

THE HIGH COURT

[2023] IEHC 251

2023 No. 240P

BETWEEN

JERRY BEADES

PLAINTIFF

AND

OWEN KEEGAN and DUBLIN CITY COUNCIL

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 15 May 2023

Introduction

1. This is an application by the plaintiff for 14 separate interlocutory reliefs, including mandatory reliefs, against the defendants. The plaintiff seeks these reliefs in relation to properties in respect of which consent was granted by An Bord Pleanála (the “**Board**”) in January 2021 to the second named defendant, Dublin City Council (“**DCC**”) to acquire by way of a compulsory purchase order (“**CPO**”). Subsequently, a Vesting Order was made by DCC to vest these properties in DCC. The properties comprise property located at 21 Richmond Ave Dublin 3, 27-29 Richmond Ave, Dublin 3 and lands at the rear of 21-29 Richmond Ave, Dublin 3 (together the “**Richmond Property**”). There were also other properties involved in a compulsory purchase process with DCC, but they are not the subject of the present application by the plaintiff for injunctive relief.

2. The first named defendant is the chief executive of DCC.
3. The application for injunctive relief is strenuously resisted by the defendants. While the arguments advanced by each party are set out in this judgment, the defendants argue, in summary, that the plaintiff has no standing to advance these complaints on behalf of the alleged former occupier of the Richmond Property, Jerry Beades Concrete Ltd, or any other third party. They say that the plaintiff fully participated in the compulsory purchase process where he raised all arguments he is now seeking to again make in these proceedings. They say that DCC is the registered owner of the Richmond Property having complied with the required legislative process for compulsory purchase orders. The defendants also say that these proceedings should be viewed as an abuse of process on the basis that the plaintiff seeks to circumvent judicial review procedures (with their strict statutory time limits) which the plaintiff did not avail of at the relevant time.
4. The plaintiff has focussed many of his arguments on the initial stages of the compulsory purchase process as well as on more recent attempts by DCC to recover possession of the Richmond Property. The plaintiff raises a number of procedural objections including that the required notices at the outset of the process were not properly served and he says this invalidates the entire compulsory purchase process that followed. The plaintiff also complains about incorrect maps attached to those notices and to deficiencies with the information included on the Derelict Sites Register. He complains about errors he says were made in designating number 21 as derelict, when he had undertaken the works requested by DCC and they confirmed that property was “non-derelict”. He also complains that the attempts by DCC to take possession of the Richmond Property were unlawful and in breach of legislation and his constitutional rights to property and to earn a livelihood from the premises.

5. The current situation is that the compulsory purchase process has been completed and DCC is the registered owner of the Richmond Property. The status quo in relation to the Richmond Property is that DCC own and are in occupation of it. Certain machinery and building materials belonging to the plaintiff remain on site.
6. Before addressing the reliefs sought and the respective arguments advanced by the parties, it is important to set out clearly the chronology to this matter. There is a very lengthy history of engagement and litigation between the parties. There was an extensive exchange of affidavits in relation to this application which was heard over a period of three days. Not all of this information is necessary to recite in this judgment – particularly as this is an application for interlocutory relief and this court is making no final determination on issues of law or fact at this time. I set out the relevant chronology below in tabular form which I believe is the most efficient way to present the relevant information as extracted from the affidavits exchanged.

Chronology:

DATE	EVENT	COMMENTS
22 Feb 2012	Richmond Property inspected by DCC Derelict Sites Section	Inspection report notes “ <i>Abandoned building site. Scaffolding to front of 21</i> ”. Notes equipment and machinery parked on site adjoining no 31. Address of building inspected appears to be 21/31 Richmond Ave.

