



THE HIGH COURT

[2024] IEHC 688

Record no. 2021/6283 P

Between:

Siobhan O’Dwyer

Plaintiff

- And -

Desmond Grogan and Mary Grogan

Defendants

JUDGMENT of Ms Justice Nessa Cahill delivered on 5 December 2024

INTRODUCTION

1. On 8 December 2022, the High Court (Roberts J.) delivered a judgment in which she granted certain interlocutory orders that were sought by the Plaintiff in these proceedings and refused others (“*the Injunction Judgment*”).

2. On 20 December 2022, the order was made setting out the terms of the injunction granted (“*the Injunction*”) and fixing directions for the preparation of the Proceedings for trial (“*the Directions Order*”).
3. The Directions Order included a direction that the Plaintiff would deliver a reply and defence to counterclaim (“*the Reply*”) by 2 May 2023. The Plaintiff did not comply with that Order. In fact, the Reply was not delivered until 3 May 2024, the day after the issue of this Motion, and 12 months after the deadline fixed by the Directions Order.
4. Three reliefs are sought by the Notice of Motion issued on 2 May 2024, but the relief pursued at the hearing of the Motion was an order varying/discharging the Injunction on the basis of the failure of the Plaintiff’s delay and failure to comply with the Directions Order.
5. It is not in dispute that there is an inherent jurisdiction to vary or discharge an injunction previously ordered. It is also not in dispute that a party to whom an injunction is granted has an obligation to progress the substantive proceedings in a timely fashion. This is an important condition that is inherent in any order granting an injunction.
6. The issue that arises in this Motion is whether and how the jurisdiction to vary or discharge an injunction should be exercised when the beneficiary of the Injunction Order has not complied with specific directions that were put in place to prepare the matter for trial.

BACKGROUND

7. The Defendants borrowed the sum of €2,202,000 from AIB Irish Banks plc (“*the Loan Facilities*”) and gave security by way of mortgages over the following five properties:
 - a) 53 Upper Drumcondra Road, Dublin 9,
 - b) 55 Upper Drumcondra Road, Dublin 9,
 - c) 57 Upper Drumcondra Road, Dublin 9,
 - d) 5 Enniskerry Road, Dublin 7,

e) 26 Lower Beechwood Avenue, Dublin 6.

(“*the Properties*”)

8. The Defendants defaulted on the Loan Facilities. On 29 April 2014, the Bank sent notices demanding the repayment of the sums due and owing. As of the date of the Injunction Order, the Defendants had not made any payments of capital or interest due under the Loan Facilities, since in or about January 2014.
9. The Plaintiff was appointed as receiver over the Properties on 12 January 2016.

Interlocutory Injunction

10. On 12 November 2021, the Plaintiff issued a plenary summons and a motion seeking various reliefs including an interlocutory injunction restraining the Defendants from preventing, impeding or obstructing the Plaintiff taking possession of the Properties; restraining the Defendants from trespassing on the Properties; restraining the Defendants from preventing, impeding or obstructing the Plaintiff from collecting rents and incomes from the Properties; and requiring the Defendants to deliver alarms, keys, and locks and any title document or books in relation to the Properties.
11. The motion was heard on 25 November 2022.
12. On 8 December 2022, Roberts J. delivered the Injunction Judgment in which she found that there was a serious issue to be tried, but declined to grant any order which would permit the sale of the Properties pending trial. She therefore refused the orders which would have the effect of transferring possession of the Properties to the Plaintiff. The Court did, however, grant interlocutory orders permitting the Plaintiff to collect rents payable in respect of the Properties, and restraining the Defendants from preventing, obstructing or impeding such collection of rents pending trial.
13. The Injunction Order was made on 20 December 2022 (and perfected on 14 January 2023) in those terms.

