

THE HIGH COURT

[2024] IEHC 490

Record No. 2022 1653P

Between

EAMON CARTHY

Plaintiff

and

**IRELAND AND ATTORNEY GENERAL, AND BANK OF IRELAND MORTGAGE BANK, AND
BANK OF IRELAND MORTGAGES BANK UNLIMITED COMPANY, AND FIELDFISHER
IRELAND SOLICITORS AND WHITNEY MOORE SOLICITORS AND BRENDAN ROBBINS**

Defendant

Judgment of Mr. Justice Conor Dignam delivered on the 31st day of July 2024

INTRODUCTION

1. This is an application by the third, fourth and sixth named defendants to dismiss the plaintiff's claim (i) as frivolous, vexatious and/or disclosing no cause of action pursuant to Order 19 Rule 28 of the Rules of the Superior Courts and/or pursuant to the Court's inherent jurisdiction as being unsustainable and/or bound to fail, (ii) as being unnecessary, scandalous or as tending to embarrass or delay pursuant to Order 19 Rule 27 of the Rules of the Superior Courts, and/or (iii) as an abuse of process pursuant to the Court's inherent jurisdiction.
2. There is some confusion in relation to the numbering of some of the defendants and how they are referred to by the plaintiff (see paragraph 18 below). The application is brought on behalf of Bank of Ireland Mortgage Bank, Bank of Ireland Mortgages Unlimited Company, and Whitney Moore Solicitors. They are the third, fourth and sixth named defendants in the title to the proceedings and an amended appearance was entered on their behalf as the third, fourth and sixth named defendants on the 26th October 2022. Bank of Ireland Mortgage Bank changed its name to Bank of Ireland Mortgages Unlimited Company so I will refer to them as "the Bank".

3. Similar applications were made on behalf of other defendants and judgments in those applications were delivered by Roberts J (*[2023] IEHC 508*) and by Kennedy J (*[2024] IEHC 63*) after I had reserved my judgment and before I delivered judgment. I invited the parties to make any submissions they might wish to make arising from those judgments. I am not bound by those judgments as they concerned applications brought by different defendants but they helpfully set out the background and the applicable legal principles. The background is set out in detail in those judgments and I will therefore only set out the background in summary, drawing from those judgments and the grounding affidavit of Ms. Emma Morrison. The contents of Ms. Morrison's affidavit insofar as it deals with the background is not seriously disputed in the affidavits delivered by the plaintiff.
4. On the 25th February 2015, proceedings were issued on behalf of the Bank in Kilkenny Circuit Court seeking possession of lands in Folio 18916F on foot of mortgages in respect of two loan accounts which were claimed to be executed by the plaintiff and his wife, Ms. Bridget Carthy.
5. The Bank's charges were registered on the folio.
6. The plaintiff and Ms. Carthy (the defendants in the Circuit Court proceedings) brought an application to have those proceedings dismissed on the basis that the Circuit Court did not have jurisdiction. This was determined on the 23rd November 2016 and the Circuit Court refused the application. As noted by Roberts J "*having been appraised by Mr Carthy of all his complaints regarding this certificate, the Circuit Court specifically declared it had such jurisdiction by order dated 23 November 2016*". The plaintiff pleads in these proceedings that on that date the solicitors on behalf of the Bank "*misled the court, by introducing manufactured evidence, deceit, and misrepresentation knowingly.*" This alleged "*manufactured evidence*" includes a Valuation Certificate issued by the seventh-named defendant which stated that the rateable valuation of the property had been determined at €39.75 notwithstanding that the property was, according to the plaintiff, not rateable, and the certificate was allegedly adduced in the Circuit Court proceedings as evidence that the Circuit Court had jurisdiction (see paragraph 18 of Roberts J's judgment).
7. On the 30th March 2017, an Order for Possession was made by Kilkenny Circuit Court. A stay of twelve months was granted. The Order also directed Bank of Ireland Mortgages to provide details of the interest rate that had been applied and gave the plaintiff and Ms. Carthy leave to apply to vacate the Order.
8. This Order was not appealed.
9. The plaintiff and Ms. Carthy subsequently separately applied to re-enter the proceedings and to vacate the Order for Possession.

