THE HIGH COURT

[2023] IEHC 62

Record No. 2014 4055 P

Between

THOMAS GERARD MULLANEY

Plaintiff

AND

DANSKE BANK A/S AND GRANT THORNTON, CORPORATE FINANCE LIMITED AND STEPHEN TENNANT

Defendants

THE HIGH COURT

Record No. 2021 5778 P

Between

THOMAS MULLANEY

Plaintiff

AND

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY, DANSKE BANK A/S TRADING AS DANSKE BANK

Defendant

Judgment of Mr. Justice Dignam delivered on the 17th day of January 2023.

Introduction

1. This judgment deals with three motions brought in two separate sets of proceedings: plenary proceedings titled '*2014/4055P Thomas Gerard Mullaney v Danske Bank A/S and Grant Thornton, Corporate Finance Limited and Stephen Tennant'* and plenary proceedings titled '*2021/5778P Thomas Mullaney v Ireland, The Attorney General, The Minister for Justice and Equality, Danske Bank A/S trading as Danske Bank'.*

2. In the first set of proceedings a Notice of Motion was issued on behalf of the first-named defendant ("Danske") on the 12th January 2022 seeking the following reliefs:

> *"a) An Order pursuant to Order 122 Rule 11 of the Rules of the Superior Courts dismissing the Plaintiff's claim for want of prosecution, no step having been taken in the proceedings for more than two years.*
>
> *b) In the alternative, an Order pursuant to Order 19 Rule 28 of the Rules of the Superior Courts striking out the within proceedings on the basis that they fail to disclose any reasonable cause of action and/or they are frivolous or vexatious;*
>
> *c) Further and/or in the alternative, an Order pursuant to the inherent jurisdiction of this Honourable Court striking out the within proceedings on the basis that they are bound to fail and/or are frivolous and vexatious;*
>
> *d) An Order pursuant to section 123(b) of the Land and Conveyancing Law Reform Act 2009 vacating Lis Pendens registered on Folios 1991F, 28094, 15931F and 1824F of the Register County Roscommon."*

3. At the hearing, counsel on behalf of Danske made clear that the relief under section 123(b) of the Land and Conveyancing Law Reform Act, i.e. paragraph (d) of the Notice of Motion, was being sought as ancillary to the reliefs at (a) to (c). He also stated

that Danske was not imploring the Court to strike out the proceedings for want of prosecution. I therefore deal with paragraph (a) last.

4. Reference was also made to the motion having been brought on behalf of the three defendants but it is clear from the face of the Notice of Motion that it was brought on behalf of Danske only.

5. In the second set of proceedings the fourth-named defendant in the proceedings, Danske, issued a motion on the 12th January 2022 seeking the following relief:

> *"a) An Order striking out and/ or dismissing the within proceedings on the grounds that the Plaintiff is an undischarged bankrupt and has commenced the within proceedings without the leave of the Official Assignee in Bankruptcy and/or the Court;*
>
> *b) An Order pursuant to Order 19 Rule 28 of the Rules of the Superior Courts striking out the within proceedings on the grounds that they fail to disclose any reasonable cause of action as against the Fourth Named Defendant and/or that they are frivolous and vexatious;*
>
> *c) Further and/or in the alternative, an Order pursuant to the inherent jurisdiction of this Honourable Court striking out the within proceedings on the basis that they are bound to fail and/or are frivolous and vexatious;"*

6. The third motion is a motion brought by the plaintiff in which he seeks:

> "*(a) An Order for Contempt by Danske Bank, Solicitor Graham Macken, and Ivor Fitzpatrick Solicitors whose Motion to Strike Out the Plaintiff's Constitutional Case is a denial of the Plaintiff's Constitutional Rights under Article 40.1 of the Constitution and Article 2 of the Treaty of Europe.*
>
> *(b) An Order for the investigation and prosecution of PERJURY by Solicitor Graham Macken who knowingly, willingly, and intentionally committed PERJURY in his Sworn Affidavit dated 11th January 2022 when he described the Plaintiff's Constitutional Rights under Article 40.1 of the Constitution and Article 2 of the Treaty of Europe as Frivolous and Vexatious."*

7. At the hearing of the first two motions I was informed that the plaintiff had issued this third motion on the morning of the hearing and that it was returnable for a date well after the hearing. Essentially the third motion was brought on the basis that the bringing of a motion to strike out the plaintiff's claim in the 2021/5778P proceedings was a contempt of court and the solicitor, in allegedly describing the plaintiff's constitutional rights as "*frivolous and vexatious*" in the grounding affidavit, had committed perjury. I was of the view that given that the motion was brought so late in the day it should not hold up the hearing of the original two motions (the only explanation given by the plaintiff for bringing his motion so late was that although he had received the motion papers in February, he only got the booklets in the few days before the hearing). More importantly, I was of the view that the plaintiff would be able to make any of the points which he was going to make in his contempt and perjury motion at the hearing in opposition to Danske's motions and it was therefore not necessary to adjourn these motions to after the hearing of the plaintiff's contempt motion.

8. In fact as matters transpired, before I delivered judgment in respect of the first two motions, the plaintiff's motion came on for hearing before me and this judgment therefore deals with all three.

Background

9. There is a considerable background to these motions. There have been two sets of summary proceedings in which orders were made granting judgment to Danske, plenary proceedings instituted by a receiver appointed by Danske to the plaintiff's lands in which Stewart J granted injunctive relief to the receiver, the two sets of plenary proceedings instituted by the plaintiff against Danske (and others) in which the current motions are brought, Circuit Court proceedings in which the plaintiff sought approval of a Personal Insolvency Arrangement, and bankruptcy proceedings instituted by Danske.

10. All of these proceedings relate to borrowings which the plaintiff and his wife had with Danske and their predecessor, the security for those borrowings and the terms of the facilities and subsequent alleged interactions. There are significant disputes of fact in relation to these matters but, other than to note the existence of those conflicts, they are not matters for these motions. The Circuit Court Insolvency proceedings obviously related in part to these borrowings.

11. Put very briefly, the plaintiff and his wife had borrowings with Danske or its predecessor which were secured on lands owned by the plaintiff and his wife. In 2009

the plaintiff and his wife requested to consolidate their loans and, after some discussions, Danske issued a facility letter on the 11th January 2010 which required an increase in the security provided and required a repayment schedule of 36 months. The plaintiff took issue with the demand for increased security and the repayment schedule. It is alleged that a representative of Danske told the plaintiff that if he and his wife accepted the loan facility offered and made the repayments for six months that he, the representative, could arrange with Danske to extend the loan term to twenty years. The plaintiff and his wife accepted the facility letter on the 22nd January 2010, including the increased security and the repayment schedule, and drew down the loan on the 4th June 2010. The plaintiff claims that everyone knew or should have known that it was never going to be possible for the plaintiff and his wife to make these repayments and that while they managed to do so for a number of months, they did so from an overdraft that was provided by Danske. It is alleged that there were discussions in 2011 about extending the loan term to twenty years but it seems that they never reached a conclusion. It is alleged that in November 2012 a representative of Danske offered to accept a reduced monthly repayment and that the plaintiff made this payment until September 2013 (which is denied by Danske) and that when they did not make repayments after that, Danske appointed receivers over the lands which it held as security for the loan facilities on the 18th December 2013.

12. On the 17th October and 22nd October 2013 Danske issued two sets of summary proceedings against the plaintiff and his wife (record numbers 2013/3359S and 2013/3420S) seeking judgment in respect of two amounts on foot of these borrowings.

