

**THE HIGH COURT**

**[2024] IEHC 491**

**Record No. 2021 2213P**

**Between**

**MARTIN TUCKER**

**Plaintiff**

**and**

**THE PROPERTY REGISTRATION AUTHORITY OF IRELAND**

**Defendant**

**Judgment of Mr. Justice Conor Dignam delivered on the 31<sup>st</sup> day of July 2024**

**INTRODUCTION**

1. This is one of several sets of proceedings concerning a property at 39 Danesfort, Castle Avenue, Clontarf, Dublin 3 and involving the plaintiff.
2. In his pleadings, the plaintiff seeks various reliefs in relation to the defendant's registration on the 19<sup>th</sup> March 2015 of a mortgage deed in respect of the property and on the 28<sup>th</sup> January 2016 of a Deed of Conveyance and Assignment of that mortgage. As became clear during the course of the hearing, the latter is in fact the sole focus of the proceedings.
3. By Notice of Motion, the defendant seeks Orders:
  - (i) pursuant to Order 19 Rule 28 of the Rules of the Superior Courts striking out the Plenary Summons and dismissing or striking out the plaintiff's claim on the grounds that it is frivolous and/or vexatious or that the pleadings disclose no reasonable cause of action;
  - (ii) pursuant to the Court's inherent jurisdiction dismissing or striking out the plaintiff's claim on the grounds that it is unsustainable and/or is bound to fail;

- (iii) dismissing the plaintiff's claim as against the defendant on the basis that the claim is an abuse of process and constitutes a collateral attack on previous Orders of the Circuit Court and this Court on appeal in proceedings brought by Havbell DAC against the plaintiff to secure possession of that property;
- (iv) restraining the plaintiff from issuing any further proceedings against the defendant or any servant or agent of the defendant relating to or touching upon that property without prior leave of the President of the High Court or such other judge as may be nominated by the President, with the defendant having been put on notice of any application for such leave;
- (v) declaring that if any such proceedings are issued without such leave, the defendant is not required to appear or to take any steps in relation thereto and that any proceedings so taken shall be treated as void and of no effect.

## **BACKGROUND**

4. There is a long and procedurally complex history to the proceedings and this application. At their core, they concern and arise from a loan and mortgage which the plaintiff and his partner had with Irish Life & Permanent and their alleged successors, Permanent TSB, and subsequently Havbell DAC. Several sets of proceedings have arisen from these matters, including possession proceedings brought by Havbell in the Circuit Court against the plaintiff and his partner, appeals by the plaintiff to the High Court and attempted appeals to the Court of Appeal and the Supreme Court in those proceedings, proceedings brought by the plaintiff against Havbell, injunction proceedings brought by Havbell against the plaintiff, proceedings brought by him against his former partner (which are currently at hearing before the High Court), and these proceedings against the Property Registration Authority.
5. The details of this history are set out in judgments of the High Court and the Court of Appeal. Allen J gave judgment in proceedings entitled *Tucker v Havbell Designated Activity Company* Record No. 2020/7879P ([2022] IEHC 15) and Noonan J gave judgment on behalf of the Court of Appeal in *Tucker v A Judge of the Circuit Court* 2021/808JR (Court of Appeal Record number 2021/252) ([2022] IECA 32). Allen J sets out the background in very considerable detail. Some background is also set out in the grounding affidavit to this application. The plaintiff does not take serious issue with any of the background facts as set out in the affidavit or Allen J's judgment. I have had regard to the history set out in that judgment and in the grounding affidavit but in circumstances where it is set out in such detail in previous judgments, it is not necessary to repeat it all

in this judgment. However, it is necessary to set out some of the background in order to understand the case that is being made by the plaintiff. Furthermore, some of the background is relevant to the application to dismiss under the Court's inherent jurisdiction, particularly on the basis that it is an abuse of process as being a collateral attack on previous judgments, and to the application for the Isaac Wunder-type relief. The following summary should be read together with Allen J's judgment.

6. The plaintiff and his partner purchased the property in 2003. They did so with the assistance of a loan from Irish Life & Permanent plc and they executed a mortgage deed on the 18<sup>th</sup> June 2003 in favour of Irish Life & Permanent.
7. On the 29<sup>th</sup> June 2012, Irish Life & Permanent plc changed its name to Permanent TSB plc.
8. By a Registry of Deeds "Form 3" dated the 19<sup>th</sup> March 2015, the mortgage deed of the 18<sup>th</sup> June 2003 was registered by the defendant on the application of a solicitor for Permanent TSB. This was given a registration number of 2015019280.
9. By a Deed of Conveyance and Assignment dated the 19<sup>th</sup> June 2015, Permanent TSB assigned the plaintiff's and his partner's loan and the mortgage to Havbell, which was then a limited liability company. It is important to note that the plaintiff does not necessarily accept that the mortgage was assigned by this deed. This is a central part of his current case.
10. By a "Form 1" (which is used for an "*Application by solicitor for registration of a Deed of Conveyance/Assignment/Grant/Assent/Judgment Mortgage or other document other than those referred to in Forms 2-8 (Rule 6)*"), the Deed of Conveyance and Assignment of the 19<sup>th</sup> June 2015 was registered by the defendant on the application of a solicitor acting on behalf of Havbell. The properties affected by the deed were identified in an "Excel Sheet".
11. On the 29<sup>th</sup> September 2016, Havbell was converted into a designated activity company.
12. Proceedings were brought by Havbell in the Circuit Court for an Order for Possession of the property on the basis that the plaintiff and his partner were in default in repayment of the loan secured by that mortgage. On the 10<sup>th</sup> May 2018, the Dublin County Registrar granted Havbell an Order for Possession with a stay of three months. It seems that the plaintiff's partner consented to that Order. The Order was appealed to the Circuit Court by the plaintiff, who was represented by solicitor and counsel at the time. The appeal was refused by Her Honour Judge Linnane on the 25<sup>th</sup> June 2018. The plaintiff sought to appeal to the High Court by seeking extensions of time to do so. There were a number of procedural aspects to this which are dealt with in detail at paragraphs 10-14 of Allen

J's judgment. He first sought an extension of time to appeal to the High Court against the County Registrar's Order of the 10<sup>th</sup> May 2018 notwithstanding that it had been superseded by Judge Linnane's Order of the 25<sup>th</sup> June 2018. He then sought an extension of time to appeal against Judge Linnane's Order. This was refused and he sought to appeal that refusal to the Court of Appeal. That court declined to accept or entertain the appeal for want of jurisdiction. The plaintiff then applied to the Supreme Court for leave to appeal the High Court's refusal of an extension of time and that application was refused by determination of the 16<sup>th</sup> October 2019 ([2019] IESCDET 232).