2 Mar 2012	DCC authorised person issues his opinion that Richmond Property is a derelict site within the meaning of section 3(b) of the Derelict Sites Act 1990 (the “ 1990 Act ”)	Internal DCC document. Refers to 21-31 Richmond Ave, Dublin 3
7 Mar 2012 and 9 Mar 2012	DCC Manager issues Order under section 11 1990 Act. Section 11 notice issues to plaintiff	Order is addressed to plaintiff regarding site at 21 Richmond Ave, Dublin 3 requiring certain works to be carried out within six weeks (remove scaffolding/hoarding & secure openings) to prevent the land continuing to be a derelict site. While Manager’s order refers to 21-31 Richmond Ave, section 11 notice (dated 9 March 2012) refers to 21 only. It was served via registered post to 3 Lower Fairview Dublin and returned undelivered.
24 Apr 2012	Further DCC derelict sites inspection reports for 21 and 27-29 Richmond Ave.	Reports recommend service of notice under section 8(2) of the 1990 Act
27 Apr 2012	Managers Order recommending notice be served of DCC’s intention to enter the Richmond Property on the Derelict Sites Register.	

30 Apr 2012	Derelict Sites Act, 1990, section 8(2) notice (the “ Notice ”) issues to plaintiff.	Notice confirms that DCC is of opinion that Richmond Property is a Derelict Site and they intend to enter particulars of it on the Derelict Sites Register. Invite representations within a period of one month.
20 Jun 2012	A S.11 notice and the Notice is affixed to the Richmond Property site at various locations.	Photographic evidence at tab 9 to affidavit of Nial Dully sworn 10 February 2023. An inspection on 12 July 2012 showed Notices had been removed and they were reattached by DCC in July 2012. Further copies of notices sent by hand to other address(es) for plaintiff.
12 Sep 2012	Further inspection by DCC.	The report noted no change in site conditions since previous inspection. Proposed to serve section 8(7) notice and re-inspect later in month to ascertain the level of compliance with section 11 notice.
17 Sep 2012	Notice under section 8(7) served on plaintiff.	This was returned undelivered. This notice confirmed that particulars of the Richmond Property have been entered on the Derelict Sites Register. Plaintiff complains about the map identifying the property the subject of this notice.
13 Nov 2012	Further notice under section 8(2) served on plaintiff at various addresses.	

13 Dec 2012	Richmond Property is added to the DCC Derelict Sites Register	On this day notices were also served in relation to determining the market value of the Richmond Property (subsequently returned undelivered).
29 Nov 2013	Section 11 notice (in respect of number 21 Richmond Ave) was delivered by hand to addresses for plaintiff and copy affixed to number 21.	Previous section 11 notice served on 13 November 2013 by registered post at various addresses - returned undelivered.
1 Apr 2014	Section 11 notice issues in relation to number 21 requiring certain works to be done.	This notice was served on the plaintiff outside the jurisdiction when DCC discovered he was based there.
12 Dec 2014	Further site inspection of number 21	Report notes that work has been carried out with removal of scaffolding and openings secured. Report confirms <i>"...this work renders 21 Richmond Ave non-derelect but there has been no improvement in the condition of the greater part of the site i.e. 27-29 Richmond Ave which remains on the DSR"</i> .
2015/2017	Various DCC inspections confirming the Richmond Property should remain on Derelict Sites Register.	Correspondence from the dangerous buildings section to the plaintiff in 2016 in respect of the Richmond Property

2017/2018	Correspondence from DCC to plaintiff outlining DCC's intention to acquire the Richmond Property compulsorily.	Correspondence confirms that DCC will not proceed if plaintiff can demonstrate he intends to take immediate action to render the Richmond Property non-derelict. Arrangements for inspection of the Richmond Property for valuation purposes.
Jan 2019	Plaintiff and his representative meet with DCC to discuss DCC's acquisition of the Richmond Property	Parties did not succeed to acquire the Richmond Property by agreement.
27 Jun 2019	DCC issues and serves s. 15 notice of intention to compulsorily acquire the Richmond Property	Notice affixed to property and also published in the Irish Times on that date. Service pursuant to the requirements of section 6 of 1990 Act. Latest date for making objections was 29 July 2019.
26 Jul 2019	Plaintiff lodges an objection to proposed compulsory acquisition.	Letter of objection did not raise any issue with service. Plaintiff argues that there is a fundamental breach of his constitutional property rights.
28 Aug 2019	DCC applies to the Board seeking consent to the proposed compulsory acquisition of the Richmond Property	Consent of the Board sought pursuant to s. 14 of the 1990 Act to enable DCC to take the appropriate measures to render the property non-derelict.
2019-2020	Plaintiff engages in objection process before the Board.	Submissions made by plaintiff on 27 September 2019, 17 June 2020 and 19 October 2020.