10. The Circuit Court re-entered the proceedings on foot of Ms. Carthy's motion and adjourned the question of vacating the Order to a future date. On the 19th February 2019, His Honour Judge Meghan (who had made the Order for Possession) refused to vacate the Order for Possession.
11. Ms. Carthy appealed that refusal. The plaintiff in these proceedings did not do so.
12. On the 6th March 2019, the sixth-named defendant started to act for the Bank (the fourth-named defendant had previously been acting for the Bank).
13. There was a very extensive exchange of affidavits in respect of Ms. Carthy's appeal.
14. Ms. Carthy's appeal came on for hearing in the High Court on the 2nd March 2020. Ms. Carthy was represented by a solicitor. The plaintiff was in attendance but does not seem to have sought to participate in any way (he stated at the hearing of this motion that he did not participate) and did not seek time or liberty to put in an affidavit or to make submissions. By consent the appeal was struck out and the Order for Possession was affirmed. The plaintiff makes the point in these proceedings that the High Court did not make an Order for Possession but rather simply affirmed the Circuit Court Order. I do not accept that this is of any relevance. The Court decided to extend the stay which had previously been granted for a further period of seven months.
15. There was correspondence between the parties and between March 2021 and May 2021 the plaintiff sent a number of documents to the Bank variously headed up "*Notice of Demand*", "*Notice of Default*", "*Notice of Default and Dishonour*", "*First Statement of Truths and Facts*" and "*Certificate of Rescission*" respectively.
16. On the 5th November 2021, Bank of Ireland Mortgage Bank changed its name to Bank of Ireland Mortgage Bank Unlimited Company pursuant to section 30 of the Companies Act 2014.
17. The plaintiff issued these proceedings on the 21st April 2022 by way of plenary summons. He delivered a Statement of Claim on the 22nd July 2022. I return to the claims made in these pleadings. At the same time, the plaintiff issued a motion in the Circuit Court proceedings seeking a stay on the Order for Possession pending determination of these High Court proceedings. That was struck out on the 14th September 2022. The plaintiff also served a number of documents entitled "*Statutory Notice for Clarification of Capacity*" (14th October 2022), "*Carthy Trust*", "*Notice of Status and Standing*" and "*Appointment of Trustees*" (January 2023) in which he, inter alia, claimed to have transferred his property to a trust (the Kellymount 1798 Trust) and purported to appoint various parties, including the Chief Justice, Governor of the Central Bank, the Catholic Primate of Ireland, as trustees of a trust entitled the "*Carthy Trust*" which he explained at hearing came into being upon his birth.

THE PLAINTIFF'S CLAIM

18. The Statement of Claim is somewhat confusing in how it refers to the various defendants. For example, it refers to the seventh-named defendant (an employee in the Valuation Office) as the fifth-named defendant and does not describe Whitney Moore. However, it is still possible to identify the claims which are directed against the Bank and Whitney Moore. The claim boils down to a claim that those defendants deliberately misled the Circuit Court on various dates by "*introducing manufactured evidence, deceit and misrepresentation knowingly*" and committed fraud and did not reveal to the High Court in Ms. Carthy's appeal the "*manufactured evidence, deceit, and misrepresentation*" thereby violating the fundamental rights of the plaintiff, his spouse and children. It is claimed that this amounts to a violation of his family dwelling and lands attached thereto and a violation of the constitutional rights of his spouse and children. He claims a breach of duty and neglect of statutory duty and seeks damages "*for breach of his constitutional rights under Article 1 protocol 1 of the European Convention on Human Rights as a result of the manufactured evidence, deceit and misrepresentation to the court carried out by the banks and solicitors and all agents, violation of the Consumer Credit Act, and violation of Directive 93/13/EEC.*"