13. On the 18th December 2013 Danske appointed a receiver over the properties which it held as security for the loans.

14. On the 28th April 2014 the plaintiff instituted the first set of plenary proceedings with which this judgment is directly concerned (record number 2014/4055P) in which he challenges the agreements underlying the borrowings. The Statement of Claim is not well pleaded and while it refers to the "*agreements*" being void and unenforceable, it does not identify precisely what agreements are being referred to as being void and unenforceable. It is clear that included in this term is the loan facility of the 22nd January 2010. It is also likely to include what is described in Danske's Defence as a "*Temporary Payment Arrangement"* of the 25th November 2011 though this is not specifically mentioned in the Statement of Claim. The plaintiff claims that the agreements are void and unenforceable on fifteen specified grounds, including that they are an unconscionable bargain, duress and undue influence, misrepresentation, economic duress, the interest was extortionate, that the defendants knew or ought to have known

that the plaintiff was never at any time in a position to repay the loans, the loan agreements were illegal, and that the defendants have been unjustly enriched by their actions. This is not an exhaustive list. As noted above, there are significant disputes of fact between the parties and some of these relate to the maters set out in this summary. The plaintiff claims a declaration that the purported loan agreement of the 22nd January 2010 and all subsequent loan agreements are void and unenforceable, damages, and a number of reliefs in relation to the security held by Danske including "*an Order that the Plaintiff is the beneficial owner of all the lands contained in Folios RN28094, RN1991F, RN1824F and RN15931F of County Roscommon*", an Order of rescission "*of all mortgage charges lodged by the First named Defendant on Folios RN199IF of Co. Roscommon*" and injunctions restraining the defendants from interfering with the lands.

15. The receiver appointed by Danske issued proceedings under record number 2014/10113P.

16. The summary proceedings (2013/3359S and 2013/3420S) came before Stewart J on the 14th October 2016 after an exchange of affidavits and she granted judgment to Danske.

17. On the same day, Stewart J also granted various reliefs to the receiver in his 2014/10113P proceedings, essentially granting possession of the properties to the receiver and restraining the plaintiff and his wife from interfering with that possession.

18. In 2018 Danske sought to strike out the plaintiff's claim in the 2014/4055P proceedings for want of prosecution and on the basis that the matters complained of in those proceedings were res judicata on the grounds that Stewart J's Orders had already determined the validity of the loans which was being challenged in the 2014/4055P proceedings. This application was refused by Burns J. According to the affidavit sworn on behalf of Danske in the current application this refusal was partly on the basis that the existing Defence had not been amended to include a plea of res judicata. This is not recorded on the face of the Order but it is sworn to by the deponent on behalf of Danske and is not denied by the plaintiff. The furthest the plaintiff goes in putting this in issue to say in an affidavit sworn in the 2014/4055P proceedings on the 19th June 2019 that "*The defendant does not exhibit the Order of Judge Burns or a copy of the DAR of the Court Proceedings to prove this and in this regard I beg to refer to copy of the Affidavit that Judge Burns relied on when making her Order.*" However, the plaintiff then accepted at the hearing that Burns J refused to strike out the proceedings on the basis that the Defence had not been amended to include a plea of res judicata but he also pointed out that she relied on the affidavits which were filed, which raised the point which is at the

core of the 2021 proceedings, ie. that the principle of equality means that the plaintiff is immune from court summonses or orders. The Court was not informed of the basis upon which Burns J refused to strike out the proceedings for want of prosecution.

19. Danske then applied for liberty to amend the Defence to include a plea of res judicata and Reynolds J gave them liberty to do so by Order of the 24th June 2019. While it is not stated in the affidavits, I was told by Counsel for Danske that this leave was given on their undertaking not to bring a further motion to strike out the proceedings on the basis that they were res judicata. The Amended Defence was delivered on the 25th June 2019.

20. This was the last step in the 2014 proceedings.

21. The plaintiff engaged a Personal Insolvency Practitioner and a Personal Insolvency Arrangement ("PIA") was proposed which was rejected by the plaintiff's creditors, including Danske. The plaintiff then issued proceedings in the Circuit Court pursuant to section 115A of the Personal Insolvency Act 2015 seeking to have the PIA approved by the Court in April 2020. After an exchange of affidavits, the Circuit Court ultimately refused the application under section 155(a)(9). The position taken by the plaintiff in this PIA and in the affidavits in relation to the debts claimed by Danske is of some significance and it is discussed below in greater detail.

22. By petition dated the 3rd July 2019 (Record no. 2019/4699/P) Danske sought to have the plaintiff adjudicated bankrupt on foot of the two judgments made by Stewart J in the summary proceedings. On the 13th October 2021 Humphreys J adjudicated the plaintiff bankrupt.

23. The previous day, the 12th October 2021, the plaintiff issued the second set of proceedings (2021/5778P) with which this judgment is directly concerned. The plaintiff describes this as the "*constitutional case*" and takes the position that it supersedes everything. He takes the position that it has nothing to do with banking. The case does, of course, raise points relating to the Constitution. Given that Danske seeks to have the claim in this most recent set of proceedings struck out, it is worth quoting at length from the Statement of Claim. It pleads a breach of duty and a breach of constitutional duty on the part of each defendant (Ireland, the Attorney General, the Minister for Justice and Equality, and Danske Bank A/S) (though no particulars are pleaded) and then goes on in a series of unnumbered paragraphs to plead:

> "*The Plaintiff seeks a Declaration from the Honourable Court that their Constitutional Rights have been denied due to the fact that the Plaintiff is aware*

of High Court Case Law No. 2018/9410P where the then Minister for Justice, Charlie Flanagan and the Attorney General, Seamus Wolfe (sic), failed to Enter an Appearance and that case was Struck Out.

High Court Case Law No. 2018/9410P along with Article 40.1 means that like the Justice Minister and the Attorney General, the Plaintiff is immune to Court Summons and the case in Court against the Plaintiff must be Struck Out.

The Plaintiff is aware that there is an investigation by the Justice Department under 3 Reference Numbers: DJE-MO-00516-2019, DJE-MO-04404-2019 and DJE-MO-00889-2019, also Pulse No. HQCSO.1-348140/16 from the Garda Commissioner in relation to this Constitutional Crisis.

I have been the Victim of Court Summons and as happened with the Justice Minister and the Attorney General, the case against me should have been Struck Out.

The Plaintiff is aware of how the DPP failed to comply with High Court Order No. 2006/1114P and like the DPP, the Plaintiff is immune to Court Order No. 2013/3359S and 2013/3420S.

The Plaintiff is aware that the State, since September 2019, has failed to provide a Defence in related Constitutional Case No. 2019/6501P.

The Plaintiff is aware that the State has failed to Enter an Appearance in related Constitutional cases No. 2018/9410P and No. 2021/2308P.

The Plaintiff is protected from all Court Summons and Court Orders under Article 40.1 of the Constitution, also, under Article 2 of the Treaty of Europe.

The Plaintiff will provide a detailed Statement of Claim and reserved the right to provide additional evidence as it becomes known.

The Plaintiffs Claim for damages is one million Euros."

