to AIB (then standing at just over €1,000,000). This, Bennett contends, indicates that Clearscape's impecuniosity has not been caused by the wrongdoings alleged against it. Bennett asserts that Clearscape will be unable to discharge its costs if it successfully defends these proceedings and seeks €60,000 as security for its costs.

19. Mr Doyle swore a replying affidavit to Bennett's application in which he sets out his position in relation to the background to these transactions as summarised at paragraphs 6 to 8 above. Mr Doyle avers that €245,000 of his personal funds were directed towards the purchase of the property. Mr Doyle swears that he was entirely unaware of the negotiation of the partnership between his father and Bennett to develop the property. Mr Doyle exhibits certain "memos to file" (dated March and April 2009 respectively) prepared by the solicitor who acted for both Clearscape and Bennett in the conclusion of the development agreement. These evidence the emergence of a partnership agreement as between Adrian Doyle and Bennett to develop the property. It is not at all clear from these memoranda that Mr Doyle was personally involved in or even informed of these developments as they unfolded. Whilst the development agreement is signed by Mr Doyle on behalf of Clearscape, it appears that he maintains that this was under duress and that he did not understand the document. Mr Doyle avers that he was entirely unaware of the application for planning permission and of Bennett's role in same. He avers that at all times his father and Bennett were the driving force behind the application for planning permission and the development of the property. Mr Doyle further avers that he was coerced by his father and by AIB to execute a personal guarantee in respect of Clearscape's indebtedness which he did on 28th July 2009. Mr Doyle avers that he did not understand what he was signing and was informed that this was a box ticking exercise so that the facility could be drawn down to complete the purchase. Mr Doyle avers that less than five months after he executed the guarantee, AIB formally demanded payment. He further avers that AIB has instituted proceedings against him on foot of the guarantee, which proceedings currently stand adjourned.
20. Mr Doyle avers that he did not receive an invoice from Bennett on 31st July 2014 and that the only invoice which he received was the second one dated 7th October 2015. He avers that Bennett had no entitlement to raise the invoice under the development agreement. He contends that the invoice was issued merely to enable Bennett to issue a plenary summons and register a *lis pendens* in its favour thus rendering Clearscape's title unmarketable to any other purchaser. Mr Doyle avers that this entire situation was brought about as a result of collusion between his father and Mr Bennett.

Legal principles in an application to strike out pursuant to O. 19 r. 28 of the Rules or pursuant to the court's inherent jurisdiction

21. Bennett seeks an order pursuant to O. 19 r. 28 of the Rules striking out the proceedings on the basis that same disclose no reasonable cause of action. This jurisdiction is only appropriately exercised when the relevant pleading, taken alone, discloses no reasonable cause of action. The burden of proof lies on the defendant to establish that the plaintiff's claim is bound to fail, and the court should not require the plaintiff to be in a position to show a *prima facie* case, merely a stateable case.
22. Bennett also invokes the inherent jurisdiction of the court to strike out proceedings. In considering whether or not to strike out proceedings in the exercise of the court's inherent jurisdiction, the court is entitled to engage in some analysis of the facts.

23. In *Tucker v. Havbel Designated Activity Company* [2022] IEHC 15 Allen J. relied on the following dicta of Clarke J. (Hardiman and Laffoy J.J. concurring) in *Keohane v. Hynes* [2014] IESC 66:

*"What the Court can analyse is whether a plaintiff's factual allegation amounts to no more than a mere assertion, for which no evidence or no credible basis for believing that there could be any evidence, is put forward. Likewise, the Court can go into documentary facts where the relevant documents govern the legal relations between the parties or from the only possible evidential basis for the plaintiff's claim (as in **Lopes**). As Barron J. noted in **Jodifern**, a court can look at a contract and it may become clear beyond argument as to what that contract means. On that basis, it may follow that a plaintiff's claim may be bound to fail. But there may be cases where, notwithstanding the text of a contract, facts are asserted and backed up either by evidence or by the possibility that evidence might be found, which might lead to the contract being construed in some different way or the consequences for the wrong alleged in the proceedings being differently considered. In such cases, as Barron J. made clear, the case must go to trial.*

In summary, it is important to emphasise the significant limitations on the extent to which a court can engage with the facts in an application to dismiss on the grounds of being bound to fail. In cases where the legal rights and obligations of the parties are governed by documents, then the court can examine those documents to consider whether the plaintiff's claim is bound to fail and may, in that regard, have to ask the question as to whether there is any evidence outside of that documentary record which could realistically have a bearing on the rights and obligations concerned. Second, where the only evidence which could be put forward concerning essential factual allegations made on behalf of the plaintiff is documentary evidence, then the court can examine that evidence to see if there is any basis on which it could provide support for the plaintiff's allegations. Third, and finally, a court may examine an allegation to determine whether it is a mere assertion and, if so, to consider whether any credible basis has been put forward for suggesting that evidence might be available at trial to substantiate it. While there may be other unusual circumstances in which it would be appropriate for the court to engage with the facts, it does not seem to me that the proper determination of an application to dismiss as being bound to fail can, ordinarily, go beyond the limited form of factual analysis to which I have referred."