3 Dec 2020	Inspectors report – The Board	<p>Prepared following site inspection on 19 May 2020. Report recounts the detailed objections and submissions made by the plaintiff to the compulsory purchase process for the Richmond Property - which closely correlate to the complaints advanced by the plaintiff in these proceedings. Key findings from this report include:</p> <p><i>“...the objector has been provided with reasonable opportunity to examine the relevant documentation pertaining to the proposed acquisition and respond to same” (para 7.1.1);</i></p> <p><i>“...the issue in the Section 14 acquisition case is whether or not the site is derelict within the meaning of section 3 of the Act. This definition does not necessarily rely on inclusion on the register of Derelict Sites” (para 7.1.5);</i></p> <p><i>“... The Council has demonstrated compliance with the necessary steps for intended acquisition within the parameters of the Derelicts (sic) Sites Act”.</i></p> <p>The Inspector concluded that the Richmond Property <i>“comes within the definition of a derelict site”</i> and recommended that the Board grant consent to DCC to compulsorily acquire the site.</p>
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11 Jan 2021	Board Direction – granting consent to compulsory acquisition	Direction notes that at its meeting that same day the Board considered the objections made to the compulsory acquisition of the Richmond Property, the inspectors report and the documents and submissions on file generally.
15 Jan 2021	Board Order granting consent to the compulsory acquisition by DCC of the Richmond Property	Board Order recites that <i>“It is considered that the site detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, owing to the neglected, unsightly and objectionable condition of the structures and the site, therefore, falls within the definition of a derelict site.... Furthermore, having regard to the observed condition of the site and the documentation provided in relation to the procedures and steps taken under the Derelict Sites legislation to include the site on Dublin City Council’s Derelict Sites Register and the serving of the notice on the lands, it is considered that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection cannot be sustained, having regard to the said necessity.”</i>

18 Jan 2021	The CPO Order is provided to the parties under detailed cover letter.	This letter detailed that “ <i>A person wishing to challenge the validity of a Board decision may do so by way of judicial review only.</i> ” Detailed information was provided regarding the relevant statutory provisions and rules of court and specifying that “ <i>subject to any extension to the time period which may be allowed by the High Court...any application for judicial review must be made within eight weeks of the decision of the Board .</i> ”
22 April 2021	DCC makes Vesting Order pursuant to s. 17 of the 1990 Act.	Vesting Order provides that the Richmond Property shall vest in DCC in fee simple free from encumbrances and all estates, rights, titles and interests of whatsoever kind on 20 May 2021.
27 April 2021	Notice of the making of the Vesting Order is served on the plaintiff. Notice is also published in the Irish Times and affixed to the Richmond Property	Notice provided details to any person who had an interest to apply to DCC not later than 12 months after the making of the Vesting Order for compensation in respect of their interest. Letter also included request to the plaintiff to remove any goods from the Richmond Property before 20 May 2021, failing which “ <i>anything left will become the property of the Council and can be disposed of by the Council as they deem appropriate</i> ”.