24. It is also worth quoting from an affidavit which the plaintiff delivered to deal "*with the facts in relation to* [his] *Statement of Claim*":

"1. I SAY THAT IN HIGH COURT CONSTITUTIONAL CASE NO. 2018/9410P THAT CASE CHALLENGED THE RIGHT OF THE DPP TO PROSECUTE WHILE THEY ARE IN ONGOING CONTEMPT OF HIGH COURT ORDER NO. 2006/1114P. THE STATE FAILED TO DEFEND THE DPP AND CONTRARY TO JUDGE REYNOLDS FRAUDULENT ORDER NO. 2018/941OP. THERE WAS NO APPEARANCE ENTERED BY THE STATE AND NO DEFENCE BY COUNSEL FOR THE DEFENDANTS. ORDER NO. 2018/9410P ESTABLISHED CASE LAW WHICH MEANS THAT LIKE THE DEFENDANTS IN CONSTITUTIONAL CASE NO.2018/9410P, ALL E.U CITIZENS ARE IMMUNE TO COURT SUMMONS TO COURT SUMMONS AND THAT EQUALITY IS GUARENTEED UNDER ARTICLE 2 OF THE TREATY OF EUROPE.

IN 2019, LEO VARADKAR FAILED TO COMPLY WITH ARTICLE 35.4.1 OF THE CONSTITUTION AND PROMOTED ATTORNEY GENERAL, SEAMUS WOULFE TO THE SUPREME COURT DESPITE HIS TREASON IN THE HIGH COURT CONSTITUTIONAL CASE NO. 2018/9410P.

2. *I SAY THAT THERE IS AN INVESTIGATION IN THE DEPARTMENT OF JUSTICE UNDER ARTICLE 3 REFERENCE NUMBER: DJE-MO-00516-2019, DJE-MO-04404-2019 AND DJE-MO-00889-2019. POLCIE PULSE NO: HQCSO. 1-348140/16 WAS ISSUED DUE THAT ONGOING TREASON BY THE GOVERNMENT. THE POLICE ARE NOW POWERLESS AS THEY PROSECUTE UNDER THE DPP AND WHILE THE DPP IS IN ONGOING CONTEMPT OF ORDER NO.2006/1114P THERE IS NO POWER TO PROSECUTE THE GOVERNMENT FOR TREASON.*

THE ABOVE TREASON HAS DISSOLVED ALL COURTS WITHIN THE E.U UNDER ARTICLE 2 OF THE TREATY OF EUROPE. SUPREME COURT PRESIDENT, FRANK CLARKE WAS INTERVIEWED BY THE LAW SOCIETY GAZETTE AND STATED THAT HE CANNOT SEE HOW THE E.U. CAN ENFORCE E.U. LAW IN ALL E.U. MEMBER STATES WHILE FRANK CLARKE IS PARTY IN THE ESCALATING TREASON WHICH HAS DISSOLVED ALL E.U. COURTS.

3. *I SAY THAT IN CASE NO. 2014/10113P HIGH COURT JUDGE STEWART OVERTURNED AN ORDER OF HIGH COURT JUDGE MURPHY WHERE JUDGE STEWART REFUSED TO ALLOW MS. HELEN LEECH TO BE CROSS EXAMINED IN CASE NO. 2014/10113P, WHILE I WAS DENIED MY CONSTITUTIONAL RIGHT FOR A FAIR HEARING.*
IN BANKRUPTCY RECORD NO. 2019/4699/P JUDGE HUMPHREYS MADE AN ORDER FOR BANKRUPTCY EVEN THOUGH HE WAS INFORMED OF AN EXISTING

CONSTITUTIONAL CASE ALREADY LODGED IN THE HIGH COURT. THIS IS TREASON, ALSO THE ORDER WAS RELIED ON AFFIDAVIT WITH RECORD NO.2019/ 4700P WHICH IS A TOTALLY DIFFERENT CASE, MURRAY- V- ESKER LODGE LTD.

4. *I SAY THAT IN CONSTITUTIONAL CASE NO. 2019/6501P HAS GARDA PULSE NO. HQCSO.1-348140/16 DUE TO THE FAILURE OF THE GOVERNMENT TO COMPLY WITH ARTICLE 35.4.1 WHICH COMPELS THE GOVERNMENT TO IMPEACH JUDGE REYNOLDS WHO IGNORED ARTICLE 40.1 OF THE CONSTITUTION AND ARTICLE 2 OF THE TREATY OF EUROPE.*

I SAY THAT SINCE APRIL 2019 THE STATE HAS FAILED TO PROVIDE A DEFENCE IN HIGH COURT CONSTITUTIONAL CASE NO. 2019/6501P AND WHILE THAT CASE IS PENDING ALL COURTS SHOULD HAVE BEEN SUSPENDED AS THAT CASE EXPOSES THE FACT THAT ALL COURT SUMMONS AND ORDERS ARE UNCONSTITUTIONAL UNDER ARTICLE 40.1 OF THE CONSTITUTION AND ARTICLE 2 OF THE TREATY OF EUROPE.

5. *I SAY THAT DUE TO THE FAILURE BY THE JUSTICE DEPARTMENT TO DATE, HAS FAILED TO INVESTIGATE AND PROSECUTE TREASON BY JUDGE REYNOLDS IN HIGH COURT CONSTITUTIONAL CASE NO. 2018/9410P PETITIONS HAVING BEEN LODGED WITH THE EUROPEAN COMMISSION DUE TO THE FACT THE JUSTICE DEPARTMENT IS IGNORING ARTICLE 2 OF THE TREATY OF EUROPE."*

25. Danske then issued the first two motions the subject of this judgment and the plaintiff subsequently issued the third. Throughout my consideration of the first two motions I have considered the points made by the plaintiff in respect of the relief sought by him in his motion.

Strike out under Order 19 Rule 28 or the Court's inherent jurisdiction

26. I was not referred to any authorities in relation to the jurisdiction to strike out proceedings on the basis that they fail to disclose any reasonable cause of action or are

frivolous and vexatious and/or bound to fail but the principles are well-established and it suffices to summarise them.

27. The jurisdiction to strike out is one which must be exercised sparingly given that it relates to the constitutional right of access to the courts; the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the claim is frivolous and vexatious or that it is bound to fail; the Court must take the plaintiff's case at its high-water mark; the Court must be satisfied that the plaintiff has no reasonable chance of succeeding; and the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the use of pre-trial procedures such as discovery or by the evidence at trial. The rationale for the jurisdiction, particularly under the court's inherent jurisdiction, is to ensure that an abuse of process does not take place – if the Court is satisfied that the plaintiff's case must fail then it would be an abuse of process for it to continue. These principles apply to the Court's inherent jurisdiction and to its jurisdiction under Order 19 Rule 28. There is an important difference between the two jurisdictions. Under Order 19 Rule 28 the Court must accept the facts as asserted in the plaintiff's claim. There is to be no inquiry into or assessment of the facts as pleaded. They must be taken as correct and the inquiry must be solely concerned with whether those facts disclose a cause of action. Under the Court's inherent jurisdiction, on the other hand, there may be a limited analysis of the facts and the Court can, to a limited extent, consider whether there is any credible basis for suggesting that the facts as asserted are true and, if not, then the proceedings may be dismissed on the basis that they are bound to fail on the merits and are an abuse of process.

2014 Proceedings

28. Danske's case in relation to the 2014/4055P proceedings is that they should be struck out as not disclosing a reasonable cause of action, being frivolous and vexatious and being bound to fail because (i) the plaintiff has been adjudicated bankrupt, (ii) the plaintiff admitted the debt, the validity of which is being challenged in these proceedings, in the Personal Insolvency proceedings in the Circuit Court and undertook to discontinue these plenary proceedings, and (iv) the validity of the debts has been adjudicated upon in the Summary proceedings and it is an abuse of process for the plaintiff to seek to challenge them again – essentially a res judicata argument.