13. Havbell obtained possession of the property in March 2019 but the plaintiff subsequently re-entered it. Havbell brought injunction proceedings against the plaintiff in the Circuit Court and on the 18<sup>th</sup> July 2019 the plaintiff gave a sworn undertaking to vacate the property by the 25<sup>th</sup> July 2019. The Circuit Court granted interlocutory injunctions with a stay until the 25<sup>th</sup> July 2019 on the plaintiff's undertaking to vacate the property by that date. Strikingly, notwithstanding the giving of undertakings by the plaintiff, he appealed Judge Linnane's Order of the 18<sup>th</sup> July 2019 to the High Court.
14. On the 25<sup>th</sup> July 2019, the date by which the plaintiff had undertaken and was ordered to vacate the property, he also applied to Judge Linnane for a further stay on her Order pending the determination of the Supreme Court of his application for leave to appeal against the High Court's refusal to extend the time for an appeal against the Order for Possession. On the 26<sup>th</sup> July 2019 he filed an ex parte docket in the High Court in relation to his application for a stay on the Circuit Court Order of the 18<sup>th</sup> July 2019.
15. The plaintiff issued proceedings against Havbell on the 15<sup>th</sup> August 2019 with record number 2019 No. 6453P seeking various reliefs. At paragraph 22 of his judgment Allen J said "*The reliefs claimed by Mr. Tucker were various, but the core claim was that Havbell was not entitled to possession. That, plainly, was something which had been heard and determined by the Circuit Court on 25<sup>th</sup> June 2018. Mr. Tucker had not appealed in time. The High Court had refused an extension of time and the Supreme Court had refused leave to appeal against the refusal of an extension of time, for the reason that he had no arguable ground of appeal.*" These proceedings were subsequently discontinued by the plaintiff as part of settlement discussions which are referred to below.
16. Havbell brought a motion for attachment and committal on the 22<sup>nd</sup> August 2019 in respect of the plaintiff's alleged non-compliance with Judge Linnane's Order and his undertaking of the 18<sup>th</sup> July 2019. This seems to have gone nowhere.
17. On the 13<sup>th</sup> January 2020, Eager J dismissed the plaintiff's appeal against Judge Linnane's Order of the 18<sup>th</sup> July 2019, i.e. the injunction, and affirmed that Order and the plaintiff was ordered to deliver up possession by 4.00pm that afternoon.

18. There were also settlement negotiations between the parties over the course of late December 2019 and the first half of 2020. This led to agreed terms but it appears that this fell apart. As part of this, the plaintiff filed and served a notice of discontinuance of the Circuit Appeal (2019/340CA) and the proceedings which had been instituted by him against Havbell on the 15<sup>th</sup> August 2019 (2019 No. 6453P). The plaintiff also sought a Personal Insolvency Arrangement. These matters are dealt with in detail by Allen J at paragraphs 27-48 of his judgment.
19. It seems that the plaintiff had remained in possession of the property after going back into possession in March 2019. In November 2020, he wrote to Havbell seeking a copy of all information kept about him and in particular an unredacted copy of any deeds of transfer or assignment or novation between Permanent TSB and Havbell concerning him, the loan and the property. On the 20<sup>th</sup> November 2020, Havbell's solicitors replied and asserted that Havbell had acquired the charge from Permanent TSB and enclosed a copy of the Order of Judge Linnane of the 18<sup>th</sup> July 2019 and the Order of Eager J of the 13<sup>th</sup> January 2020. They demanded that he vacate the property by Monday, the 23<sup>rd</sup> November 2020.
20. On that date, the 23<sup>rd</sup> November 2020, the plaintiff instituted a second set of proceedings against Havbell (the proceedings in which Allen J gave the judgment referred to earlier). Allen J sets out at paragraph 68-75 of his judgment the claims that were advanced by the plaintiff. In summary, they include a challenge to the validity of the transfer of the mortgage by Permanent TSB to Havbell; a complaint of a breach of duty and breach of contract on the part of Havbell; a claim that the mortgage did not provide for a transfer of the loan and that Havbell failed to register its interest in the mortgage; that Havbell misrepresented its entitlement in the Circuit Court proceedings; that Havbell failed to secure the payment of two pension funds which served as security for the mortgage (this is the subject of the proceedings which the plaintiff has brought against his partner and is at hearing before this Court); and a number of criticisms of the Deed of Transfer/Irish Law Deed of Conveyance and Assignment.
21. On the same day, the plaintiff issued a motion seeking an interlocutory injunction restraining Havbell from taking possession of the property (notwithstanding that Havbell had an Order for Possession and the Circuit Court had granted an injunction requiring the plaintiff to give up possession). He asserted that he had been let down by his solicitor in the possession proceedings, the funding which he had secured to perform the settlement agreement had been withdrawn due to the Covid-19 pandemic, Havbell had not performed their obligations under that agreement, Havbell had voted down his proposed PIA, and he had done his utmost to pay sums to Havbell as agreed.