20 May 2021	DCC becomes full owner of Richmond Property	Registered on folio 245708F.
20 Apr 2022	Plaintiff submits claim for compensation	Claim of €30 million made by plaintiff on his own behalf and on behalf of Jerry Beades Concrete Ltd, Conor Beades and Nickey Beades.
25 Sep 2022	DCC secures possession of Richmond Property.	Plaintiff objects to DCC entry onto site. Also alleges he has equipment on site that is required to run his business. Complaints and correspondence regarding water ingress/alleged rights of way to the basement of number 31. Plaintiff alleges that DCC has acted unlawfully and in breach of forcible entry legislation.
19 Jan 2023	Plaintiff issues plenary summons and seeks injunctive relief.	

The injunctive relief sought

7. The following summarises the reliefs sought by the plaintiff in his notice of motion (pending the determination of these proceedings): –

- (1) An order restraining DCC from taking any further steps to give effect to the “*unlawful placing*” of the Richmond Property on the Derelict Sites Register.
- (2) An order restraining DCC from taking any further steps to give effect to the CPO for the Richmond Property (the other properties not being pursued at the hearing).

- (3) An order restraining DCC from interfering with the contractual relationship between the plaintiff and Jerry Beades Concrete Ltd in relation to “*their mutual use of and peaceful enjoyment of*” the Richmond Property.
- (4) An order directing DCC to vacate the Richmond Property “*immediately*”.
- (5) In the alternative to number (4), an order compelling DCC to permit the plaintiff access to the basement area of the Richmond Property “*in order to permit him maintain the pumps necessary for the prevention of water damage to the said plaintiff’s stock and equipment in the basement*”.
- (6) An order directing DCC to permit the plaintiff access to the Richmond Property in order for the plaintiff to access his stock, vehicles and equipment in a basement area on his own land.
- (7) An order directing DCC to permit the plaintiff, Jerry Beades Concrete Limited and its employees access to the basement of the Richmond Property to access stock, vehicles and equipment to fulfil its contractual obligations.
- (8) An order directing DCC to remove the locks and chains from the gates of the Richmond Property.
- (9) An order preventing DCC from trespassing or accessing the area immediately in front of number 31 Richmond Ave, outside the area covered by the alleged compulsory purchase order.
- (10) An order of Mandamus directing the removal of the Richmond Property from DCC’s Derelict Sites Register.
- (11) An order of Mandamus directing the removal of the CPO related to the Richmond property (the other properties not being pursued at hearing).

- (12) An order restraining DCC from appointing or assigning any person to block or to curtail access to the plaintiff's stock, vehicles and equipment located on the Richmond Property.
 - (13) An order pursuant to section 15(1)(b) of the Derelict Sites Act, 1990, compelling DCC to produce proof of service of all documents sent to the plaintiff and/or every lessee or occupier of the Richmond property.
 - (14) An order restraining DCC from interfering with the plaintiff's attendance and access at the Richmond Property.
- 8.** It is apparent that many of the reliefs sought are overlapping to a significant extent and, while framed as restraining orders seek, in essence, mandatory relief. Other orders are self-evidently mandatory including the orders for Mandamus. In respect of all of those mandatory reliefs it will be necessary for the plaintiff to satisfy the higher standard of proof of a strong case likely to succeed at trial.
- 9.** Taking the related reliefs together I note as follows:
- (a) Order (1) and (10) effectively seek the same relief. This is in effect mandatory relief to overturn a decision made by DCC in 2012 to enter the Richmond Property on the Register. Apart from the fact that this decision was initially taken over 10 years ago, it was subsequently confirmed by the Board as part of its consent considerations and this decision was not challenged by the plaintiff by way of judicial review.
 - (b) Orders (2), (4), (8) (11) and (14) can also be considered together. They seek to reverse the effect of the CPO of the Richmond Property - removing it or preventing DCC from acting on foot of it or preventing DCC from excluding the plaintiff from access to the Richmond Property. It is the case that a Vesting Order has been made and DCC is now the registered owner of the Richmond Property.