Unfortunately, the plaintiff gives no particulars at all of these claims. This is particularly significant in a fraud claim. However, it is clear that the alleged fraud, deceit, misrepresentation and manufactured evidence includes the Valuation Certificate produced by the seventh-named defendant (see paragraph 18 and 20 of Roberts J's judgment). In an affidavit in the Circuit Court proceedings, filed on the 20th March 2018, and exhibited in this application, the plaintiff refers to the Valuation Certificate which was provided to the Circuit Court as being intended to "*mislead and deceive the court into granting a possession order against the defendant.*" Furthermore, in his replying affidavit to the current application he states:

"I do say that I had no choice only to take this action because of my seasonable (sic) duty to my trust regarding the fraudulent evidence and falsified affidavit sworn on the 11th day of November in the year 2016 by John Reid of the bank and I do also say that the V2 cert (valuation Cert) handed into the court on the 23rd day of November in the year 2016 by Barrister, to Judge Doyle was in fact obtained by deception, for the purpose of persuading the Circuit Court that it had jurisdiction."

Furthermore, at paragraph 6 of his judgment, Kennedy J, referring to a motion to compel the plaintiff to reply to a Notice for Particulars, says:

*"Two affidavits delivered by the Plaintiff (in response to the Applicant's motion for particulars) expanded on the claim against the Applicant. The first affidavit acknowledged that the case arose from the Original Proceedings and justified the proceedings as a necessary response to "the fraudulent evidence and falsified affidavit" of a particular bank employee. **It claimed that the***

bank's valuation certificate was "obtained by deception, for the purpose of persuading the Circuit Court that it had jurisdiction". This appears to be the Plaintiff's primary complaint. It should be noted that the "falsified affidavit" appears to be the affidavit sworn in the Circuit Court proceedings grounding the application for possession..." (emphasis added)

19. The plaintiff expanded on the alleged fraud at the hearing in response to questions from the Court. He said there were three aspects to the fraud claim: the valuation certificate issue; that the 'contract' was not signed by him or Ms. Carthy in a solicitor's office with independent witnesses and independent legal advice; and the amount that was claimed to be due and owing. He explained that the case in relation to the valuation certificate is that his property was not rateable and that the Bank and its solicitors misled the seventh-named defendant by giving information which had nothing to do with his property so as to obtain a valuation certificate which could then be used to mislead the Circuit Court into believing that it had jurisdiction.
20. As noted above, none of these matters are particularised in the pleadings. Nonetheless, in light of the well-established principle that proceedings should not be struck out if they can be saved by an appropriate amendment, I have considered these matters. It may well be that in an appropriate case the parameters of this principle and whether this extends as a general principle to all situations including where serious matters could easily have been raised in the pleadings but were inexplicably not pleaded will have to be considered and determined. However, this was not argued in this case and I have, therefore, considered all of these matters as being part of the plaintiff's claim.

APPLICABLE LEGAL PRINCIPLES

21. The principles governing the exercise of the Court's jurisdiction to strike out a claim under Order 19 Rule 28 of the Rules of the Superior Courts or under the Court's inherent jurisdiction are well-established (see, for example, *Barry v Buckley* [1981] IR 306, *Salthill Properties Limited v Royal Bank of Scotland plc* [2009] IEHC 207, *Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 21, *Keohane v Hynes* [2014] IESC 66, *Clarington Developments Limited v HCC International Insurance Company plc* [2019] IEHC 630, *Kearney v Bank of Scotland* [2020] IECA 92). They have recently been stated by the Court of Appeal in *Scotchstone Capital Fund Ltd & anor v Ireland & anor* [2022] IECA 23, and in *McAndrew v Launceston Property Finance DAC & anor* [2023] IECA 43.
22. In summary, the jurisdiction, whether under Order 19 Rule 28 or the Court's inherent jurisdiction, is subject to a number of overarching principles: first, the default position is that proceedings should go to trial and that a person should only be deprived of a trial when it is

clear that there is no real risk of injustice; second, it is a jurisdiction to be exercised sparingly, given that it relates to the constitutional right of access to the courts; third, the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the case is frivolous or vexatious or bound to fail or that it is an abuse of process, and the threshold to be met is a high one; fourth, the Court must take the plaintiff's claim at its high-water mark; fifth, the Court must be satisfied not just that the plaintiff will not succeed but cannot succeed; and sixth, the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the utilisation of pre-trial procedures such as discovery or by the evidence at trial.