22. The plaintiff also issued a Notice of Motion in the Circuit Court possession proceedings on the 12<sup>th</sup> March 2021 in which he sought to vacate the Order of the 10<sup>th</sup> May 2018. This was the Order of the County Registrar, which had been superseded by the Order of Judge Linnane of the 25<sup>th</sup> June 2018. He also issued a motion in Havbell's Circuit Court injunction proceedings in which he sought to vacate the Order of Judge Linnane of the 18<sup>th</sup> July 2019. As recorded by Allen J (paragraph 55), this was based on a number of different grounds: the possession proceedings had been fundamentally flawed; he had been completely let down by his solicitor; the High Court had applied the wrong test in respect of his application for an extension of time to appeal the possession order; the figures which had been relied on by Havbell had been wrong; the Order refusing his appeal had an incorrect record number and named the wrong judge; he had agreed a settlement with Havbell which had been frustrated by force majeure; Havbell had not complied with its obligations under the settlement agreement; he had secured a loan from another bank which he had offered to Havbell; Havbell had voted against his proposed PIA; and Havbell was using the courts to avoid its obligations in regard to redemption.
23. Both of these motions were refused by the Circuit Court on the 4<sup>th</sup> May 2021. The plaintiff appealed to the High Court.
24. On the 16<sup>th</sup> March 2021, the plaintiff issued a motion in the Allen J proceedings seeking discovery of, inter alia, all deeds relied upon by Havbell in relation to the alleged transfer. He also issued a motion on the 7<sup>th</sup> April 2021 seeking to join his partner, two of the solicitors in the firm on record for Havbell, and the managing partner in the firm which acted for his partner in the Circuit Court proceedings, as co-defendants, and for leave to issue subpoenas duces tecum directed to the first three proposed co-defendants. Allen J decided that he should deal with Havbell's motion to dismiss the proceedings first.
25. On the 20<sup>th</sup> May 2021, the Circuit Court determined a further application for attachment and committal against the plaintiff in respect of a breach of the Order of the 18<sup>th</sup> July 2018. Allen J records that the plaintiff *"is said to have been represented by a solicitor and counsel and to have accepted that he had failed to obey the Order of the 18<sup>th</sup> July 2019."* Judge O'Connor made the Order for attachment and committal. The plaintiff appealed against that Order and on the 9<sup>th</sup> June 2021 he issued a motion in that appeal seeking a stay on Judge O'Connor's Order pending the hearing of the appeal. The plaintiff sought leave to challenge that decision by judicial review. He was refused leave by the High Court and appealed that refusal to the Court of Appeal. That appeal was rejected and Noonan J gave the judgment which is referred to above.
26. The plaintiff instituted these proceedings on the 1<sup>st</sup> April 2021.

## **THE PLAINTIFF'S CLAIM**

27. In his Statement of Claim, the plaintiff seeks various reliefs against the defendant arising from the defendant's registration of the mortgage deed on the 19<sup>th</sup> March 2015 (the registration numbered 2015019280) and the registration of the Deed of Conveyance and Assignment on the 28<sup>th</sup> January 2016. These reliefs include mandatory injunctions directing the defendant to remove these registrations, a declaration that the registrations are "*fatally flawed and or invalid and or illegal and or unlawful*" and an Order for damages for breach of statutory duty, negligence, stress and or distress.
28. He claims that relief on the grounds that:
- (i) the defendant caused to be registered an undated mortgage deed;
  - (ii) the mortgage deed was dated in a manner which breached the defendant's obligation to maintain the register with appropriate and accurate information;
  - (iii) the defendant knowingly caused to be registered a mortgage deed which failed to disclose a date of execution on its face in breach of rule 4(5)(b) of Statutory Instrument 52/2008 entitled "Registration of Deeds Rules 2008" ("the Rules");
  - (iv) the defendant knowingly caused to be registered a mortgage deed in breach of rule 5(2) and 6(1) of the Rules;
  - (v) the defendant knowingly failed to comply with its obligations pursuant to rule 6(2) and 6(4) of the Rules;
  - (vi) the defendant knowingly registered an undated equitable mortgage in breach of the Statute of Limitations 1957;
  - (vii) on the 28<sup>th</sup> January 2016 (the Statement of Claim pleads 2015 but the plaintiff said at the hearing that this was an error) the defendant knowingly caused to be registered a transfer of mortgage on foot of a Form 1 dated the 19<sup>th</sup> June 2015 which did not contain or identify the mortgage at Registration Number 2015019280.
29. Points (i) – (vi) relate to the registration of the mortgage deed. Point (vii) relates to the registration of the Deed of Conveyance and Assignment.
30. The plaintiff claims that by these actions and the defendant's negligence, the defendant was in breach of duty causing damage to the plaintiff and to his constitutional rights,

exposed him to third party attack on his statutory, constitutional and common law rights and has caused the register to be used in bad faith by third parties and this conduct forms a direct attack on the property rights of the plaintiff.

31. In fact, at the hearing, the plaintiff accepted that his claims in respect of the registration of the mortgage deed, i.e. the registration on the 19<sup>th</sup> March 2015, was incorrect and he explained that his claim boils down to his claim that the registration on the 28<sup>th</sup> January 2016 of the Deed of Conveyance and Assignment, which he describes as the registration of "the transfer of the mortgage", was wrongful.
32. Even before the hearing, during the exchange of affidavits in relation to this application the plaintiff had made clear that the real issue in the case was the registration of the Deed of Conveyance and Assignment. He said that *"...the matter can be distilled down to one issue and that is whether or not the defendant has in its possession a deed of transfer of the plaintiff's interest in the mortgage loan form (sic) Permanent TSB to Havbell, the plaintiff is relying on the decision in Tanager v Rolf Kane in that respect"* and went on to refer to the *"seriousness of the stance of Havbell that it has a deed of transfer in the name of the plaintiff but has thus far failed to provide same."*
33. His claim is that the Form 1 (the application for the registration of the Deed of Conveyance and Assignment) identified the interests affected by that deed by reference to an Excel spreadsheet and this spreadsheet only referred to his partner's name and therefore only referred to a mortgage executed by his partner, but not by him. He contends, therefore, that the mortgage executed by both of them was not in fact transferred by the Deed of Conveyance and Assignment, or at least that his interest was not transferred, and yet Havbell relied on this registration to obtain the Order for Possession from the Circuit Court. He deals with this in his affidavit of the 9<sup>th</sup> May 2022. In that affidavit, he said that he had always maintained that *"Havbell did not have or hold evidence of a valid transfer of the mortgage that originated with PTSB in the name of Martin Tucker."* He refers to the averment in the defendant's grounding affidavit that *"By deed of conveyance and assignment dated 19 June 2015, the Plaintiff's and [his partner's] loan and the security held for it were assigned to Havbell..."* and makes the point that while the defendant exhibits the relevant Form 1 to support this averment, she did not exhibit the *"complete form 1"*. He exhibits the full Form 1. The difference appears to be that the Form 1 refers to an "Excel Sheet" under the heading *"Description of the Property"*. Ms. Ruddy did not exhibit the Excel Sheet. The plaintiff exhibited the form and that Excel sheet. It comprises of a Schedule of names, addresses, and details of mortgages, including identification numbers and dates. He says that the defendant's *"...exhibit excludes the list of individuals in which the deed of conveyance/transfer affects wherein the exhibit of your deponent clearly details the individuals, their property and account numbers that are affected by*