14. In the same order, Roberts J. directed certain-trial steps be taken, most notably that the Reply must be delivered by 2 May 2023, two weeks after the date for delivery of the replies to particulars. The directions then provided for the exchange of discovery correspondence in May 2023, with any discovery motions to be made returnable on 19 June 2023.

The Events Following the Interlocutory Injunction

15. In the period between January 2023 and August 2023, there was an exchange of correspondence between the parties in relation to the collection of rent owed in respect of certain of the Properties; arrangements for access to the Properties by the Plaintiff; and related matters.

16. The Plaintiff raised certain issues in relation to rent, including the complaint by letter dated 7 March 2023 that there was a rental deficit of €3,900 for the months of January and February 2023 and complaints that the rent was being paid to the Defendants, whereas the Injunction Order directed that the Plaintiff was entitled to collect rents. On 16 March 2023 the Defendant's solicitors wrote a response seeking to account for the shortfall and enclosing cheques in the amounts in question.

17. The tenants continued to pay rent to the Defendants rather than the Plaintiff and this was the subject of correspondence between July and September 2023, including threats by the Plaintiff on 24 July 2023 that, if the situation was not remedied within 7 days the Plaintiff would apply to court for an attachment and committal order owing to non-compliance with the Injunction Order. There were similar statements of intention to apply to Court for attachment and committal in subsequent correspondence on 28 August 2023. In replying correspondence, the Defendants disputed that there was wrong-doing or non-compliance with the Injunction Order.

18. The Plaintiff's complaints appear to have been addressed by mid-September 2023, when the Defendants wrote to each of the tenants of the Properties individually notifying them that rents must be paid to the Plaintiff directly and not to the Defendants.

19. By letter dated 19 March 2024 the Defendants’ solicitors wrote to the Plaintiff’s solicitors indicating that a Notice of Trial had been filed and requesting the Certificate of Readiness be completed.
20. The Plaintiff’s solicitors replied on 20 March 2024 stating that they were not in a position to have the matter heard as they were still drafting the Reply “*and are considering whether discovery is required*”. The letter states that “*we will endeavour to deliver our Reply within 21 days of the date hereof*”.
21. On 18 April 2023, the Defendants’ solicitors wrote noting the failure to comply with the Directions Order and that the Reply had still not been received. A “*final 7 days*” was allowed for the delivery of the Reply and the letter records that if there is a failure to do so, the matter would be set down for hearing and the Defendants were reserving their position and may bring the failure to comply with the Directions Order to the attention of the Court. The letter notes that the delay in the proceedings was causing prejudice to the Defendants.

This Motion

22. The Defendants issued this Motion on 2 May 2023. The orders sought are a declaration that the Plaintiff is in breach and/or contempt of the Directions Order; an order discharging or varying the Injunction Order; or in the alternative, an order to compel compliance with the Directions Order.
23. The Motion is grounded on the affidavit of the Second Defendant, sworn on 2 May 2024, which sets out the background to the Motion and the engagement between the parties since the making of the Directions Order.
24. The Plaintiff delivered the Reply on 3 May 2024.
25. In the replying affidavit of Mr Emmet Martin, solicitor, sworn on 18 June 2024 on behalf of the Plaintiff, it is contended that the order sought by this motion should be refused owing to the fact that the First Named Defendant is in occupation of one of the properties. It is not said why or how this is relevant to the default by the Plaintiff and

no attempt is made in that affidavit to explain or address the Plaintiff's failure to comply with the Court's directions.

26. In the affidavit of Ms Dearbhla Murphy, also sworn on behalf of the Plaintiff, she states she "*has been assisting*" the Plaintiff with her appointment as receiver and makes certain averments regarding access to one of the properties and provides a hearsay account of a conversation with a third party about the First Named Defendant. The relevance of these matters to the Motion before me is not stated and, again, there is no attempt to explain or even address the Plaintiff's failure to comply with the Directions Order.