29. I do not believe that it would be appropriate to dismiss the proceedings under Order 19 Rule 28 of the Rules of the Superior Courts. As noted above that rule is designed for cases where, assuming all the facts pleaded to be true, these facts do not disclose a cause of action. The basis upon which Danske seeks to have the proceedings struck out is not that the pleadings do not disclose a cause of action but that in light of events which have occurred since the institution of the proceedings, the plaintiff's case is bound to fail and is therefore frivolous and vexatious. Proceedings which were not frivolous and vexatious when they were instituted could, of course, become frivolous and vexatious by the occurrence of events after their institution but I am reinforced in my view that this is not an appropriate case to be dealt with under Order 19 Rule 28 in circumstances where it requires a consideration of the effect of the plaintiff being adjudicated bankrupt, where there is a dispute about the effect of the plaintiff including the Danske debt in his Proof of Debt in the Personal Insolvency proceedings, and where the plaintiff says on affidavit that he was only willing to admit the debt if the PIA was accepted or approved.

30. It seems to me that these arguments are more properly considered under the Court's inherent jurisdiction.

Effect of Bankruptcy

31. Danske submits that as the plaintiff has now been adjudicated bankrupt the 2014/4055P proceedings have become frivolous and vexatious and bound to fail because the effect of the adjudication is that (i) he can not maintain the proceedings because they concern lands of which he is no longer owner (the lands now having become vested in the Official Assignee) and (ii) he can not maintain the proceedings because the cause of action is vested in the Official Assignee.

32. The first of these, i.e., that he can not maintain the proceedings because the lands have become vested in the Official Assignee, might be a basis for striking out the proceedings if the claim only concerned an interest in the lands. However, as is clear from paragraph 14 above, relief is also sought in respect of the underlying loan agreements. Of course, Danske says that the validity of those loans has already been determined by Stewart J but that is a separate point. For present purposes, I can not conclude that the 2014/4055P proceedings are bound to fail on the basis that they concern the ownership of lands and ownership has become vested in the Official Assignee because the proceedings also concern the validity of the loans and therefore whether the amount claimed is owed at all. If this were the only point raised it would be

necessary to consider whether that part of the plaintiff's claim concerning ownership of the lands should be struck out but, given my decision on Danske's second point, I do not consider it necessary to do so.

33. The second point, which is, in fact, Danske's primary point is that the plaintiff can not maintain the proceedings because the entitlement to sue has become vested in the Official Assignee. No authorities were opened to the Court. Danske relied on section 44 of the Bankruptcy Act which provides that all property belonging to the bankrupt at the date of his adjudication automatically vests in the Official Assignee for the benefit of the bankrupt's creditors. It provides, inter alia:

> *"(1) Where a person is adjudicated bankrupt, then, subject to the provisions of this Act, all property belonging to that person shall on the date of adjudication vest in the Official Assignee for the benefit of the creditors of the bankrupt.*
> *(2) …*
> *(3) The property to which subsection (1) applies includes –*
>
> *(a) all powers vested in the bankrupt which he might legally exercise in relation to any property immediately before the date of adjudication; …"*

34. "*Property*" is defined as including things in action and therefore includes a right of action.

35. Thus, in the absence of any arguments to the contrary, I am satisfied that the effect of the plaintiff being adjudicated bankrupt is that the right to sue has become vested in the Official Assignee both in light of the definition of "*property*" and because the power to sue in respect of the lands or the agreements falls within section 44(3)(a). While it is long-established that a right to sue in respect of a tort resulting in injuries wholly to the person or feelings of the bankrupt does not vest in the Official Assignee, this does not apply to the 2014/4055P proceedings which are entirely concerned with the plaintiff's estate.

36. Where the right to sue has become vested in the Official Assignee and has therefore been lost to the plaintiff, proceedings in his name must be held to be bound to fail. If the plaintiff is not entitled to maintain proceedings then proceedings in his name can not succeed.

37. However, the effect of section 44 is not to extinguish the cause of action but to vest it in the Official Assignee. Thus, the proceedings could not be held to be frivolous or

vexatious and bound to fail solely on the basis of the adjudication because the Official Assignee could decide to maintain the proceedings or could decide to give the plaintiff leave to maintain them or, more properly, could assign the right to prosecute the proceedings to the plaintiff.

38. It seems to me that a step by a plaintiff to persuade the Official Assignee to prosecute the proceedings or to assign the right to do so to the plaintiff can be seen as analogous to an application to amend a defective pleading. As noted above, the jurisdiction to dismiss proceedings is one to be exercised sparingly and if the proceedings can be improved or saved by an appropriate amendment to the pleadings then they should not be struck out. Similarly, it seems to me that if a case can be improved or, more accurately, saved, by an appropriate application to amend the proceedings into the Official Assignee's name or by an application by a plaintiff to the Official Assignee for the latter to assign the right of action to the bankrupt/plaintiff then the proceedings could not be struck out without there having been an opportunity to make such an application. Thus, I would not dismiss these proceedings solely on the basis of the plaintiff having been adjudicated bankrupt without there having been such an opportunity. On the facts of this case I am satisfied that there has been such an opportunity. The Official Assignee's position is set out in a letter of the 17th February 2022 in respect of the 2014 and 2021 plenary proceedings instituted by the plaintiff in which it is stated, inter alia:

> *"…As you are aware, the plaintiff Mr. Mullaney was adjudicated a bankrupt by order of the High Court on 13th October 2021. As a consequence of same we are of the opinion that as they relate to property as defined in the Bankruptcy Act 1988 that the right of action in these proceedings against your client vested in the Official Assignee in Bankruptcy.*
>
> *The Official Assignee is not looking for a stay under Section 137(1)(a) of the Bankruptcy Act nor does he wish to be added as a party to the proceedings.*
>
> *The Official Assignee having considered the proceedings sees no benefit to the Bankruptcy Estate in continuing with the above matters.*
>
> *Our office has written to Mr. Mullaney on the 15th February 2022 and have informed him of the decision of the Official Assignee. We have not had a reply to date…"*

39. It was submitted on behalf of Danske that the Official Assignee had consented to Danske's application to strike out the proceedings. That does not accurately reflect the Official Assignee's position as set out in this letter. However, it is absolutely clear from the letter that the Official Assignee has no intention of maintaining either the 2014 or the 2021 proceeding. It is also clear that the plaintiff has not sought leave to continue the proceedings. The plaintiff has not given any evidence of any further correspondence in which he tried to persuade the Official Assignee to prosecute the proceedings or to give the plaintiff leave to do so. I am satisfied that this is sufficient to permit the Court to proceed on the basis that an application to "*improve or save*" the proceedings has not been and is not going to be brought.

40. The plaintiff submitted that the adjudication did not mean that the proceedings were frivolous and vexatious or bound to fail largely on the basis that he should not have been adjudicated bankrupt. He submitted that he had instituted the 2021/5778P proceedings, which he describes as his "*constitutional action*", before he was adjudicated bankrupt, that they supersede everything and that the bankruptcy proceedings should not have gone ahead while that "*constitutional action*" was pending; he told me that he made that point to Humphreys J and that Humphreys J proceeded with the bankruptcy proceedings nonetheless. It was also submitted to Humphreys J that the 2014 plenary proceedings should be dealt with first and this was rejected by Humphreys J on two grounds (i) there was an agreement to discontinue those proceedings and (ii) the underlying debt was admitted in the Circuit Court. He also submitted that a person can not be made bankrupt unless their property was worth less than they owe and that was not the case. Finally, he made the point that Humphreys J proceeded on the basis of affidavits from both sides that were unstamped.