*the transfer, when examined one will note the obvious omission of your deponent's name from the list."* He points out that "[T]he said deed only contains the name of my ex-wife...a transfer of [her] interest does not transfer your deponent's interest."

34. In circumstances where the plaintiff has said that his claim is focused on the registration of the Deed of Conveyance and Assignment and he accepts that what the defendant says about the registration of the mortgage deed is correct, it is not necessary to consider (i) – (vi) above (paragraphs 5-12 of the Statement of Claim) and the reliefs based on them.

### **REGISTRATION OF DEEDS RULES**

35. While the plaintiff accepted at the hearing that he was not correct in relation to the claimed breaches of specific rules in respect of the registration of the mortgage deed, he did rely on some of these rules in relation to his claim about the registration of the Deed of Conveyance and Assignment. It would therefore be helpful to set them out.

36. Statutory Instrument 52/2008 contains the Registration of Deeds Rules and is made pursuant to section 48 of the Registration of Deeds and Title Act 2006. Section 48 provides:

*"48.— The Registration of Deeds and Title Rules Committee established by [section 74](#) may, with the agreement of the Minister, make general rules for the purpose of enabling this Part to have full effect and, without prejudice to the generality of the foregoing, may make provision in those rules in relation to any of the following matters:*

*(a) the form, content and indexing of the register and records;*

*(b) the forms of application for registration of deeds;*

*(c) the procedures to be observed in connection with registration, including the allocation of serial numbers to applications for registration and their cancellation where the applications are refused;*

*(d) the form and manner in which entries in the register are to be made, modified or cancelled;*

*(e) any other matter referred to in this Part as prescribed."*

37. Section 35 provides that the defendant shall maintain a register of deeds and that the register (a) shall be in the prescribed form and (b) shall contain the prescribed information.
38. Section 36 provides that an application for registration of a deed in the register shall be made in the prescribed form.
39. The prescribed matters are set out in the Rules made under section 48.
40. Article 4(5) of the Rules provides, inter alia:

*"(5) The register shall contain the following information in respect of each deed registered under the Act –*

*(a) the name of the deed,*

*(b) the date of the deed,*

*(c) the grantors in the deed,*

*(d) the grantees in the deed,*

*(e) a description of the property,*

*(f) the serial number allocated under Rule 7,*

*(g) the date of registration,*

*(h) such other information as may be considered by the Authority."*

41. Article 5(2) of the Rules provides:

*"(2) There shall be kept by the Registry in respect of each registration a record, as appropriate, containing the name of the deed, the date of the deed, the name of each Grantor, the name of one Grantee, the description of the property, the serial number, the date of registration and the general nature of the deed."*

42. Article 6 provides, inter alia:

*"(1) Save as otherwise provided in these Rules, every application for registration of a deed shall be in the appropriate form of the Schedule of Forms to these Rules, with such alterations and additions as the circumstances require and which the Authority allows and shall be accompanied by the deed and the prescribed fee."*

- (2) *If it appears to the Authority that any application is improper in form or in substance or is not clearly expressed or does not indicate with sufficient precision the particular interest or land which it is intended to affect or refers only to matters which are not the subject of registration under the Act or is otherwise expressed in a manner inconsistent with the principles upon which the register is to be kept, it may refuse registration, either absolutely or except subject to such modifications therein as it shall approve.*
- (3) ....
- (4) *To ensure accuracy in the registered details the Authority shall compare the details on the application form with those in the deed in respect of which registration is being made.*
- ....
- (7) *Every application shall be deemed to be received when the prescribed information at Rule 5(2) is recorded by the Authority.*
- (8) *Registration shall be effected by recording the prescribed information at Rule 5(2)."*

#### **PRINCIPLES APPLICABLE TO DISMISS APPLICATION**

43. 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 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). The principles, particularly in relation to the exercise of the Court’s inherent jurisdiction, 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. Allen J also considered the principles in his judgment in *Tucker v Havbell* [2022] IEHC 15.
44. 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.

45. Irvine J dealt with the meaning of "frivolous and vexatious" in *Fox v McDonald [2017] IECA 189*. While Irvine J was writing in respect of Order 19 Rule 28, the same principle applies to the Court's inherent jurisdiction. She said, inter alia:

*"[t]he word 'frivolous' when used in the context of O. 19 r.28 is usually deployed to describe proceedings which the court feels compelled to terminate because their continued existence cannot be justified having regard to the relevant circumstance."*

46. It is well-established that there is a difference between the jurisdiction which arises under Order 19 Rule 28 of the Rules and the inherent jurisdiction of the Court. Clarke J explained the difference in *Lopes v The Minister for Justice*, where he said at paragraph 17:

*"The distinction between the two types of jurisdiction is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J pointed out at p.308 of his judgment in Barry v Buckley [1981] IR 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked."*

47. White J said in *Murray and Air Ambulances Services Ltd v Fitzgerald [2012] IEHC 20* (referred to by Allen J) that in exercising its inherent jurisdiction in assessing whether proceedings are vexatious, the Court is entitled to look at the whole history of the dispute and to look for one or more of a number of indicia of vexatious litigation.