23. In this case, there are particular considerations in relation to abuse of process on the basis of res judicata or the rule in *Henderson v Henderson* and in relation to the application of that line of authority in circumstances where fraud is claimed.
24. Roberts and Kennedy JJ both set out the applicable legal principles with great clarity in their respective judgments and in particular deal with the principles which apply where fraud is alleged. It is wholly unnecessary for me to set the principles out again. I gratefully adopt the principles and approach contained at paragraphs 40-48 of Roberts J's judgment and at paragraphs 12-30 of Kennedy J's judgment. Paragraphs 17-28 of Kennedy J's judgment are particularly relevant to the question of res judicata and the rule in *Henderson v Henderson* and paragraphs 14-16 deal with setting aside a final and binding Order where there is alleged to have been fraud.
25. I have applied the principles set out in all of those cases.

DISCUSSION AND CONCLUSION

The pleaded case

26. I conclude that the claim made in the pleadings is frivolous and vexatious, discloses no reasonable cause of action, is bound to fail and is an abuse of process under both Order 19 Rule 28 and the Court's inherent jurisdiction.
27. Before turning to the core of the plaintiff's claim I should say that there is no basis upon which the plaintiff can maintain proceedings in respect of an alleged violation of Ms. Carthy's constitutional rights. I also understand from the evidence in the Circuit Court proceedings that his children (or at least some of them) are adults. He is therefore not entitled to maintain a claim in respect of any alleged breach of their rights. Any such breach is a matter for those affected parties to litigate. Even if the plaintiff's children are not adults, the plaintiff can not personally sue for damages in respect of an alleged wrong to them. He could conceivably sue

on their behalf as their next friend but he has not indicated any desire to do so or to amend the proceedings in order to do so. Furthermore, issues in relation to his adult children were raised in the Circuit Court proceedings. Thus, insofar as the plaintiff's action rests on alleged wrongs to Ms. Carthy or his children, he is not entitled to maintain these proceedings and they are bound to fail.

28. In any event, as discussed above, the essence of the plaintiff's case is that these defendants acted wrongfully in relying on a fraud, deceit or manufactured evidence before the Circuit Court and then before the High Court on Ms. Carthy's appeal. This is, in my view, an impermissible attack on final and binding decisions of the Circuit Court and High Court and it is on grounds that could have been and indeed were raised in those earlier proceedings.
29. As discussed above, the plaintiff at the hearing identified three aspects of alleged fraud, deceit and manufactured evidence.
30. The issue in relation to the valuation certificate was raised by the plaintiff in the Circuit Court and the Court refused to strike out those proceedings for want of jurisdiction (on the 23rd November 2016). It continued to be raised by the plaintiff in those proceedings in his substantive replying affidavit sworn on the 9th February 2023. The Circuit Court held against the plaintiff and he did not appeal any of the relevant Orders of the Circuit Court. He could have done so and could have raised the alleged issues in relation to the Valuation Certificate in the High Court. He chose not to do so. While not strictly speaking relevant to the plaintiff's current application, Ms. Carthy did appeal to the High Court. She did so on different grounds and did not, but could have, raised the Valuation Certificate issue before the High Court. Indeed, the plaintiff, who was present in the High Court did not seek to do so either by being formally joined to the appeal or seeking leave to deliver an affidavit or make submissions. In my view, therefore, the core of the claim which is disclosed by the pleadings in this case is clearly res judicata or an abuse of process in the *Henderson v Henderson* sense, i.e. it seeks to raise points which could have been raised in the earlier proceedings.
31. In his replying affidavit, the plaintiff also takes issue with the amount of the debt. He identified this as being one of the aspects of fraud, deceit and manufactured evidence in his oral submissions. He says that the figure sworn to in the bank's grounding affidavit for the possession order was more than had been stated in a letter of March 2014. He also says that he contacted the Central Bank in May 2022 to require proof of all outstanding debts and the amount that was cited by the Central Bank was different to an amount cited in the Circuit Court proceedings. In my view, leaving aside the limited relevance of a discrepancy between figures in 2022 and in 2017, 2019 or 2020 without more, the plaintiff is precluded from challenging the Order for Possession or bringing proceedings on the basis of that Order on the grounds of such a discrepancy. He was perfectly entitled to raise any point he wished to make in relation to the amount of the claimed debt in the Circuit Court or, indeed, before the High Court if he