27. The First Defendant in his affidavit sworn on 4 July 2024 denies the allegation that he is residing in one of the properties. As there was no application to cross-examine any of the deponents, I cannot and do not form any view on this contested question of fact. Its asserted relevance to this Motion is in any event entirely opaque.

28. What is relevant to note is that there is no affidavit sworn by the Plaintiff herself in reply to this Motion (although she did swear an affidavit when she was seeking the Injunction) and the two affidavits which were filed on her behalf contain no reference to, or explanation for, the failure to comply with the Directions Order.

29. The Motion was heard on 21 October 2024.

DISCUSSION

30. There are two issues to consider. The first is the scope and extent of the Court's discretion to vary or discharge an injunction. The second is whether there are good reasons to exercise that discretion on the particular facts before me. This includes an assessment of the grounds relied upon by the Plaintiff to oppose the relief that is sought.

Discretion of the Court

31. On the first point, there is no dispute that this Court has a discretion to discharge or vary an injunction previously ordered, or that it is a wide discretion. In addressing the legal basis for the relief sought by this Motion, the Defendants rely on the judgment of

Haughton J in *Sheehan v Breccia* [2017] IEHC 692 (“*Sheehan v. Breccia*”) and the confirmation in that judgment that courts enjoy a “*wide discretion to vary an interlocutory injunction*”.

32. The Plaintiff’s counsel accepted that there is an inherent jurisdiction to lift or vary an injunction previously granted and, citing *Sheehan v. Breccia* at [76], submitted that the manner in which that jurisdiction is exercised must take into account the facts and circumstances of the matter.
33. In *Sheehan v. Breccia*, the first defendant (“*Breccia*”) brought an application to vacate an injunction that had been granted to the plaintiff (“*Sheehan*”) on the ground that there was a relevant development in separate but related proceedings which decided the substantive claim. Sheehan’s position was that the injunction had been ordered by agreement and that the related proceedings decided only one part of the substantive claim.
34. In the High Court, Haughton J recognised the breadth of the discretion to discharge or vary an injunction, but refused to do so in that case, on the basis that there remained a fair issue to be tried and the delay asserted was not sufficient to interfere with the injunction. This decision was overturned on appeal ([2019] IECA 234, Peart J, with Whelan and McCarthy JJ concurring), on the basis that the only serious issues which could have resulted in a permanent injunction had been removed from the proceedings and the claims that remained were an insufficient basis to order an injunction. The issues of delay and the failure to prosecute the proceedings expeditiously were not addressed on appeal.
35. While delay was not decisive in the High Court and was not addressed in the Court of Appeal, there are some notable and relevant statements of the law in the judgment of Haughton J. He referred to the judgment of Henchy J in *Irish Commercial Society v Plunkett* [1986] IEHC 43, [1986] ILRM 504 which was relied on as “*authority for the general principal that interlocutory orders, obtained by consent or otherwise, can be varied or discharged at the discretion of the Court.*”
36. There was no dispute about this proposition and Haughton J found at [76(a)],

“The court has the power to vary or discharge interlocutory injunctions even if made on consent. This jurisdiction arises inter alia where there has been breach of agreement between the parties, change of circumstance or inordinate delay. The principles applicable to granting an interlocutory injunction guide the court, but the relief is discretionary and flexible, the court is guided by equitable principles, and ultimately the court must do what is 'just and convenient' and best designed to minimise the risk of injustice in all the circumstances.”

37. This confirms that the overriding question is what the interests of justice require in all of the circumstances.

38. With regard to the role of delay in that balancing exercise, the important starting point is that the beneficiary of an injunction is bound to act expeditiously to get the proceedings concluded and not delay their resolution. It is not permissible for that party to rest on their rights rather than pressing on for a final determination of the substantive dispute. That is simply not the purpose or intended effect of an interlocutory order.

39. In *Betty Martin Financial Services Ltd. v. EBS DAC* [2019] IECA 327 Collins J (at [110], Whelan and McGovern JJ concurring) cited

“the well-established principle that, where a party has sought and obtained an injunction pending trial, that party is under a particular duty to take all reasonable steps to ensure a timely trial.”