48. In an application to dismiss proceedings under Order 19 Rule 28 the Court must accept the facts as asserted in the plaintiff's claim and if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim and should not be struck out. On an application under Order 19 Rule 28 there is to be no enquiry into, or assessment of, the facts as pleaded. They must be taken as correct and the enquiry must be solely concerned with whether those facts give rise to a

cause of action. On an application under the Court's inherent jurisdiction, on the other hand, there may be a limited analysis of the facts. Clarke J addressed this difference in a number of cases. In *Keohane v Hynes* [2014] IESC 66, he said:

*"6.1 In my High Court judgment in Salthill Properties Limited & anor v. Royal Bank of Scotland plc & ors [2009] IEHC 207, which was approved in the recent judgment of this Court in Lopes v. Minister for Justice Equality & Law Reform [2014] IESC 21, I explained the distinction between the jurisdiction which arises under O.19, r. 28 and that which arises under the inherent jurisdiction of the court. At para. 3.12. of Salthill Properties, I said the following:*

*"It is true that, in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19, the court must accept the facts as asserted in the plaintiff's claim, for if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim. However, I would not go so far as to agree with counsel for Salthill and Mr. Cunningham, to the effect that the court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the court. A simple example will suffice. A plaintiff may assert that it entered into a contract with the defendant which contained certain express terms. On examining the document the terms may not be found, or may not be found in the form pleaded. On an application to dismiss as being bound to fail, there is nothing to prevent the defendant producing the contractual documents governing the relations between the parties and attempting to persuade the court that the plaintiff has no chance of establishing that the document concerned could have the meaning contended for because of the absence of the relevant clauses. The whole point of the difference between applications under the inherent jurisdiction of the court, on the one hand, and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other hand is that the court can, in the former, look to some extent at the factual basis of the plaintiff's claim."*

49. Clarke J emphasised that the extent to which it is appropriate for the Court to assess the evidence and the facts even under the Court's inherent jurisdiction is extremely limited. He also noted that "documents cases" may be more amenable to an assessment of the facts. He referred to paragraph 2.6 of his judgment in *Lopes* where he said:

*"At the same time, it is clear that certain types of cases are more amenable to an assessment of the facts at an early stage than others. Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss."*

50. He referred to the distinction which he had drawn between different types of "documents cases" in his judgment in *Salthill Properties*. He said in *Salthill Properties*:

*"3.9 It has often been noted that an application to dismiss as being bound to fail may be of particular relevance to cases involving the existence or construction of documents..."*

*3.10 However, it is important to emphasise the different role which documents may play in proceedings. In cases, such as the examples which I have given earlier, involving contracts and the like, the document itself may govern the legal relations between the parties so that the court can consider the terms of the document on its face and may be able to come to a clear view as to the legal consequences flowing from the parties having governed their relations by the document concerned.*

*3.11 However, there are other cases where documents are not vital in themselves save that they may cast light on the underlying facts which may be at the heart of the proceedings concerned. Correspondence, minutes of meetings, memoranda and the like, do not, of themselves, create legal relations between the parties. Rather they purport to reflect facts such as what was said at meetings, what was communicated from one party to another or the like. Parties may explain or seek to clarify what might otherwise appear to be the natural meaning of such documents. At the end of the day, it will be what view the court takes as to what actually happened that will determine the facts on the basis of which the court will come to its judgment. Contemporary documentation is often a very valuable guide to such facts, but such documentation is not necessarily determinative. It is important, in that context, not to confuse cases which are dependent on documents themselves with cases where documents may be a guide, albeit often a most important guide, to the underlying facts which need to be determined in order to resolve the issues between the parties."*

51. It is also well-established that the Court can conclude that proceedings are frivolous and vexatious or that they fail to disclose a reasonable cause of action under Order 19 Rule 28 or that they are frivolous and vexatious and an abuse of process under the Court's inherent jurisdiction where the plaintiff is attempting to re-litigate matters that have already been determined or where they are attempting to litigate matters which could have been raised in earlier proceedings and were not. Costello J said in *Morrissey v Irish Bank Resolution Corporation* [2015] IEHC 200 (paragraph 5):

*"It is a fundamental principle of law that a party should not be entitled to re-litigate matters or raise issues which have already been determined by a final judgment of a court of competent jurisdiction between the same parties and their privies. This is known as the principle of res judicata. But beyond the strict limitations of res judicata the courts have long recognised that there may be abuse of process outside of the relatively confined limitations of the rule and the courts have always been prepared to balance the rights of parties to have their cases heard and determined by the courts with the rights of the opposing parties to fair procedures in the conduct of litigation and, where necessary, to strike out proceedings if they amount to an abuse of process."*

52. Related to this is that the Court can also dismiss proceedings where they are being used as a mode of collateral attack on a final and binding decision. Indeed, that follows from the description of "frivolous and vexatious" given in *Fox v McDonald*. It was also stated in *Scotchstone* that cases which are frivolous and vexatious include "*cases which may have a reasonable chance of success but would confer no tangible benefit on a plaintiff or are taken for collateral or improper motives or where a plaintiff is seeking to avail of scarce resources of the courts to hear a claim which has no prospect of success.*"
53. These are the principles by reference to which I have determined this application.