No challenge was brought by the plaintiff by way of judicial review, being the appropriate remedy available to him had he wished to challenge the CPO or the subsequent Vesting Order. The relief sought aims to reverse the effects of the CPO through the mechanism of mandatory interlocutory relief. It seeks to require DCC to vacate property in respect of which it is now the registered owner.

- (c) Orders (3), (5), (6), (7) and (12) are similar to the orders at (b) above. They are also mandatory in nature effectively seeking to direct DCC to give up possession of the Richmond Property and permit the plaintiff and Jerry Beades Concrete Ltd to use same in circumstances where DCC does not consent to this. DCC denies that there is any requirement to permit the plaintiff to access the Richmond Property either to remove stock on that property or in an adjoining basement area through which access is sought by the plaintiff via the Richmond Property. The court was provided with evidence of attempts to agree arrangements for the removal of stock and items from the Richmond Property. The plaintiff is not satisfied with those arrangements and says the materials cannot be removed in the manner suggested by DCC. DCC is not willing to permit the plaintiff to re-enter the Richmond Property. Insofar as there is a requirement to access other basement areas through the Richmond Property, DCC says this is a matter in respect of which the plaintiff will be compensated as part of the assessment of the impact of the CPO on his retained lands.
- (d) Order (9) seeks to prevent trespass to the area immediately in front of number 31 Richmond Ave. DCC denies that it has carried out any acts of trespass in this area.
- (e) Order (13) does not appear to be an order appropriate to interlocutory relief. It appears more correctly to be in the nature of a discovery request. It is also of

course a matter in respect of which submissions were made by the plaintiff as part of the CPO process to the Board and he made no challenge to their rejection of those submissions.

Has the plaintiff established a legal basis to obtain the interlocutory relief he seeks.

10. The legal principles governing how the courts should deal with applications for interlocutory injunctions were set out in detail by the Supreme Court in *Merck Sharp & Dohme v Clonmel Healthcare* [2019] IESC 65, [2020] 2 IR 1, and I do not intend to repeat those principles in detail in this judgment. An applicant seeking interlocutory relief must firstly satisfy the court that he meets the relevant threshold test – which threshold generally depends on whether the interlocutory relief sought is prohibitory or mandatory. The distinction is a matter of substance rather than how the applicant describes the relief sought. In the present case, and as outlined above, the reliefs sought by the plaintiff, save for the reliefs at paragraphs (9) and (13) of the notice of motion are, in substance, mandatory in nature. That being the case, the relevant threshold which the plaintiff must meet is that he can demonstrate at this point that he has a strong case likely to succeed at trial. This is a more onerous standard than that he establish that there is a fair issue to be tried. In the present case the defendants argue that irrespective of which test applies, the plaintiff fails to meet it.
11. The defendants submit that the plaintiff has failed to establish any legal basis for seeking the reliefs he claims in these proceedings. Their main argument in this respect is that the plaintiff did not and has not sought to challenge the decision of the Board or the subsequent Vesting Order in the only permissible manner open to him – namely, by way of judicial review under sections 50, 50A and 214 of the Planning and

Development Act 2000 (as amended) (the “**2000 Act**”). Section 50(2) of the 2000 Act confirms as follows:

“A person shall not question the validity of any decision made or other act done by-

(a) a planning authority, local authority or the Board in the performance or purported performance of a function under this Act, ...

(c) a local authority in the performance or purported performance of a function conferred by an enactment specified in section 214 relating to the compulsory acquisition of land...

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts...”.

- 12.** Counsel for the defendants referred to the decision of the Supreme Court in *Shell E& P Ireland Ltd v McGrath* [2013] IR 247 in which Clarke J (as he then was) stated at para 48 of his judgment as follows:

“The underlying reason why the rules of court impose a relatively short timeframe in which challenges to public law measures should be brought is because of the desirability of bringing finality to questions concerning the validity of such measures within a relatively short timeframe. At least at the level of broad generality there is a significant public interest advantage in early certainty as to the validity or otherwise of such public law measures. People are entitled to order their affairs on the basis that a measure, apparently valid on its face, can be relied on. That entitlement applies just as much to public authorities. The underlying rationale for short timeframes within which judicial review proceedings can be brought is, therefore, clear and of significant weight.”