Analysis of the case made in light of these principles

Wrongful application for planning permission; invalidity of the development agreement; and invalidity of the mortgage deed and deed of appointment.

24. Clearscape does not plead that Bennett's application for planning permission over the property caused it to suffer any loss or damage. Therefore, even assuming that Bennett had applied for planning permission over the property without any interest therein, I cannot see how this could disclose a reasonable cause of action.

25. Clearscope pleads that the development agreement, loan facility, mortgage deed (and Mr Doyle's personal guarantee) were signed by Mr Doyle under coercion and without independent legal advice. Essentially therefore the statement of claim pleads the factual elements of a claim that these documents were signed under circumstances amounting to duress or in circumstances where the defence of *non est factum* should apply to any enforcement action on foot thereof.
26. I will assume for the sake of argument that such a case can be made by a corporate entity, rather than an individual on the basis that Mr Doyle was the controlling mind and will of Clearscope. If so, then bearing in mind Mr Doyle's vulnerability in the light of his hearing impediment and his consequent dependence on his father, it is by no means impossible that it could be made out that Clearscope entered into the mortgage deed or loan facility in circumstances where the defence of *non est factum* should apply. If (and this is a big if) all of this were borne out, then this might conceivably provide Clearscope with a right of action against AIB. However, as there is no allegation that Bennett participated in or was even aware of this coercion, this would not generally give rise to a right of action against it merely because it purchased the property. Equally, leaving aside for the moment the allegation of malicious prosecution by Bennett, the alleged sale of the property at a gross undervalue would not give rise to liability on the part of the purchaser of the property, Bennett.
27. As such, I can see no credible basis for a claim against Bennett in regard to the alleged deficiencies in the development agreement or mortgage deed. Nor is there any conceivable claim against Bennett arising from any alleged invalidity in the appointment of the receiver. I find therefore that no reasonable cause of action against Bennett is disclosed in these respects by the pleadings. Further, nothing in the affidavits changes my view that no reasonable cause of action on the part of Clearscope against Bennett is disclosed in these respects.
28. Although it is somewhat troubling that Mr Doyle, who is a vulnerable person, appears to have committed his own resources to the purchase of the property without the benefit of independent legal advice, it would not be appropriate to draw any inferences as to the truth or otherwise of his allegations of coercion, particularly as Mr Adrian Doyle is not a party to these proceedings. Nor would it be appropriate to draw any inferences as against AIB who is also not a party to the proceedings.

Breach of contract/the wrongful demand for payment

29. Clearscope argues that Bennett had no legal entitlement to issue the demand for payment and thereafter to commence the 2016 proceedings on foot thereof. Bennett argues that this claim is unsupported by any detail or documents whatsoever and is mere assertion. I cannot accept this.
30. In determining the present application, I am entitled to look at the development agreement and form a view on what it means. Having done so, I conclude that there is a reasonable argument to be made that Bennett was not entitled to raise the invoices issued in 2014 and 2015. These invoices were issued after the construction and sale of

the first residential unit and appear to have sought payment of the construction costs to date. However, the development agreement does not appear to contemplate raising an invoice *pro tem* should construction costs exceed the sale price of the residential units sold at any given time. On the contrary, the development agreement appears to contemplate that profits and losses would be carried forward and shared equally between Clearscape and Bennett at the conclusion of the development of the entire site. Further, even if a *pro tem* invoice could validly be issued in respect of the excess costs of a particular residential unit, it appears that the invoice raised by Bennett prior to the issue of its proceedings was for the entire construction costs to date on the site, rather than for the relevant residential unit sold or even for a prorated share of the construction costs. This does not appear to be in accordance with the development agreement.

31. In the circumstances, there is a reasonable case to be made on credible evidence that the invoice was issued in breach of the terms of the development agreement.