## **DISCUSSION AND CONCLUSION**

### *Order 19 Rule 28*

54. As noted above, the only claim which requires to be considered is the plaintiff's claim in respect of the registration of the Deed of Conveyance and Assignment. This claim is specifically pleaded in paragraph 13 of the Statement of Claim ("*On the 28<sup>th</sup> January 2015 (sic) the registrar knowingly caused to be registered a transfer of mortgage on foot of a Form 1 dated the 19<sup>th</sup> June 2015, which did not contain or identify the mortgage at Registration Number 2015019280*") and is part of the general pleas of breach of duty, breach of statutory obligations and negligence against the applicants at paragraphs 14 – 17 of the Statement of Claim.
55. There is no doubt that this claim is inadequately particularised in that it does not clearly set out the basis upon which it is claimed the defendant registered "*a transfer of mortgage on foot of a Form 1...which did not contain or identify the mortgage*". However, this was clarified in the exchange of affidavits and during the course of submissions. I return to the case being made shortly. It seems to me that this deficiency in pleading can be cured by an appropriate amendment and, it is well-established that if a defect can be cured by an amendment to the pleadings the application to dismiss can not succeed.
56. Secondly, as currently pleaded, the case that is made in paragraph 13 is that the defendant registered "*a transfer of mortgage*". The defendant did not do so. The defendant registered a deed which had or purported to have that effect but did not register the transfer. This could be fatal to the plaintiff's position. However, I have to have some regard for the fact that the plaintiff is a litigant-in-person and that he may not have pleaded his case as precisely as would be expected of a person who is represented by counsel and solicitor. Of course, this can not be stretched too far and can not serve to give the litigant-in-person an unfair advantage. This is particularly the case where the

litigant-in-person, as in this case, has very significant litigation experience. Nonetheless, I can have regard to the submissions made by the plaintiff in relation to the case being made him. That case is not limited to the claim that the defendant registered "*a transfer of the mortgage*". His claim includes the claim that the defendant should have declined to register the Deed of Conveyance under the Rules because it did not comply with those Rules. He pointed to Rule 4(5) and 5(2) and 6(2). He also relied on Rule 6(4) which obliges the defendant to "*ensure accuracy in the registered details*" by requiring the defendant to "*compare the details on the application form with those in the deed in respect of which registration is being made*" and submitted that if the defendant had compared the details properly it would have seen that the contents were not correct in that the plaintiff's name was omitted from the description of the mortgage which was already registered with the defendant and which Permanent TSB was purporting to transfer in the Deed of Conveyance and Assignment.

57. Of course, the pleadings would have to be amended to properly plead that case.
58. Subject to that, having regard to the very high bar which must be satisfied by the defendant in seeking an Order striking out a claim, I am not satisfied that the defendant has met that test insofar as it is claimed that the pleadings do not disclose a reasonable cause of action. If the claim that the defendant did not act in accordance with the Rules and that the plaintiff suffered damage as a result is made out then the plaintiff will have a cause of action. Of course, I should note the following two matters. Firstly, the mere fact that a public body failed to act in accordance with such Rules does not automatically give rise to an entitlement to damages. Secondly, the damage which the plaintiff alleges he suffered is that Havbell was able to rely on the registration of the Deed of Conveyance and Assignment to persuade the Circuit Court that Havbell was entitled to an Order for Possession because it owned the mortgage of the 18<sup>th</sup> June 2003 or, more particularly, owned the plaintiff's interest in that mortgage. It seems to me that the plaintiff may face a very serious difficulty in establishing that he suffered that damage by reason of the registration in circumstances where Havbell's entitlement would seem to be based on the Deed of Conveyance and Assignment rather than the registration.
59. However, these issues go to the merits of the claim and whether the plaintiff would ultimately be successful. The Court, when assessing whether a reasonable cause of action is disclosed, is limited to assessing whether the plaintiff could not succeed rather than would not succeed. In my view, subject to the case being properly pleaded, on that test, I could not conclude that the pleadings do not disclose a reasonable cause of action.
60. The Court, when exercising its jurisdiction under Order 19 Rule 28, may also consider whether the claim is frivolous and vexatious. Rather than dealing with this separately at



this stage, I propose to deal with it when considering the application under the Court's inherent jurisdiction.

### *Inherent Jurisdiction*

61. I am satisfied that the proceedings should be dismissed under that inherent jurisdiction. I am of that view on the basis that even an extremely limited engagement with the evidence discloses that there is no factual basis for the claim and that the claim is frivolous and vexatious and an abuse of process as being brought for an improper purpose as a collateral attack on the earlier judgments of the Circuit Court and the High Court.
62. As discussed above, the claim that the registration of the Deed of Conveyance and Assignment amounts to a registration of "*a transfer of mortgage*" is fundamentally incorrect. It is a registration of the Deed of Conveyance and Assignment which Havbell claims to transfer the mortgage. The registration of the deed does not have the effect of registering Havbell's interest in the same way that the registration of a transfer of ownership of a mortgage on a folio has in respect of registered land.
63. The suggestion that the registration of the Deed is in breach of the Rules has no support in the evidence. This is a classic "*documents case*" which turns entirely on the construction of documents. It is a case where "*...the court can consider the terms of the document on its face and may be able to come to a clear view as to the legal consequences...*" of those documents.
64. Rule 4(5) requires that the register shall contain, inter alia, "*the grantors in the deed*" and the "*grantees in the deed*". Rule 5(2) requires there "*...shall be kept in the Registry in respect of each registration a record, as appropriate, containing the name of the deed, the date of the deed, the name of each Grantor, the name of one Grantee, the description of the property, the serial number, the date of registration and the general nature of the deed.*" The only complaint made is about deficiencies in respect of the name of the Grantor. The registration correctly records that the grantor under the Deed of Conveyance and Assignment was Permanent TSB and that the grantee was Havbell. Thus, there is no basis for claiming a breach of Rule 4(5) and (5)(2) in respect of the registration of the Deed of Conveyance and Assignment.
65. However, as discussed above, the plaintiff's claim is focused more on Rule 6(2) and (4) and his complaint is that the application for registration was improper in substance or does not indicate with sufficient precision the particular interest or land which the Deed was intended to affect and that if the defendant had properly compared the details on the application form (Form 1) with those in the deed in respect of which registration was being made (the Deed of Conveyance and Assignment) registration would or should have