had appealed. Indeed, one of the reasons why the Circuit Court Judge gave liberty to re-enter the matter even after granting the Order for Possession was because he required the bank to give details about interest rates, which, of course, goes to the question of the amount of the debt. Both the plaintiff and Ms. Carthy availed of that opportunity. There was in fact extensive evidence about related matters in Ms. Carthy's appeal. It is clearly an abuse of process for the plaintiff to seek to raise issues about the amount of the underlying debt at the time of the Order for Possession at this remove.

32. He also claimed in his affidavit that "*...the alleged mortgage attached to mortgage account numbers 390010484 and 39008587 were in fact a commercial loan. Both myself and Bridget never signed the alleged mortgage in the presence of Andrina Fahy of Patrick J. Neilan & Sons Solicitors...*" and identified the second point as one of the aspects of fraud. These are both matters which could have been raised in the Circuit Court proceedings, (and, indeed, in his affidavit of the 12th March 2018 (filed on the 20th March 2018) in the Circuit Court proceedings, the plaintiff did raise them both). Interestingly, he only claimed at that stage that Ms. Carthy did not sign the mortgage deed in the presence of the solicitor and did not claim that he did not sign it. In circumstances where the points could have been raised and were raised in the earlier proceedings, it is not open to the plaintiff to ask the Court to grant relief based on those matters. He expands on the point about the loan being a commercial loan in an affidavit he handed in to Court on the morning of the hearing and essentially contends that because he is not a corporation he could not have entered a commercial agreement. That is misconceived and, in any event, could have been raised before the Circuit Court or in an appeal to the High Court.

33. As noted in the authorities considered by Kennedy J in his judgment, the rules in relation to res judicata and the rule in *Henderson v Henderson* should not be applied in a formulaic way and regard must be had to all of the circumstances, including the fact that it is alleged that the otherwise final and binding determination was obtained by fraud. The logic of this, of course, is that if it was obtained by a fraud which only comes to light after the relevant determination was made, it should be open to the courts to revisit the matter. In my view, that simply does not arise in this case. As Roberts J put it at paragraph 50 of her judgment in relation to the valuation certificate, "*...the facts allegedly concealed from or misrepresented to the Circuit Court with fraudulent intent were in fact fully ventilated before the Circuit Court...*" The same thing can be said about the other two aspects of alleged fraud. Thus, it can not be said that the Order was obtained on foot of a fraud which only came to light after the Order was made. Essentially what has happened is that the plaintiff made his arguments about the alleged fraud in relation to the valuation certificate to the Circuit Court, that Court did not accept his case, the plaintiff did not appeal that decision, and now seeks to collaterally attack that Order (which was affirmed by this Court) on the basis of the same alleged fraud and additional grounds which

could have been and were advanced at the time. If he wished to do so that should have been done by way of appeal and it is an abuse of process to seek to do it in these proceedings.