41. These do not constitute an answer to the contention that the adjudication means that the plaintiff's claim is frivolous and vexatious and bound to fail. The points amount to a collateral attack on the decision of Humphreys J. Firstly, Humphreys J determined that the bankruptcy proceedings should proceed notwithstanding the existence of the 2014 proceedings. In paragraph 19(ii) of his judgment Humphreys J considered this point and held that the "*continued existence of the plenary action [*clearly referring to the 2014 proceedings*] is not a bar to adjudication.*" The plaintiff told the Court that he informed Humphreys J that he had launched the "*constitutional action*" and that it supersedes everything. Indeed, he says in paragraph 3 of his affidavit quoted in paragraph 24 above that Humphreys J "*was informed of an existing constitutional case already lodged in the High Court*" and that Humphreys J proceeded nonetheless. While Humphreys J does not refer to this in his judgment (possibly because he ruled on it

during the hearing), I must accept the plaintiff's account of this which he stated on affidavit and again during the hearing. If the plaintiff is incorrect in his recollection and he did not raise the existence of the "*constitutional action"* (which had been instituted the previous day) then he can not now complain that the adjudication proceeded notwithstanding the existence of those other proceedings. It seems to me that in circumstances where neither side's affidavits were stamped, the plaintiff can not legitimately complain about Humphreys J proceeding on that basis. However, the fundamental point in respect of these arguments is that the plaintiff did not appeal the judgment and order of Humphreys J. His explanation for not doing so is that the constitutional case would sort it out but the fact is that there is a valid and subsisting Order adjudicating the plaintiff a bankrupt. In the absence of having appealed the Order it is not open to the plaintiff to submit that the adjudication has no effect.

42. The same applies to the plaintiff's submission that he was incorrectly made a bankrupt because his property was not worth less than his debts. If he claims that Humphreys J erred in adjudicating him a bankrupt then the appropriate avenue was to appeal that decision. He did not do so.

43. Thus, I am satisfied that the 2014/4055P proceedings are frivolous and vexatious in the sense that they have become bound to fail and should therefore be struck out on that basis. I will return to this point in respect of the 2021/5778P proceedings.

Debts previously admitted

44. Danske also submits that the 2014/4055P proceedings are bound to fail on the basis that they comprise a challenge to the validity of agreements on foot of which the underlying debts are owed but the plaintiff already admitted those debts in the proposed Personal Insolvency Arrangement and also agreed to discontinue the 2014 proceedings during the course of those Personal Insolvency proceedings. The plaintiff's position is (i) that there is no statutory provision to the effect that including a debt in the list in a Proof of Debts means that the debt is admitted, and (ii) that his admission of the debt and agreement to withdraw the 2014 proceedings was contingent on Danske accepting his proposed Personal Insolvency Arrangement or the Circuit Court approving it.

45. Danske accepted through counsel that there is no express statutory provision to the effect that the inclusion of a debt in a Proof of Debt or a proposed PIA has the effect that the debt is admitted. However, it was pointed out that a debt must be admitted in order for it to rank for a dividend. It was explained that the mechanics are that when a

creditor receives notice of an intention to propose a PIA the creditor writes to the PIP claiming a debt and the debtor instructs the PIP either to accept or reject the debt

46. The main issue is the status of the plaintiff's admission of the debt and his agreement to withdraw the plenary proceedings. Danske submits that the plaintiff has clearly and unequivocally admitted the debt and agreed to withdraw the plenary proceedings challenging it. The plaintiff contends that his admission of the debt and his agreement to withdraw the 2014 proceedings was contingent on Danske accepting his proposed PIA or the Circuit Court approving it.

47. The stated position of the plaintiff in relation to this alleged admission and agreement is somewhat ambiguous. The statement that the plaintiff would discontinue the plenary proceedings is contained in a section of an affidavit sworn in the Personal Insolvency proceedings sworn on the 8th March 2021 in which he also repeats some of the complaints which form part of his claim in the plenary proceedings. From paragraph 32-35 of this affidavit he repeats some of the claims which are included in the 2014 plenary proceedings and then in paragraph 36 he says "*I say, in particular response to paragraph 31 of the Objector's Affidavit, that there were some issues with the lending however I will immediately discontinue the said proceedings* ***in aid of this application. The PIA is to be a full and final settlement between the parties.***" [emphasis added]. A draft agreement document that was exchanged between the parties prior to the hearing of the Personal Insolvency proceedings is also of some relevance. This was never executed and, as I understand it, no agreement was reached between the parties so this document remained a draft and so can not bind Danske. However, it is of relevance to the plaintiff's position that his "*admission*" of the debt and his "*agreement*" to discontinue the plenary proceedings was contingent on the acceptance of the PIA. The draft states under the heading "*Settlement*":

> "*a) …*
> *b) The First Borrower* [the Plaintiff] *agrees to file a Notice of Discontinuance in the Plenary Proceedings…on or before 17.00 hours on the 21st April 2021 with all parties agreeing to be liable for their own costs in the matter.*
> *c) The Borrowers and each of them acknowledge the Judgment debt due to the Bank under record number 2013/3359S is due and owing by them to the Bank and that they have no cause of action or complaint either Civil or Criminal against the Bank, its employees, former employees or agents.*
> *d) …*

e) Subject to compliance by the Borrowers with the terms of this Agreement….and only after receipt by the Solicitors for the Bank and The Receiver of the filed Notice of Discontinuance and confirmation of the removal of the registration of the Lis Pendens in the manner herein provided

(i)The Bank will formally withdraw the Notices of Objection filed in both sets of interlocking Personal Insolvency Proceedings and all parties agree to be liable for their own costs in the proceedings…"

Thus, at least at one stage, there was a link between the plaintiff's admission of the debt and agreement to withdraw the plenary proceedings and the withdrawal by Danske and the receiver of their objections to the PIA. The plaintiff also appeared to attack the underlying borrowing in the affidavits sworn in the bankruptcy proceedings (affidavit sworn on the 12th October 2021).

48. However, as against these factors, it is also significant that in the paragraph of the affidavit of the 8th March 2021 (paragraph 37) immediately following the paragraphs where he sets out his complaints, he deposes that the allegations "*were made by me in the heat of the moment and I now understand I should not have made those allegations. I was under considerable stress and pressure and I did not (and do not) want to lose my family home and lands. I am desperate to retain my family home and lands and as soon as I heard of Personal Insolvency, I approached a PIP immediately.*" It seems that the plaintiff was resiling from or withdrawing those allegations. In addition, he accepted that he had received bad advice. Furthermore, as far as I can make out the plaintiff had not previously stated the position that his admission of the debt and undertaking to withdraw the proceedings was contingent on Danske or the receiver taking certain steps and seems to have only made that point in the current proceedings.

49. As noted above, the jurisdiction to strike out proceedings must be exercised sparingly and the plaintiff's case must be taken at its high-water mark and if this ambiguity had remained I would not have been satisfied to strike out the proceedings on the basis of being frivolous or vexatious and bound to fail solely on the basis of these apparent admissions or agreements.