been refused. This claim turns exclusively on the fact that the Excel spread sheet setting out the properties being affected by the Deed of Conveyance and Assignment contained only his partner's name. In my view that is not well-founded. The Excel sheet set out the address of the property, the date of the Permanent TSB mortgage and, crucially from the point of view of the complaint against the defendant, the registration number of the registration of the original mortgage executed by the plaintiff and his partner. This is undoubtedly sufficient to have allowed the defendant to have properly carried out the comparison exercise and to be satisfied that the application was proper in substance and that it indicated with sufficient precision the particular interest being affected. The interest being affected was the mortgage of the 18<sup>th</sup> June 2003 which was registered on the 19<sup>th</sup> March 2015 under number 2015019280. That was clear. It seems to me that fundamentally the plaintiff's complaint is about whether the Deed of Conveyance and Assignment had the effect of transferring the mortgage. That is not a matter for the defendant.

66. In those circumstances, it seems to be that the proceedings are bound to fail.
67. I am also satisfied that they are frivolous and vexatious and are an abuse of process in that they are brought for an improper purpose and as a collateral attack on the earlier decisions of the Circuit Court and High Court.
68. That this is so is clear from the plaintiff's own words.
69. The plaintiff says in his replying affidavit in this application (paragraph 4) "*...I have maintained that throughout the currency of proceedings issued by Havbell in the Circuit Court as against me, Havbell did not have or hold evidence of a valid transfer of the mortgage that originated with PTSB in the name of Martin Tucker, this is borne out in the affidavit of Ms. Ruddy which will become apparent*" and (in paragraph 7) "*I say that this omission from the deed of your deponent's name relied upon by Permanent TSB plc to Havbell to validate the transfer of the loan and security can only be described as a monumental failure on the part of the grantee and grantor to execute the deed correctly, this was the evidence put before the Circuit Court in pursuit of an order for possession and injunction which Havbell succeeded in obtaining against me, wrongly, in my view as it appears the evidence put before the court was done so by Havbell in the full knowledge it was flawed and Havbell opted to not disclose the flaw in their evidence.*"
70. Furthermore, by a Notice for Particulars of the 4<sup>th</sup> November 2021, the defendant asked the plaintiff to identify the alleged damage claimed in paragraph 14 of the Statement of Claim, where it is pleaded: "*It is the claim of the Plaintiff that by his/her actions and or negligence the Defendant has breached his/her statutory obligations causing damage to the Plaintiff in respect of his right to due process.*" The reply given by the plaintiff was:

*"...the alleged damage to the Plaintiff in respect of his right to due process is that despite raising the issue of fact that Havbell did not have or hold a valid transfer of the mortgage in the name of the Plaintiff, **the lack of evidential proof of same was accepted by the Circuit Court, or conversely evidence that was obtained by Havbell from the Registry of Deeds was accepted by the Circuit Court** which did not and could not have provided for a valid transfer of the mortgage to Havbell in the name of the Plaintiff."* (emphasis added)

71. At paragraph 4 of the Replies to Particulars, the plaintiff said:

*"In response to Paragraph 4 of the Defendants notice for particulars the actions of the Property Registration Authority have caused damage to the Plaintiff in light of the fact their erroneous records have been used in evidence against the Plaintiff in the exercise of his constitutional rights to respect for his property and right to a fair trial."*

72. Furthermore, there was an exchange of correspondence between the Chief State Solicitor's Office, acting for the defendant, and the plaintiff prior to the issuance of this motion. By letter of the 16<sup>th</sup> February 2022, the CSSO referred to the plaintiff having *"initiated an avalanche of litigation"* and that it was clear from earlier judgments (the Allen J and Noonan J judgments) that the proceedings against the defendant were *"for the collateral purpose of seeking to undermine the validity of the Circuit Court possession order"* and were an abuse of process. The letter called on the plaintiff to confirm that he would discontinue the proceedings. The plaintiff replied by letter of the 17<sup>th</sup> February 2022 stating, inter alia:

*"I would start by stating that I do not desire to be engaged in an "avalanche" of litigation as you put it, I do recognise that it appears that this is the case however, what is missing fro your observations are;*

- 1. At the time of the possession proceedings I engaged a Solicitor to act on my behalf, the said Solicitor was negligent which resulted in Havbell obtaining an order for possession, a negligence complaint was upheld by the Law Society as against my then Solicitor.*
- 2. Havbell have claimed without providing any evidence that it holds a valid transfer of the mortgage from PTSB to Havbell in the name of Martin Tucker – I am simply seeking this evidence and sought that evidence in proceedings brought against Havbell on a number of grounds, namely the evidence of a valid transfer in the name of Martin Tucker and to enforce an agreement made between Martin Tucker and Havbell in 2020, Allen J acceded to Havbell's application to strike out the proceedings which will be appealed albeit reluctantly.*

...

*If there was any other way to resolve these issues I would be engaged in that process, the documents I seek are either available or not as the case maybe, if you revert and advise in writing that the documents are not available, I will on consent agree to discontinue the proceedings provided there is no order as to costs, if however you cannot confirm in writing that the documents I seek are no available then I have no other option than to progress the discovery application."*

73. It is clear from the above that these proceedings are brought for the collateral purpose of continuing a long battle with Havbell which has proceeded through several sets of proceedings in the Circuit Court and High Court and appeals or attempted appeals to the Court of Appeal and the Supreme Court. They are brought with a view to "*obtaining evidence*" against Havbell to undermine or attack the Order of the Circuit Court. Any issue about Havbell's entitlement to an Order for Possession including whether or not they held the plaintiff's mortgage was a matter for those proceedings and indeed it seems from the above that this was raised by the plaintiff in those proceedings. There is a final and binding decision of the Circuit Court, affirmed by the High Court, and it is an abuse of process to seek to continue that dispute and to seek to go behind those Orders.
74. It also seems to me that the above facts give rise to a very serious question about whether the proceedings are an abuse of process on the basis that the issues concerning the schedule to the Deed of Conveyance and Assignment are res judicata or are in breach of the rule in *Henderson v Henderson* as seeking to relitigate matters which were raised in the earlier proceedings or to litigate matters which could have been raised in those proceedings. This was not really advanced by the defendant and in those circumstances I do not propose to consider it any further.
75. In my view, the proceedings are frivolous and vexatious and amount to an abuse or process. I will therefore make an Order under both Order 19 Rule 28 and the Court's inherent jurisdiction dismissing the proceedings.