40. There, the Court refused the appeal challenging the grant of an injunction to restrain the termination (and implementation of the termination) by the EBS of a number of tied agency agreements with the respondent. Collins J emphasised in so doing that the case was being case managed in the Commercial List and that it was *“reasonable to assume that the proceedings will get on for hearing with all due dispatch.”* The Court specifically identified that, *“in the event that the EBS considers that the Agent is guilty of any undue delay, then it will be open to it to apply to discharge the injunctions.”*

41. Haughton J in *Sheehan v. Breccia* also referred to that duty, which was described in the following terms by Breccia ([12])

“...they submit that when a party obtains any sort of interlocutory injunction it is implicit that they must proceed with their action as expeditiously as possible and where there is delay on the part of the party who has obtained the injunction, that injunction can be discharged. They rely on Walsh v Deloitte & Touche [2002] LRC 545 which dealt with the delay of a plaintiff who had obtained a mareva injunction against a defendant and had not made any progress with the matter for over four years. Lord Hoffman discussed at great length the importance of proceeding expeditiously with matters which were the subject of interlocutory mareva relief.”

42. The authorities are unambiguous and it is not - and cannot be – in dispute that a court has a discretion to discharge an injunction owing to the delay in the prosecution of the proceedings by the party which is enjoying the benefit of the injunction.

43. As to the precise circumstances in which such a discretion may be exercised, in *Sheehan v. Breccia*, it was alleged that the injunction should be discharged on the ground of delay, among other reasons. Sheehan opposed this, pointing to the fact that the delay was not deliberate and was explained by “*candid and compelling*” reasons and that the prejudice caused by the discharge of the injunction would be greater than the prejudice caused by its continuation ([40]).

44. The factual context is set out in the High Court judgment at [37] and demonstrates that all parties failed to adhere to the directed date for the exchange of discovery, with at least some of the delay (and, in particular, the first 11 months of delay) arising because of issues on the defendants’ side rather than on the plaintiff’s. There were other matters addressed in the judgment which were found to show that Breccia contributed to the overall delay. Haughton J preferred Sheehan’s account of the relevant timelines and concluded:

“In all the circumstances, it seems that all parties must bear some degree of responsibility for the delay and it would be inappropriate for the Court to discharge injunctive relief on this basis” ([63]).

45. Haughton J. concluded ([76(g)]):

“As to the argument that the respondent has failed to progress this matter in the Commercial court, I am not satisfied that such delay as occurred was inordinate. Secondly, responsibility for delay in making discovery and otherwise bringing the remaining issues to trial does not rest solely with the respondent, and is not attributable to any deliberate act or prevarication on his part. Further Breccia has not shown any appreciable prejudice by reason of the delay – such prejudice or loss as it may have suffered can be compensated by interest or damages, and does not compare to the prejudice that the respondent could suffer if this application succeeded. In all the circumstances the delay is not such as to defeat the entitlement to interlocutory relief.”

46. So, in summary, the delay in *Sheehan v. Breccia* was found in the High Court to be the fault of both parties; the beneficiary of the injunction was found not to have been responsible for culpable delay or failure to comply with court directions; and the delay was not sufficiently material or prejudicial to warrant interference with the injunction.

47. In a different set of circumstances, it may well be just and appropriate to discharge a previously ordered injunction on the basis of delay or failure to progress proceedings. It comes down to an assessment of the specific facts and circumstances of each case.

48. The next question therefore is whether the facts that pertain here, particularly the Plaintiff’s failure to advance the proceedings or comply with the Directions Order, do render it just and appropriate to discharge the Injunction.