50. However, matters have advanced far beyond simple reliance on what the plaintiff may or may not have said or what he may or may not have meant. The plaintiff's position has already been considered and determined by both the Circuit Court (in the Personal Insolvency proceedings) and the High Court (Humphreys J in the Bankruptcy

proceedings). The Circuit Court rejected the PIA and, I am told (and it is not disputed) that the Circuit Court Judge described the plaintiff's conduct in not discontinuing the plenary proceedings as "*shocking*". More particularly, Humphreys J clearly stated in his judgment in the Bankruptcy proceedings that the plaintiff admitted the debts and undertook to discontinue the plenary action and, crucially, Humphreys J proceeded on that basis. He said at paragraph 11 of his judgment (*[2021] IEHC 669*) that "*In the personal insolvency application, both debtors accepted the debt, in Mr. Mullaney's case in the amount of €1,599,330.84….*"; in paragraph 12 he noted that "*[T]here was an undertaking to discontinue the plenary action. That did not happen and Her Honour Judge Enright ultimately refused the application for a personal insolvency arrangement on 22nd July, 2021*"; and in paragraph 19(ii) under the heading "*Defences Advanced*" he stated "*[I]t is said that the plenary summons should be dealt with first. The problem there is that there was an agreement to discontinue the proceedings, and in addition the debt was admitted in the Circuit Court. Under those conditions, the continued existence of the plenary action is not a bar to adjudication.*" The plaintiff did not appeal this judgment. Thus, there is no ambiguity or live dispute about whether the debt was admitted and whether the plaintiff agreed to discontinue the 2014/4055P proceedings. In those circumstances, the proceedings seeking to challenge the validity of the loans and the agreements must be frivolous and vexatious and bound to fail.

51. It may also be noted that this attempt to "*hedge his bets*" by agreeing to withdraw the plenary proceedings on a contingent basis could be said to amount to an abuse of process in the manner in which he is prosecuting the proceedings, i.e. that it is an abuse of process to claim in plenary proceedings that the debts are not owed but in subsequent proceedings to admit, even on a contingent basis, that the debts are owed with a view to securing the benefit of a reduced debt against the wishes of the creditor, but to reserve the right to withdraw the admission. However, Danske sought relief on the more narrow ground that it was an abuse of process for being frivolous and vexatious and bound to fail on the basis that there was no longer any dispute about the debt so I, therefore, do not need to consider this other species of abuse of process.

Validity of the loans determined in the summary proceedings

52. Danske also argued (though no major emphasis was placed on this) that the proceedings were bound to fail because the validity of the loans was determined in the summary proceedings (by the orders of Stewart J of the 14th October 2016). This, of course, is a res judicata point. Res judicata is often described as falling within the Court's

inherent jurisdiction to dismiss for abuse of process. In my view it would not be appropriate to consider dismissing the proceedings on this basis in light of the undertaking that was given to Reynolds J at the time she gave liberty to amend the Defence, i.e., not to bring a motion to strike out on the grounds of res judicata.

2021 Proceedings

Bankruptcy

53. Danske also applies to strike out the 2021/5778P proceedings on the basis of the bankruptcy adjudication. They do so as a stand-alone relief but it seems to me to be appropriate to consider it under their application to strike out the proceedings as being bound to fail and being frivolous and vexatious. On the face of it slightly different considerations apply in relation to these proceedings in that the pleadings refer to the plaintiff's constitutional rights. As noted above, a right of action relating to a tort resulting in injuries wholly to the person or feelings of the bankrupt does not vest in the Official Assignee and the question therefore arises whether the case that is made relates to such a tort. It is clear that a right of action in respect of some breaches of constitutional rights would be encompassed in this exclusion and the scope of that may have to be determined in an appropriate case. No arguments were made to the Court and it seems to me that it is not necessary to determine that scope in this case as it is clear that while the plaintiff's constitutional rights are relied upon, the proceedings arise from and concern the financial and property affairs of the plaintiff, i.e. his estate. They do not relate to a tort "*resulting in injuries wholly to the person or feelings of the bankrupt*." The plaintiff made clear during the hearing (in response to a question from the Court as to why Danske has to be a party to the 2021 proceedings if the case is that the courts have breached his constitutional rights) that "*it all goes back to Danske's refusal to give a twenty year loan.*" Thus, it is clear that even the 2021 proceedings are concerned with the plaintiff's estate albeit in the context of constitutional rights. Thus, it seems to me that these proceedings can also not be maintained except by or with the leave of the Official Assignee and without same they must be struck out as being frivolous and vexatious or bound to fail. These proceedings are also dealt with in the Official Assignee's letter of the 17th February 2022 and there is no evidence that the plaintiff has requested the Official Assignee to maintain the proceedings or to assign them to the plaintiff. Thus, the same reasoning as set out in paragraph 38 above applies.

Nature of the claims

54. Separate consideration must also be given to the nature of the relief sought in the 2021/5778P proceedings.

55. The plaintiff has delivered a Statement of Claim. He did so after he was adjudicated bankrupt. Danske submitted that he was not entitled to do so given that he had been adjudicated bankrupt. It seems to me that I can have regard to the contents of the Statement of Claim, or purported Statement of Claim, for the purpose of considering whether the claim that is being advanced is frivolous and vexatious or bound to fail.

56. In short, the plaintiff's claim is that (i) he is immune from court summonses because in a previous, unrelated case (Record no. 2018/9410P) brought by a different plaintiff the Minister for Justice and the Attorney General failed to enter an appearance and the proceedings against them were struck out which, it is alleged, means those parties are immune to court summonses and on the basis of Article 40.1 of the Constitution and article 2 of the Treaty of Europe the plaintiff must also be immune to court summonses and the case against him should have been struck out; (ii) he is immune to court orders (in the summary proceedings 2013/3359S and 2013/3420S and the receiver's plenary proceedings 2014/10113P) because the DPP failed to comply with a High Court Order in a case bearing record number 2006/1114P and the principle of equality under Article 40.1 of the Constitution and article 2 of the Treaty of Europe means that the plaintiff must also be immune to court orders; (iii) the State has failed to deliver a Defence in proceedings bearing record number 2019/6501P; (iv) the State has failed to enter an appearance in case no. 2021/2308P; (v) the plaintiff is protected from all court summonses and court orders under Article 40.1 of the Constitution and under article 2 of the Treaty of Europe; and (vi) there are a number of investigations by the Department of Justice and An Garda Síochána. From a discussion with the plaintiff at the hearing it is clear that the "*Treaty of Europe*" refers to the Treaty on European Union, article 2 of which notes that the European Union is founded on a number of values including equality.

57. He also expands on these claims in an affidavit, which is quoted in paragraph 24 above, and alleges that while case number 2019/6501P is pending all courts must be suspended and that the alleged treason in not delivering a defence has dissolved all courts in Europe. However, even if I have regard to the affidavit or if the pleadings were to be amended to reflect the contents of that affidavit I would remain of the view that the proceedings should be struck out for the reasons set out below.

58. Similar, if not identical, claims have been made (and dismissed) in a number of other cases. I was not referred to them by the parties and have therefore not considered them for the purpose of this judgment.

59. I am satisfied that whether one approaches the plaintiffs' claim and the application to strike it out under Order 19 Rule 28 or under the Court's inherent jurisdiction an Order should be made striking it out.