#### *Isaac Wunder Order*

76. The principles governing applications for what have become known as "Isaac Wunder Orders" are well-established and well-known. They were set out in *Údarás Eitlíochta na hÉireann & DAA Public Limited Company v Monks [2019] IECA 309* and *Kearney v Bank of Scotland [2020] IECA 92*. These cases set out in great detail some of the types of factors which the court should have regard to when considering whether to make an Isaac Wunder type Order. These should not be treated as an exhaustive checklist or indeed as a list of matters which must all be satisfied before the relief can be granted. They provide a framework containing a non-exhaustive list of relevant factors within

which a court may consider the proper balance between the rights of the person who may be the subject of the order, persons who may be defendants in proceedings and the interests of the common good.

77. The general principles are that an Isaac Wunder type Order is an interference with the constitutional right of access to the courts and as such is exceptional in nature. Collins J in *Údarás Eitlíochta na hÉireann* emphasised *"the exceptional nature of the Isaac Wunder jurisdiction and the care that needs to be taken to ensure that so-called Isaac Wunder orders are made only where the court called upon to make such an order is satisfied that it is proportionate and necessary to do so"* and that *"[T]he court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed. It is also important that the order must be framed as narrowly as possible (consistent with achieving the order's objective.)"* Haughton J agreed with these observations.
78. Whelan J in *Kearney* said that such Orders should only be deployed sparingly and only where there is a clear case that demonstrates the necessity of making such an Order. One of the points identified by Whelan J in respect of the necessity of making an Order is that there are good grounds for believing that the plaintiff will initiate further proceedings.
79. I am satisfied, having regard to these general principles and the specific factors identified in *Údarás Eitlíochta na hÉireann* and *Kearney* that it is appropriate in the particular circumstances of this case to grant relief in the nature sought. I return to the specific relief.
80. Firstly, I have concluded that these proceedings are frivolous and vexatious.
81. Secondly, Allen J has previously held that the plaintiff's proceedings against Havbell were frivolous and vexatious. This must be taken together with my conclusion in this judgment that these proceedings are frivolous and vexatious.
82. Thirdly, Allen J has made an Isaac Wunder type Order in respect of proceedings against Havbell. That, of course, can not be determinative as it involves different parties and therefore different claims. However, it is a relevant factor as it displays an approach on the part of the plaintiff of repeatedly initiating proceedings in respect of the same property.

83. Fourthly, I have had regard to the fact that there has been a very considerable volume of litigation in respect of this property, though it must be acknowledged that not all of it has been instituted by the plaintiff. Nonetheless, he has initiated a number of sets of proceedings and appeals. The mere fact that he has been unsuccessful is not sufficient but I can and have had regard to his conduct within all of those proceedings. Significant in this regard is the approach of the plaintiff to Court Orders and his prosecution or attempted prosecution of procedurally misguided appeals or applications. The plaintiff's approach to Court Orders has been unusual, to say the least. For example, on the 18<sup>th</sup> July 2018, he gave undertakings that he would vacate the property and on that basis the Circuit Judge placed a stay on the injunction but the plaintiff appealed the Order. Furthermore, having given an undertaking that he would vacate the property by the 25<sup>th</sup> July just a week earlier, he then sought an extension of the stay which Judge Linnane had placed on the injunction on the basis of his very undertaking. He also accepted that he was in breach of the Order of the 18<sup>th</sup> July 2018 when a motion for attachment and committal was brought before Judge O'Connor and yet appealed the Order of Judge O'Connor that he vacate the property. In relation to the conduct of the proceedings and appeals, it is relevant to note that the plaintiff has attempted to appeal Orders of the County Registrar which had clearly been superseded by Orders of the Circuit Court. He also sought to appeal a decision of the High Court on a Circuit appeal to the Court of Appeal when that Court clearly did not have jurisdiction and sought to appeal to the Supreme Court. He also made an application for a stay on the Order of the County Registrar three years after it had been made and almost three years after it had been superseded by Judge Linnane's Order for Possession. He also sought to join two of the solicitors in the firm on record for Havbell and the managing partner in the firm who acted for his partner in the Circuit Court proceedings. The attempted joinder of litigants' legal representative is of particular relevance when considering Isaac Wunder type relief.
84. What emerges from this is that the plaintiff appears willing to exploit any possible means by which to continue the campaign in respect of the property. It appears very likely from this that the plaintiff will seek to bring further proceedings unless his ability to do so is regulated.
85. The right of access to the Courts is an important constitutional right. However, it is not an absolute right and the courts are entitled to make Orders which may interfere with that right provided such interference is balanced and proportionate. Any such Order must limit the interference with the rights of the plaintiff to the minimum extent possible. The reliefs sought in the Notice of Motion do not preclude the plaintiff's right of access to the Courts but simply require him to seek the permission of the President of the High Court or a judge assigned by the President and are limited to proceedings concerning the property. No particular argument was made to me as to the necessity for the relief at

paragraph 5 of the Notice of Motion and it seems to me that it is not necessary. In the event that the plaintiff were to successfully initiate proceedings in breach of an Order made under paragraph 4 of the Notice of Motion the defendant would have the remedy of applying to have those proceedings struck out.

86. In those circumstance, I will make an Order in terms of paragraph 3 of the Notice of Motion.
87. I will therefore make an Order dismissing the proceedings under Order 19 Rule 28 and the Court's inherent jurisdiction and an Order in terms of paragraph 4 of the Notice of Motion.