Whether it is just and equitable to discharge the Injunction

49. The position of the Defendants, in broad summary, is that there has been an unexplained and unjustified failure by the Plaintiff to comply with the Directions Order or to progress the Proceedings.
50. The Defendants' counsel asserted that the effect of the Plaintiff's conduct is that the Plaintiff has had the benefit of a court order which is yielding substantial sums of money without endeavouring to get the proceedings on. It was said that the Plaintiff is not entitled to the benefit of the Injunction if she is not showing any intention to get the proceedings concluded and that the Injunction should be discharged.
51. The starting point for a proper assessment of this question must be the Injunction Judgment itself.
52. Significantly, the Injunction Judgment records that, in opposing the Injunction, the Defendants relied on prior delay by the Plaintiff in the receivership and in these Proceedings (Injunction Judgment, [33], [44]).
53. Roberts J. records that "*there was a delay in advancing the receivership*" [3] but did not refuse the injunction on this basis. Three reasons for this decision are identified in the Judgment.
54. First, the Court found at [33], that
- "while it is clear that a significant period of time has elapsed since the appointment of the plaintiff as receiver in April 2016, I am satisfied that the plaintiff has been able to explain that delay"*.
- The explanations proffered by the Plaintiff are set out in the Judgment.
55. Second, the Court found that the defendants had contributed to the delay in the bringing of the injunction application ([35]).

56. Third, the Court was also – notably – influenced by the fact that the delay in the Proceedings did not cause prejudice to the Defendants, as they remained in control of the Properties ([36]):

“I do not believe that the delays have caused any prejudice to the defendants in circumstances where they continued to remain in control of the Properties and appear to have continued to derive rental income from the Properties during that period... they have also confirmed that no part of that rental income has been paid by them to the plaintiff.”

57. So while Roberts J. identified pre-existing delay by the Plaintiff, she decided it was not a ground to refuse the injunction in the circumstances, including those set out above.

58. In making the decision to grant certain injunctive relief (the issue of delay notwithstanding), Roberts J. made the clear finding that:

“This court believes it is imperative however that the underlying proceedings should be expedited and both parties have indicated their willingness to cooperate to achieve an early trial date” ([37]).

59. This is underlined further in the concluding paragraph of the Injunction Judgment, in which Roberts J. directed that she would –

“... receive agreed directions from the parties as to the timetable for the next steps in these proceedings or, failing agreement, will make such further directions so as to ensure the parties will achieve as early a trial date as is reasonably possible” [56].

60. The Court’s view that the matter should be expedited and heard as soon as reasonably possible is manifest and strongly stated. In order to advance this imperative, the matter was listed before Roberts J. on 20 December 2022 and the Directions Order and the Injunction Order were both made (in the same Court order) on that date.

61. The Directions Order outlined the pre-trial steps to be taken, up to the issue of any discovery motions to be listed on 19 June 2023. Given that the Plaintiff decided not to seek discovery (although did not communicate this to the Defendants until the hearing of this Motion), the last necessary pre-trial step was the delivery of the Reply, which was ordered to be done by 2 May 2023.
62. Accordingly, on the basis of the directions put in place by Roberts J. while granting the Injunction, these Proceedings should have been ready to be set down for hearing by 2 May 2023. What in fact occurred is that the Plaintiff did not deliver the Reply until 12 months later.
63. Even absent the Directions Order, a delay of over 12 months from the receipt of replies to particulars to the delivery of a reply would be a real issue and could of itself indicate a failure to progress proceedings such as to warrant discharging an injunction.
64. However, the situation is more serious here: not only did the Plaintiff delay for 12 months since the last step in the proceedings, she also failed to comply with a specific Court order, and to a material extent. The Plaintiff should have had two weeks from the receipt of replies to particulars to deliver the Reply and instead took over 12 months. She also resisted the proceedings being set down for hearing in March 2024, including on the ground of discovery being under consideration, an obstacle which evaporated at the hearing of the Motion.
65. Against this background, it is striking that there is no reference to this lengthy delay and default in either of the replying affidavits sworn on behalf of (but not by) the Plaintiff, still less an attempt to explain or justify it.
66. The Plaintiff makes five points in opposing this Motion.
67. First, in oral submissions, counsel for the Plaintiffs submitted that the reason for the delay was that there were issues with the collection of rents, which it was said, were not resolved until October 2023.