13. Clarke J noted at para 59 of his judgment in *Shell* that

“...the type of legislation which has been adopted in recent times in the planning and immigration fields, for example, not only imposes a statutory time limit for the commencement of proceedings but also prevents any question as to the validity of relevant measures being raised save by judicial review.... It seems to me to necessarily follow that permitting such a challenge to be brought in a manner which would entirely circumvent those rules would amount to permitting rules ..to be circumvented in an inappropriate way”.

14. The defendants argue that the plaintiff’s main complaint relates to infirmities in service of notices relating to the compulsory acquisition process under the 1990 Act. They say that there is clear evidence that service was correctly affected pursuant to section 6 of the 1990 Act. They also state that the plaintiff’s complaints regarding service issues, the use of the Richmond Property by Jerry Beades Concrete Ltd, and assertions that the Richmond Property is not “derelict” were all issues canvassed in detail by the plaintiff before the Board and were determined against the plaintiff by the Board in its decision made in January 2021. The defendants point out that the Board is not a party to these proceedings. The defendants say that the plaintiff’s current application for interlocutory relief amounts to an impermissible attempt to circumvent the statutory safeguards provided by the 2000 Act including strict statutory time limits and criteria, such as substantial grounds, which must be met in order to obtain leave to bring judicial review proceedings. Such an approach they say amounts to an abuse of process and an impermissible collateral challenge to the decision of the Board taken over two years ago. For these reasons they argue that the plaintiff has failed to meet the threshold for seeking interlocutory relief, whichever threshold the court applies.

- 15.** The plaintiff argues that there is a serious question as regards notice and proof of service of the required documents on him and the occupier company and says in such circumstances the right to fair procedures has been denied to him and the actions of the defendants have resulted in the plaintiff no longer being able to make a living from the Richmond Property.
- 16.** The evidence before the court confirms that the plaintiff made a number of submissions and objections to the Board and copies of his submissions are exhibited to the Inspectors Report at tab 35 to the affidavit of Nial Dully. The plaintiff complained about service of notices including on Jerry Beades' Companies who he claimed were in occupation of the Richmond Property. He complained about discrepancies with maps and about the manner in which the Richmond Property had been placed on the Derelict Sites Register. He also complained regarding the works he had carried out at number 21 and said that site was not correctly classified as derelict. He complained that he had not been given an opportunity to finish off the Richmond Property so as to render it non-derelict. In his final submissions these complaints were repeated and expanded upon. The plaintiff submitted that the inclusion of the Richmond Property on the Derelict Sites Register was unlawful and that notices and documentation were non-compliant with the statutory requirements.
- 17.** Insofar as the same complaints, or versions of them, are relied upon as the basis for claiming interlocutory relief in the present proceedings, it appears to me that these are arguments the plaintiff ought correctly to have made by way of judicial review in compliance with the 2000 Act. I am making no final finding on that point as it would of course not be appropriate for me to do so in the context of an interlocutory application. However insofar as I am of this view based on the material before this court, I do not

believe that the plaintiff has met the necessary threshold on these points to obtain the interlocutory relief he seeks.