60. Before setting out my reasons I should address a point made by the plaintiff. He emphasises that when Burns J made her Order refusing to strike out the 2014 proceedings on the basis of being res judicata and for want of prosecution she had regard to the affidavits recited in her Order and these included an affidavit sworn on the 15th October 2018 in which the plaintiff had raised some of the same points in respect of immunity as are pleaded in these 2021 proceedings. He contends that the matter has, therefore, already been decided by Burns J, that Danske did not appeal that decision and they are in effect attacking or seeking to overturn Burns J's Order. I do not accept that this is correct. Burns J can not have decided anything in relation to whether or not the plaintiff is immune to court summonses or orders. The motion was concerned with whether particular issues were res judicata and whether the plaintiff was guilty of a want of prosecution in respect of the 2014 proceedings, not whether the plaintiff enjoys immunity from all court summonses and orders. There is nothing in the Order to suggest that Burns J determined this issue. Crucially, the full extent of the plaintiff's submission is that one of the affidavits before Burns J raised these points. He chose not to place any evidence before the Court that these issues were argued or considered by Burns J.

Order 19 rule 28

61. As discussed above, when considering an application under Order 19 rule 28, the Court is required to take the facts as asserted and to assess, on the basis of those facts, whether the plaintiff could have a cause of action (not whether he would succeed but whether he could succeed)

62. The facts asserted by the plaintiff in the Statement of Claim are:

(i) in proceedings bearing record number 2018/9410P the Minister for Justice and the Attorney General failed to enter an appearance and the case was struck out;

(ii) there is an investigation by the Department of Justice and the Garda Commissioner issued a pulse number in respect of this case;

(iii) the DPP failed to comply with a High Court order in proceedings bearing record number 2006/1114P;

(iv) the State has failed, since September 2019, to provide a defence in a related constitutional case bearing record number 2019/6501P;

(v) the State has failed to enter an appearance in case number 2021/2308P.

63. These are the facts that are asserted and which the court must take as being true. The plaintiff pleads certain inferences which should be drawn from or certain legal conclusions which should be reached on these facts upon which he seeks his relief. These are, seriatim:

(a) because case number 2018/9410P was struck out even though the Minister for Justice and the Attorney General failed to enter an appearance and because an appearance has not been entered in case number 2021/2308P this means as a matter of law they (the Minister and the Attorney General) are immune to court summonses and therefore on the basis of the guarantee of equality so also is the plaintiff; therefore the "case" against him should have been struck out;

(b) because the DPP failed to comply with a High Court order in proceedings 2006/1114P the DPP is, as a matter of law, immune to High Court orders and the guarantee of equality means that the plaintiff is also immune from the orders in the two sets of summary proceedings and in the receiver's plenary proceedings;

(c) Because the State has failed to deliver a defence in a case which challenges all court summonses and orders (Record No. 2019/6501P) all courts must be suspended pending the determination of that case.

64. The asserted facts simply do not and cannot give rise to these inferences and legal conclusions upon which the plaintiff's claim is based. Even if the Minister for Justice and the Attorney General failed to enter an appearance in an individual case and the

case was struck out (2018/9410P or 2021/2308P) and/or the DPP failed to comply with an order (2006/1114P) in another individual case it does not and cannot follow that the Minister, the Attorney General or DPP are immune to summonses and orders respectively. Thus, there is no basis whatsoever in the facts pleaded for the claim that the plaintiff is entitled in accordance with the principle of equality to immunity from court summonses or court orders. Even assuming the facts as asserted to be correct (as I do) there is simply no foundation in those facts for the claim made by the plaintiffs that the Minister, the Attorney General or the DPP is immune from Court Orders or Court Summonses and therefore no basis for the claim that the principle of equality requires the plaintiff to be immune also.

65. Similarly, even if the State has failed to deliver a Defence in a case which challenges all court summonses and orders (which I am taking to be correct for present purposes) there is no basis in that fact upon which to reach the conclusion that all courts must be suspended.

66. In all the circumstances, I would strike out the plaintiff's claim in the 2021/5778P proceedings under Order 19 Rule 28 as being frivolous and vexatious and bound to fail. Even if I am wrong in this, I would strike out the claim under the Court's inherent jurisdiction.

Inherent jurisdiction

67. The plaintiff's claims are fundamentally misconceived. As discussed in greater detail above, the plaintiff's claims are grounded squarely on the premise that the Minister for Justice and the Attorney General are immune to court summonses and the DPP is immune to Court Orders. That is simply misconceived and wrong in law and, therefore, the very basis for the plaintiff's claim of immunity and that the courts should be suspended is wrong. There is no foundation to them whatsoever. Even the most cursory review of the court lists or of the judgments in the Irish Reports or on the Courts Service website will show the sheer volume of cases involving State bodies, including the Minister for Justice, the Attorney General and the DPP, and the number of cases in which Orders are made against those parties.

68. While the plaintiff refers to other proceedings (upon which he relies) in his Statement of Claim and his undated affidavit, he does not exhibit any of the orders in those proceedings in that affidavit. Some relevant papers were exhibited to the affidavit of the 18th October 2018 which was sworn by the plaintiff in the 2014 proceedings

(referred to above in the discussion of Burns J's Order). These comprise of a Court Order, an affidavit of a Mr. Eugene Cafferky sworn in a Supreme Court Appeal No. 334/2007 which was an appeal from a decision of the High Court in proceedings numbered 2006/1114P (relied upon by the plaintiff in his Statement of Claim), an Order of Hardiman, Finnegan and O'Donnell JJ in respect of that appeal, a decision of McKechnie, O'Malley and Finlay-Geoghegan JJ in respect of an application to vary or rescind, an Order of Gilligan J of the 14th May 2007 in the 2006/1114P proceedings, an Order of Lavan J of the 14th November 2007 in the same proceedings, and an affidavit which appears to have been sworn by Mr. Eugene Cafferky in the plaintiff's proceedings 2014/4055P. What emerges from this is that Gilligan J by Order of the 14th May 2007 directed that an appearance be entered within 7 days and that a Defence be delivered within 4 weeks and that Lavan J by Order of the 14th November 2007 dismissed the proceedings on the grounds that they disclosed no reasonable cause of action. The complaint is that a Defence was not delivered within the 4 weeks directed by Gilligan J. Mr. Cafferky appealed against the Order of Lavan J dismissing the proceedings and the Supreme Court upheld that order.

69. In my view, it is unnecessary to even engage with these facts but they are illustrative of the lack of any merit to the plaintiff's claims. What it shows is that proceedings 2006/1114P (Appeal number 334/2007) were dismissed as disclosing no reasonable cause of action and, in those circumstances, there was no obligation to deliver a defence or any obligation which had existed had come to an end. It is not unusual that a procedural order setting a time limit for the taking of some step becomes superseded by a subsequent order. This is what seems to have occurred in 2006/1114P. But in any event, the reason I do not believe that it is necessary to engage with the procedural facts of those proceedings, as disclosed in these documents, is that even if the DPP breached or failed to comply with a procedural order a number of years ago, there is simply no basis whatsoever for suggesting that this must lead to the suspension of all court orders or for suggesting that the DPP and all individuals are immune from complying with such orders.

70. The plaintiff has not exhibited any documents relating to the other proceedings relied upon by him but, given that they all relate to alleged procedural breaches, the same reasoning applies.