68. As pointed out by the Defendants' counsel there is nothing on affidavit from the Plaintiff or any person purporting to swear an affidavit on behalf of the Plaintiff stating this as the reason for the default and delay. Even if this was on affidavit, I do not see how asserted difficulties in the collection of rents explain, or are even relevant to, to the Plaintiff's failure to deliver the Reply until 12 months later than she was required to by Court order to take that step.
69. I accept the Defendants' submissions on this point and regard it as a remarkable feature of this Motion that there is no affidavit by or on behalf of the Plaintiff seeking to even address her serious failure to comply with the Court's Directions Order.
70. On the basis of these facts, there is clearly a basis on which a court could decide to discharge the Injunction which the Plaintiff obtained when the Directions Order was made.
71. Second, the Plaintiff's counsel emphasised that the Plaintiff is no longer in breach of the Directions Order; the pleadings are now closed; discovery is not being sought; and it was said that the matter can soon be heard. The Plaintiff's position is that the question of prejudice must be weighed and that the important point is that the matter is nearly ready for hearing.
72. In reply, the Defendants' counsel highlighted that it was only at the hearing of the Motion that it was first intimated that discovery would not be sought, and there was some doubt that the matter is now ready to proceed, given the issue of new, intervening possession proceedings by AIB (as addressed below).
73. I do not consider the late delivery of the Reply or the decision (communicated during the hearing of the Motion) not to seek discovery to assist the Plaintiff in resisting this Motion. If the Plaintiff had even taken those steps on 20 March 2024 when called on by the Defendants to certify the matter as ready to proceed, the situation would have been different, but the Plaintiff chose to delay until 21 October 2024 to confirm that discovery would not be sought. The manner in which the Plaintiff conducted this aspect of the proceedings has itself caused further delay and cannot now be prayed in her aid in opposing this Motion.

74. Third, the Plaintiff makes the submission that that there was nothing in the Injunction Judgment which made the Injunction conditional on compliance with the Directions Order.
75. It is strictly correct to say that the Injunction is not expressly premised on compliance with the Directions Order. However, this is not a requirement for the Injunction to be discharged. Delay alone could suffice. As already seen, it is inherent in any injunction that the beneficiary of the Court's order must expeditiously progress the proceedings, and the injunction may be discharged if this is not done.
76. Moreover, a careful review of the Injunction Judgment makes plain that the Court did identify existing delay by the Plaintiff and, while she decided to grant certain injunctive reliefs, in so doing Roberts J. directed that the proceedings must be expedited, that there should be an early trial, and put in place specific orders to achieve that objective. She also attached weight to the absence of prejudice to the Defendants arising from the Plaintiff's delay (specifically because the Defendants were in receipt of the rents).
77. The Injunction Judgment warned the parties that it was "*imperative*" that the proceedings should be expedited, and the Plaintiff has singularly failed in this respect. The Injunction may not have been expressly conditional on compliance with the Directions Order, but it was plain what the Court intended and it was not that the Plaintiff would have the benefit of the Injunction for almost two years, without even setting the matter down for trial, which is what has occurred.
78. In short, there is nothing in the Injunction Judgment which assists the Plaintiff in resisting this Motion, quite to the contrary.
79. Fourth, a submission was made by the Plaintiff's counsel that the Court should not lightly discharge an injunction that was given on the basis of a reserved judgment. This misses the fact that the Injunction Judgment itself mandated expeditious trial preparation in light of prior delay by the Plaintiff and excused that prior delay on the basis of factors that do not now pertain.