- 18.** The plaintiff made several freedom of information requests from DCC and other parties, as a result of which he obtained additional documentation and information which he says was unavailable to him at the time this matter was before the Board. He argues that the Board was not sent the “*Statutory & the Mandatory Required Register*”. He complains that there are entries and information missing from the Register that are required under section 8 of the 1990 Act and that these omissions invalidate the CPO for the Richmond Property. He continues to complain regarding map discrepancies including maps attached to the Derelict Sites Register. He argues that this process was part of a wider personal vendetta against him by the defendants. He has uncovered the name of the party he believes was the original complainant to DCC regarding the condition of the Richmond Property and he argues that this complaint is “*completely biased*” (para 2 of the supplemental affidavit of Jerry Beades sworn 18 April 2023). He also complains that the Board inspector was a former DCC employee. I am not satisfied that these matters raise a sufficient basis to justify the court’s intervention by way of mandatory injunctive relief at this time.
- 19.** The plaintiff also complains about the entry onto the Richmond Property by DCC which occurred on 25 September 2022. The plaintiff refers to this in his supplemental affidavit as the “*breaking and entry*” by DCC onto the property. He relies upon the Forcible Entry Act 1634 in which he says it is an offence to break and enter or make an entry into any lands and tenements by force. He says that under this statute it is no defence that the person guilty of forcible entry was entitled to possession or had a legal right of entry. He says that this Act remains on the Irish statute books and was retained by section 2(2)(b) of the Statute Law Reform Revision Act 2009. He also claims that

there are no provisions under the 1990 Act which provide for powers to break and enter or forcibly eject occupiers.

20. In response, the defendants refer to the Prohibition of Forcible Entry and Occupation Act 1971 which expressly disapplies the offence of forcible entry to landowners in respect of lands they own – section 2(a). They confirm that this matter is relevant only to a prosecution for the offence and no such matter is before this court. They say that the plaintiff wants a mandatory order allowing him, without DCC consent, to continue to operate a business from the Richmond Property which is now owned by DCC. Such an order they say would run entirely contrary to the Board Order, the Vesting Order (neither of which the plaintiff challenged) and indeed the registration of DCC as the owner on the folio for the Richmond Property. They refer to the conclusive nature of the property register under section 31(1) of the Registration of Title Act 1964. They also refer to the effect of a vesting order which, as noted in the Law Reform Commission Report: Compulsory Acquisition of Land (2023) at para 17, “... *permits the acquiring authority to obtain an unencumbered title since it operates not by conveying the existing title, but rather by vesting in the acquiring authority any relevant land or interest in fee simple free from encumbrances and all estates, rights, titles and interests on the vesting date.*”
21. The defendants state that where there is good title (as in the present case for DCC) the courts should not permit a third party trespass via an interlocutory application.
22. I am satisfied that the status quo is that DCC is the registered owner of the Richmond Property and that DCC has a statutory obligation to secure properties acquired by it through the compulsory purchase process. DCC are *prima facie* entitled to enter upon and secure lands they are the registered owner of and in respect of which any other party’s entitlements have been extinguished through the unchallenged Vesting Order. In

those circumstances, the plaintiff has not made out a legal basis for mandatory interlocutory relief to be granted to him which would reverse that status quo, requiring DCC to act as though it were not the registered owner of the Richmond Property (by compelling access/vacating the property and so forth).

- 23.** In relation to those reliefs seeking access to or through the Richmond Property to collect goods and materials belonging to the plaintiff, I do not believe that orders should be made requiring DCC to permit the plaintiff to enter the Richmond Property. I am satisfied that there have been several attempts to make arrangements for the handover of the plaintiff's goods to him and of course the plaintiff could have collected his property at any time before the completion of the CPO process. The efforts made are set out in some detail in the affidavit of Nicola Finegan sworn 10 February 2023. The plaintiff says he has nowhere else to store these items. That is, however, a matter for the plaintiff. He also says that the arrangements were unsuitable and that goods cannot simply be handed out over the fence. I note that DCC has confirmed the materials could be transported to and collected from another area and I expect that sensible arrangements could be achieved for the collection of the plaintiff's goods with the plaintiff's cooperation. If that cooperation is not forthcoming, DCC may have to dispose of the goods and materials. I do not however make any determination in that regard. Suffice to say that I do not believe any interlocutory orders should be made in the terms requested by the plaintiff in order to retrieve goods and materials which may remain on the Richmond Property.
- 24.** Finally, I will deal with the relief sought at para 9 of the plaintiff's notice of motion seeking to restrain any trespass by the defendant on lands immediately in front of number 31 Richmond Ave, which are outside the area compulsorily acquired by DCC. In her affidavit sworn 10 February 2023, Nicola Finegan on behalf of DCC refers to

this area as “*Mr Beades’ Land*”. Any trespass on this area is denied by DCC. Neither does DCC assert any entitlement to access this area or claim to be doing so. There was insufficient evidence before the court of any trespass or continuing trespass necessitating an interlocutory order in these terms.