34. In my view, that is determinative and in those circumstances it is not necessary to go on to consider the matters discussed at paragraphs 50 and 51 of Roberts J's judgment in relation to whether the Circuit Court's jurisdiction was dependent on the valuation certificate.
35. In those circumstances, it seems to me that based on the case that is pleaded, the proceedings as against the third, fourth and sixth-named defendants should be dismissed as being frivolous and vexatious, bound to fail and an abuse of process.
36. Even if I am wrong on that, independently of those considerations, the claim against Whitney Moore would have to be dismissed.
37. Firstly, Whitney Moore only became involved after the Circuit Court had made its Order, i.e. in the context of the High Court appeal. The only claim that could possibly be maintained against them therefore is that they failed to "*reveal the manufactured evidence, deceit and misrepresentation to the Court*". There is no basis for this in circumstances where the matter had already been raised in the Circuit Court. There was simply nothing to "*reveal*" at that stage. Ms. Carthy, or the plaintiff if he had chosen to appeal, could simply have raised the points in the appeal. Furthermore, the appeal was brought by Ms. Carthy and not the plaintiff herein. He did not bring any appeal in the original proceedings. In those circumstances, there is no basis upon which the plaintiff can maintain a claim in respect of any alleged wrongdoing in the appeal proceedings. The appropriate litigant in respect of such alleged wrongdoing is Ms. Carthy, the appellant.
38. Secondly, the allegation that Whitney Moore acted fraudulently or deceitfully is a mere assertion. There are no particulars or facts pleaded to support that assertion.
39. Thirdly, Whitney Moore was acting as solicitor in those appeal proceedings. Kennedy J at paragraph 29 of his judgment refers to the judgment in *Moffitt v Bank of Ireland (Unreported, Supreme Court, 19th February 1999)* in which Keane J said:

"...the fact that the second named defendant, a solicitor, arranged for the swearing of an affidavit which subsequently turned out to be false, if indeed it is false, affords no cause of action whatsoever against the solicitor. The solicitor merely acts on his instructions. His instructions may be correct or they may be incorrect, but he must act in accordance with his instructions. If those instructions are incorrect or false then, of course, that may give rise to a cause of action to Mr. and Mrs Moffitt as against the Bank, but it gives them no cause of action whatever against the solicitor who is merely discharging his professional duties to the client that he is acting for..."

40. More recently, in *Gilroy v Callanan [2019] IEHC 480*, Hunt J said:

"[Counsel for the solicitors] relied upon the decision of the Supreme Court (per Keane J, as he then was) in Moffitt v Bank of Ireland (1999). This judgment establishes the principle that even if a solicitor arranges for the swearing of an affidavit that subsequently turned out to be false, this affords no cause of action whatever against the solicitor, where the solicitor simply acted upon his instructions. Such instructions may be correct or may be incorrect, but the solicitor is nonetheless obliged to act upon them. If the instructions turn out to be false, then a cause of action may arise against the solicitor's client."

41. Thus, it seems to me that in any event the claim against Whitney Moore must be dismissed.

Other claims

42. As noted above, the plaintiff has raised other points in the course of his affidavits and submissions and, notwithstanding that they do not form any part of the pleaded case, I have considered whether they mean that the proceedings should not be dismissed in circumstances where it is well-established that proceedings should not be dismissed if they can be saved by an appropriate amendment. Some of these have also been considered by Roberts J and Kennedy J. In my view, all of these points are misconceived. I have considered them all but it is only necessary refer to some of them.
43. In his replying affidavit, the plaintiff claims that in January 2023 he claimed the loan accounts giving rise to the borrowings as "trust property" and the "KELLYMOUNT 1798" Trust now holds all titles to those accounts. He also claims that the Circuit Court proceedings and the current proceedings are "trust matters" and, as he holds equitable interest, he has a "right to claim this". He also refers to a "CARTHY TRUST". He explained at the hearing that this is a trust which arose upon and because of his birth and birth certificate.
44. He also exhibits documents by which he purported to appoint various persons or to notify them of the appointment of persons as trustees. By way of example, he wrote to the Chief Justice on the 24th January 2024 stating that various people including the Chief Justice, the Governor of the Central Bank, the Catholic Primate of Ireland had been appointed as trustees of the "CARTHY TRUST" and stating:

"I, Eamon-Patrick, a natural living man with status corrected and having reached the age of majority and surrendered the security instrument 6810825 sin 3349838J on the 28th day of July in the year 2022 and having transferred all equitable and legal title of EAMON PATRICK CARTHY to the state trustees, i, am the settlor/Beneficiary of said trust. i, Eamon Patrick now hold the equitable interest and right only, and as we have given proper notice that we have ceased any other injury, i, as settlor, will attend the chancery court on the 30th day of January in the year 2023 to be heard in equity. I require the judge on the day to respect my standing and remind

him/her of his/her fiduciary duty to the trust to ensure that no further injury to the CARTHY TRUST, and that all matters are settled on the day."