Malicious prosecution and declaration that the transfer is void

32. At the conclusion of the hearing, I asked the parties to address the court on the relevance of *Dorene Limited and Dorene Separates Limited v. Suedes (Ireland) Limited* [1981] IR 312, it not having been opened to the court by either party. *Dorene* was recently approved by the Court of Appeal in *Dublin Waterworld Ltd v. National Sports Campus Development Authority* [2019] IECA 214.
33. In *Dorene Limited*, Costello J. (as he then was) held that a claim for damages at common law would lie for the institution or maintenance of a civil action if it could be shown that the action was instituted or maintained a) without reasonable or probable cause, b) maliciously and c) that the claimant has suffered actual damage or that the impugned action was one which the law presumes will have caused the claimant damage. The test to be applied in determining whether there was reasonable and probable cause for the proceedings is an objective one pursuant to which the court must examine the facts, consider the legal principles applicable to them and decide whether there were reasonable grounds for instituting or maintaining the action. Malice, in this sense means the presence of some improper or wrongful motive such as an intent to utilise the legal process in question for a purpose other than its legally appointed and appropriate purpose.
34. In light of my review of the evidence above, and without in any way determining the issues, I conclude that there is a reasonable case to be made on credible evidence that criteria a) and b) above are satisfied in the present case. In my view there is reasonable and credible evidence that the 2016 proceedings were commenced and maintained without reasonable and probable cause. Furthermore, there is reasonable and credible evidence that in maintaining the said proceedings without ever serving same on the plaintiff, in registering a *lis pendens* on the property and in thereafter purchasing the property with the *lis* in place, the 2016 proceedings were used for a purpose other than their appropriate purpose. I am also satisfied that there is reasonable and credible evidence that criteria c) is met. The affidavit evidence demonstrates that property purchased for almost €1,000,000 and valued at €490,000 in Clearscape's financial statements dated 21st January 2019 (a matter of weeks before the sale to Bennett) was

sold to Bennett for €80,000. Further, Bennett itself accepts that the registration of the *lis pendens* was a feature tending to lower the price which could be sought for the property.

35. It is not disputed that the plenary summons was not served on Clearscape or that the *lis pendens* only came to the attention of Mr Doyle after the sale of the property to Bennett. In these circumstances, it was not open to Clearscape to take any steps to vacate the *lis pendens* and militate its deleterious impact upon the purchase price. In addition, it seems that no steps were taken by AIB to investigate whether there were any grounds to vacate the *lis pendens*. Rather, the land was purchased by the company which had registered the *lis pendens* who it seems was the only interested buyer.
36. The above facts potentially disclose a reasonable cause of action for breach of contract and malicious prosecution against Bennett. I fully accept that a successful claim for breach of contract and malicious prosecution would usually sound in damages only. Equally, however, I am satisfied that a purchaser who has notice, actual or constructive, of an irregularity or unlawfulness in the sale of lands could not obtain good title. On the facts of this particular case therefore, I am satisfied that Clearscape has made out a reasonable case for the declaratory relief sought and if necessary for an order setting aside the transfer of the lands to Bennett.

Application to vacate *lis pendens*

37. Bennett seeks an order pursuant to s. 123 (b)(ii) of the Land and Conveyancing Law Reform Act, 2009 or pursuant to the inherent jurisdiction of the court vacating the *lis pendens* registered by Clearscape on the basis that the proceedings are not being prosecuted *bona fide*.
38. In this regard, Bennett's written submissions maintain that the only allegation made by Clearscape which if upheld could conceivably lead to the conveyance to Bennett being set aside, is the allegation that the conveyance did not occur at arm's length and was at a gross undervalue. Bennett maintains that there is an absence of any material facts to support this allegation, that the proceedings are therefore not being prosecuted *bona fide* and that the *lis pendens* should therefore be discharged. In light of my finding that there is a reasonable case to be made in this regard, I cannot accept this argument.
39. For the reason stated at paragraph 36 above, I also reject the argument that the proceedings do not advance a *bona fide* claim to an interest in land. I therefore decline to vacate the *lis pendens*.

Security for costs

40. Bennett also seeks an order for security for costs pursuant to s. 52 or s. 390 of the Companies Act 2014 or O. 29 of the Rules. However, security for costs will not be ordered unless the defendant has established a *prima facie* defence to the plaintiffs claim. Bennett's affidavit evidence does particularly assist in understanding its likely defence to the malicious prosecution claim. No defence or draft defence to the amended statement of claim is to hand. Presently therefore it is not possible to discern whether or not the defendant has a *prima facie* defence to such aspects of the plaintiffs claim as I have found

disclose a reasonable cause of action. For that reason, I decline to order security for costs.