Decision of this court

- 25.** For the reasons outlined above, the plaintiff’s application fails on the initial threshold stage of establishing either a fair issue to be tried or a strong case likely to succeed at trial. The plaintiff fully participated in objecting to the CPO process for the Richmond Property before the Board, where he raised many of the same issues he now seeks to advance in these proceedings against DCC. The Board rejected his submissions and informed him how to lawfully challenge the Board’s decision. He did not challenge the Board’s decision nor did he challenge the Vesting Order subsequently made by DCC. DCC is now the registered owner of the Richmond Property. While this court is not determining final issues of fact or law on this interlocutory hearing, nevertheless the above confluence of factors persuades this court to refuse the interlocutory reliefs sought.
- 26.** While it is not necessary for me to consider any further issues, I have for the sake of completeness also considered the balance of convenience, including the adequacy of damages. I am satisfied that even if the plaintiff met the relevant threshold, which he does not, the balance of convenience would lean heavily in favour of refusing the injunctive relief sought.
- 27.** The plaintiff argues that the relief sought will not prejudice the defendants and will merely hold matters pending a determination of the entire case. He says that a feasibility study has not yet been carried out and that there is nothing to suggest that

DCC will be able to do anything with the Richmond Property in the foreseeable future and they are continuing to spend significant amounts of money on security. He argues that the least risk of injustice rests in granting the relief sought by him, in particular through giving him access to the Richmond Property in order to make his living which he says is his constitutional right. He says that damages are not an adequate remedy for him.

28. The defendants submit that damages are an adequate remedy for the plaintiff in respect of all aspects of loss he or other parties may suffer as a result of the CPO. They note that the plaintiff has already submitted a substantial claim in that regard which includes reference to ancillary losses including the impact on the value of retained lands outside the area of the CPO (including any impact on access to the retained basement area). The defendants say, conversely, that the undertaking as to damages given by the plaintiff is unlikely to be of any value to DCC and that the plaintiff has failed to adduce evidence that there is any substance to the undertaking he has offered.
29. Furthermore, the defendants say they have offered to arrange for the plaintiff to collect materials and that the plaintiff has failed to engage with this process. They say they remain open to facilitating collection of materials by the plaintiff.
30. The defendants also say that, in considering the balance of convenience, this court should give appropriate weight to the orderly implementation of measures which are *prima facie* valid and in the public interest in the orderly operation of the CPO. DCC is the registered owner of the Richmond Property and the court should preserve the status quo which is that DCC owns the land and should be permitted to maintain same securely. DCC says that the Richmond Property is earmarked for important housing development and that DCC would be prejudiced if it were unable to move forward with that development.

- 31.** I am satisfied that damages would be an adequate remedy for the plaintiff in this case and indeed in relation to the CPO generally and this court would encourage the parties to engage in the compensation process as soon as possible. I believe the balance of convenience favours maintaining the status quo, whereby the defendants are in possession of the Richmond Property under decisions and instruments which have been unchallenged and have a presumption of legality.
- 32.** In all the circumstances, I refuse the reliefs sought by the plaintiff.
- 33.** As to costs, my provisional view is that the defendants, having been entirely successful in resisting the interlocutory reliefs sought, are entitled to recover their costs as against the plaintiff. I will however list this matter for mention on Tuesday 13 June at 10.45am for the purposes of hearing the parties in relation to same and on any other matter arising from this judgment.