45. I do not believe that even if these matters were included in the claim they would disclose any reasonable cause of action. I agree with Roberts J that even if such trusts were created (and I emphasise that I do not necessarily accept that they have been created) they do not have the legal effect which appears to be suggested by the plaintiff. They do not make the Circuit Court or High Court Orders invalid or unenforceable and do not make his property immune from the Orders for Possession.
46. The applicants also made a number of points in relation to these trusts including that the plaintiff was precluded under the mortgage from disposing of his interest in the property and therefore was not entitled to convey the property to the trust and that such a trust, even if created, could be set aside under the Conveyancing Act. I do not need to consider these points.
47. The plaintiff also stated in an affidavit handed in at the hearing that the Circuit Court has no jurisdiction for constitutional law matters and that "*any Order for Possession is absent consideration for Constitutional Law and the Rights of Sovereign Men and Women and therefore any such Order for Possession has no standing in Law...*" It is correct to say that the Circuit Court has no jurisdiction to determine the constitutionality of legislation. It did not purport to do so in the Circuit Court proceedings. It is incorrect to say, if this is what is being said, that the Circuit Court can not consider constitutional law or individuals' rights under the Constitution. It is required to do so. It must, in making its decisions, apply the law and act in accordance with the Constitution and to that extent must consider constitutional law. I agree with the reasoning of Kennedy J in paragraph 47 of his judgment. If the plaintiff believes that the Circuit Court acted without jurisdiction then he should have appealed or sought to challenge the exercise of that jurisdiction by judicial review. He did neither.
48. Also in that affidavit the plaintiff exhibited various documents including a document entitled "*Deed of Acknowledgement and Confirmation*" purporting to be issued by the Irish Republican Brotherhood on the 20th February 2023, a document entitled "*Acknowledgement of Claim of Fact and Declaration of Dominion*" also purporting to be issued by the IRB on the 7th June 2023, A "*Statutory Declaration under an 'Act'*", a document entitled "*The Constitution of the Republic of Ireland*" with "*Vaughans Hotel*" and "*IRB*" noted on it, a purported Order of "*The Sovereign Dáil Éireann Courts on Circuit*" dated the 11th November 2022, and a document described as an "*Indenture*" dated the 20th February 2023. These documents have no legal effect and therefore could not form the basis for any reasonable cause of action.
49. The plaintiff also argued that the Bank had not established "*equitable capacity*". He explained at the hearing, in response to questions, that this meant that the Bank had not proven that it had loaned him the money and therefore was not entitled to obtain the relief in the Circuit

Court. This is by its very nature a point which could have been raised in the Circuit Court or in an appeal to this Court and can not be raised at this stage.

50. Thus, even if the pleadings were to be amended to include these matters, or any of the matters raised in the plaintiff's affidavits, a reasonable cause of action would not be disclosed and/or the proceedings would be frivolous and vexatious (in the legal sense set out by Irvine J in *Fox v McDonald [2017] IECA 189*) and an abuse of process as seeking to litigate matters which should have been raised in the original proceedings or to relitigate matters which were raised in those proceedings.
51. A particular feature of this application is the reliance by the plaintiff on unusual documents which are expressed in legalese or, more particularly, pseudo-legalese, and his handing in of an affidavit at the hearing. The defendants referred to the decision of Rooke ACJ in *Meads v Meads [2012] ABQB 571* and the decision of *Freeman v Bank of Scotland [2013] IEHC 371*. Some of the features of the case reflect what is described in those cases. The applicants also raised a point about the plaintiff possibly being improperly assisted by a McKenzie friend. However, in light of what I have decided I do not have to consider these matters any further.
52. In all of those circumstances, it seems to me that it is appropriate to dismiss the plaintiff's claim pursuant to Order 19 Rule 28 of the Rules of the Superior Courts and under the Court's inherent jurisdiction. It is therefore not necessary to consider the relief sought at paragraph 2 of the Notice of Motion.