80. In granting the Injunction (the delay by the Plaintiff notwithstanding), Roberts J particularly emphasised:

(a) the absence of prejudice to the Defendants, as they were continuing to receive the rents payable during the period of delay by the Plaintiff; and

(b) that the delay by the Plaintiff up to the delivery of the Judgment was properly explained and was not all the fault of the Plaintiff.

81. The opposite conclusions now fall to be drawn. This is a case in which the Plaintiff was given an interlocutory right to collect rents pending trial, intended to temporarily displace the rights of the Defendants to do so. However, owing to the Plaintiff's own default and delay, she has had that "temporary" right for far longer than the Court intended when granting the Injunction.

82. A ruling that the Plaintiff is no longer entitled to the Injunction, having been guilty of more egregious, prejudicial, unexplained delay since, is entirely consistent with, and does not remotely interfere with or undermine, the findings in the Injunction Judgment.

83. The fifth point that was emphasised by the Plaintiff was that the correspondence exchanged in advance did not disclose a specific intention to apply to Court for an order discharging the Injunction.

84. By way of reply, the Defendants' counsel stated that it was an application to vary or discharge the injunction so to allow the Defendants to resume the collection of rents and that the Defendants will account for the rents so collected and cooperate with the Plaintiff to get the proceedings to trial.

85. I consider that the complaint that there was a lack of advance notice of the specific reliefs being sought is a valid complaint. If more specific notice had been given, the Plaintiff may have served the Reply before the Motion issued. However, the delivery of the Reply is not – and would not have been - an answer to, or cure of, the prior delay and failure to comply with the Court's order. While it would have been preferable for more specific notice to have been furnished of the reliefs that would be sought, I do not

see how that could have altered the outcome, and it does not warrant a refusal to exercise the discretion to discharge the Injunction Order.

86. A final matter mentioned on behalf of the Plaintiff at the hearing of the Motion was that AIB has brought possession proceedings in respect of the Properties, which proceedings have been served on the Defendants. There is limited information and no evidence before me regarding those proceedings, although it is fairly acknowledged by the Plaintiff's counsel that those possession proceedings may well overtake and render moot the present Proceedings.

87. While I am not privy to any documentation related to these proceedings, it is undoubtedly relevant to consider their existence when deciding whether and how to exercise the jurisdiction I am being asked to exercise. In particular, they do appear to me to be relevant to the question of prejudice. If AIB is applying for possession, this will impact on the receivership in any event. I have not been shown any evidence as to how or what prejudice would be suffered by the Plaintiff by the discharge of the Injunction, in light of the pending possession proceedings. By contrast, there is a clear benefit to the Defendants by being restored to their position as the collectors of rents unless and until AIB gets an order for possession.

CONCLUSIONS

88. There has been significant and unexplained delay by the Plaintiff in progressing her claim against the Defendants. In so delaying, the Plaintiff has also breached an order of the Court.

89. The Plaintiff's conduct has resulted in prejudice to the Defendants, who have already been subject to the Injunction for significantly longer than was intended by Roberts J. in granting that order.

90. The Plaintiff did not swear an affidavit in reply to this Motion and the affidavits sworn on her behalf fail to explain, or even address, her failure to comply with the Directions Order or her delay in progressing these Proceedings.

91. The only finding that is consistent with the interests of justice is that the Plaintiff is no longer entitled to the benefit of the Injunction granted by Roberts J. in December 2022. The fact that there had been delay by the Plaintiff even before the Injunction was ordered, and Roberts J. specifically referenced the importance of an early trial in this matter, further points to the equity of this outcome.
92. I emphasise, as Roberts J. did, that it is imperative that these proceedings should now be set down for trial without delay.
93. In light of the findings in this Judgment, I am of the view that the correct order as to costs is that the Plaintiff should be liable for the Defendants' costs of this Motion.
94. If any party wishes to contend for a different costs' order, I can hear oral submissions on this point at 10.30 am on 19 December 2024. The parties have liberty to communicate with the Registrar in the event that this is not required.