71. Put simply, even if it was demonstrated that the Minister for Justice and Attorney General or the DPP failed to enter an appearance or to deliver a Defence in individual cases this could not give rise to the conclusion which the plaintiff contends for, i.e. that the Minister, Attorney General or the DPP are immune from court summonses or orders,

or that the entire court system must be suspended, or if treason has been committed that the whole court system of the European Union is dissolved, and thus the whole premise upon which the plaintiff's claim is based falls away.

72. The plaintiff made the point that Danske had not replied to his affidavit of the 1st February 2022 (quoted in paragraph 24 above) and suggested that this must be determinative. This can not be decisive in circumstances where the Court can not resolve disputes of fact on a motion of this type and where the Court has to take the plaintiff's case at its high-water mark. Thus, even if Danske had put in a replying affidavit disputing the facts as set out in the plaintiff's affidavit I would have been obliged to take those facts at their high-water mark in any event.

No cause of action against Danske

73. Danske also claims that the proceedings are frivolous and vexatious and bound to fail as against Danske because the matters pleaded have nothing to do with Danske. I do not accept this. The plaintiff's claim is that he should not have been summoned to court in the summary proceedings and should not have been made subject to court orders and that it was Danske who wrongfully procured those summonses and orders. He pointed in particular to the Order of Stewart J, which did not allow the cross-examination of one of Danske's representatives despite Murphy J having previously allowed cross-examination, and to the Order of Humphreys J in proceeding with the adjudication notwithstanding the existence of the constitutional case. These were undoubtedly obtained on foot of Danske's participation, if for no other reason than that it was Danske who instituted the relevant proceedings. Danske would also be directly affected if the plaintiff were to succeed in the 2021 plenary proceedings.

74. The plaintiff also said during the hearing that the 2021 proceedings concern breaches of constitutional rights, including the ones mentioned in the previous paragraph, and in addition a claim that Danske acted in breach of the plaintiff's constitutional rights in not putting his borrowings on a twenty year loan basis. Of course, that is not the case that is pleaded in the Statement of Claim in any shape or form. The case that is pleaded relates to immunity to court summonses and orders arising from other cases. It is true that the Statement of Claim does plead a "*breach of duty*" against, inter alia, Danske, but the Statement of Claim must be read as a whole. There is no reference at all to the matters discussed above in paragraph 66 and the claimed "breach of duty" can only be read as referring to the other matters that are pleaded in the

Statement of Claim, which, I have concluded are frivolous and vexatious and bound to fail for the reasons set out above.

75. I do not believe that any of these issues can be addressed by an amendment of the pleadings or by any interlocutory steps such as the raising of interrogatories or discovery. The claims referred to in paragraph 72 is a wholly different case to the one that has been brought. That case has simply not been made or even hinted at in the pleadings.

76. I will, therefore, strike out the plaintiff's claim in proceedings 2021/5778P under Order 19 Rule 28 of the Rules of the Superior Courts and under the Court's inherent jurisdiction on the grounds that the plaintiff's claim is frivolous and vexatious and is bound to fail. I will strike out the plaintiff's claim in proceedings 2014/4055P under the Court's inherent jurisdiction.

Want of Prosecution

77. In those circumstances, and in light of Counsel for the defendants indicating that he was not imploring the Court to strike out the proceedings for want of prosecution it is not necessary for me to determine Danske's application to dismiss the 2014/4055P proceedings for want of prosecution. I should just say by way of general comment that the mere fact that Burns J dismissed a previous application to dismiss for want of prosecution does not act as a bar to a subsequent application. Nor does bringing a subsequent application necessarily amount to an abuse of process. A decision as to whether a party is guilty of delay or want of prosecution is made on the basis of the facts as they stand at that point in time. If there is further delay after that a further application may be appropriate.

Lis pendens

78. It follows from the dismissal of the proceedings in which the lis pendens was registered that the lis must be discharged and I will make that order.

Plaintiff's motion for contempt and perjury

79. It also follows from my conclusion that the 2021/5778P proceedings should be struck out on the grounds of disclosing no reasonable cause action, being frivolous and vexatious and being bound to fail that the plaintiff is not entitled to the relief sought in his Notice of Motion.

80. Even if I am incorrect in my decision on Danske's motions, or had decided them differently, or if I had considered the plaintiff's motion separately from those motions I would be entirely satisfied that the plaintiff's motion is without merit.

81. The plaintiff's motion for contempt is grounded squarely on the sole fact that Danske and the solicitors acting on its behalf issued a motion applying to the Court to strike out the proceedings. The bringing of a motion to be determined by a court after it has heard from both sides does not constitute a contempt of court. In fact, the plaintiff did not lay any basis for submitting that it is a contempt other than asserting that to be the case. It may be that this assertion stems from the averment in his grounding affidavit that his "*Constitutional Rights under Article 40.1 of the Constitution and Article 2 of the Treaty of Europe are untouchable*" but even if this averment were correct that is no basis upon which it can properly be suggested that an application to a court established under the Constitution is a contempt of that Court.

82. I also accept the argument advanced on behalf of Danske that in the absence of an allegation of a breach of a Court Order there can be no finding of contempt against Danske or the solicitors. Indeed, it must also be borne in mind that the solicitors are not even a party to the proceedings.

83. I am equally satisfied that the plaintiff's application for an "*Order for the investigation and prosecution of PERJURY*" by the individual solicitor dealing with the matter on behalf of Danske is without merit. In the grounding affidavit to Danske's motion the solicitor averred that "*The within proceedings are frivolous and vexatious*" (paragraph 26), that on the basis that the pleadings had not set out any allegation against Danske "*the within proceedings are manifestly frivolous and vexatious in that they seek to litigate issues that do not concern the Bank*" (paragraphs 28 and 29), and "*I say and believe that the within proceedings are very clearly bound to fail and they are manifestly frivolous and vexatious…*" (paragraph 34) and it seems that the plaintiff's assertion that the solicitor has committed perjury is on the basis of these averments. The plaintiff claims that the solicitor "*knowingly, willingly, and intentionally committed PERJURY when he described [the plaintiff's] Constitutional Rights as Frivolous and Vexatious.*" This is based on a fundamental misconception. Nowhere does the solicitor

describe the plaintiff's constitutional rights as frivolous and vexatious. He describes the proceedings brought by the plaintiff as frivolous and vexatious. There is a difference between the two so to the extent that the plaintiff is proceeding on the basis that as a matter of fact the solicitor described his constitutional rights as frivolous and vexatious there is no basis in fact for the relief sought. Secondly, the averments made by the solicitor are expressions of his opinion as to the merits of the plaintiff's case. As set out above, I have concluded that he was correct in his opinion but even if I had concluded otherwise it would not follow that the solicitor in expressing his opinion had committed perjury or should even be investigated for committing perjury. There is no basis in the evidence for concluding or even suspecting that the opinion expressed was anything other than a genuine and honestly held belief so even if a person could be prosecuted for perjury for expressing a view there is no basis whatsoever for granting the relief at paragraph (b) of the plaintiff's Notice of Motion.

84. I will, therefore, refuse the relief sought by the plaintiff and make Orders striking out the 2014/4055P (on the basis of the Court's inherent jurisdiction) and 2021/5778P (on the basis of Order 19 rule 28 and the Court's inherent jurisdiction) proceedings and will make an order pursuant to section 123(b) of the Land and Conveyancing Law Reform Act 2009 vacating the lis pendens registered in Folios 1991F, 28094, 15931F and 1824F of the Register of County Roscommon.