**THE HIGH COURT**

**[2024] IEHC 739**

**Record no. 2020/5335P**

**Between:**

**Conor Hogan**

**Plaintiff**

**and**

**Tanager DAC, Tarbutus Limited, Chartered Assets Management Limited and Tom Kavanagh.**

**Defendants**

**JUDGMENT of Ms Justice Nessa Cahill dated 20 December 2024**

## INTRODUCTION

1. Two motions fall to be decided in this judgment. By the first motion which was issued on 24 January 2024, the Plaintiff, Mr Hogan, seeks 19 different orders ("*the Plaintiff's Motion*"). By the second motion, issued on 9 February 2024, the Second and Third Defendants ("*the Tarbutus Defendants*") seek an order striking out the proceedings as against them and a so-called "*Isaac Wunder Order*" restricting the ability of Mr Hogan to bring further proceedings ("*the Tarbutus Motion*"). The two motions were heard on 22 and 23 October 2024.

2. The Motions were issued in plenary proceedings that were commenced by Mr Hogan on 18 September 2020 and which concern, in very broad terms, the ownership of a residential property ("*the Proceedings*").

3. The property in question is a duplex apartment at Apartment 9B Ballycummin Village, Ballycummin, County Limerick ("*the Property*"). It is registered in the Land Registry

as Folio 8118L. Mr Hogan's position is that he is the full owner of the Property and that there has been no legal transfer or sale of the Property.

4. There is an important context to these Motions. Tarbutus issued proceedings against Mr Hogan ("*the Tarbutus Proceedings*") which culminated in a decision of the High Court (Holland J.) that Tarbutus is the lawful owner of the Property and is properly registered as the owner of the Property on Folio 8118L. The High Court found that Mr Hogan had demonstrated no basis for the Register to be rectified. The High Court also found that Tarbutus is entitled to an injunction to restrain any trespass on that Property by Mr Hogan. This decision was upheld by the Court of Appeal and Mr Hogan's application for leave to appeal that decision was refused by the Supreme Court. The legal ownership of the Property has been conclusively and finally determined to rest with Tarbutus.

5. After the Supreme Court determination, Mr Hogan sought to reanimate these Proceedings by the issue of this Motion. For several reasons that will be explained in this Judgment, each of the orders sought by Mr Hogan is refused. Some of these reasons are based on the application of fundamental rules which make it impossible for Mr Hogan to obtain the orders sought by him. Mr Hogan is a litigant in person and it is perhaps understandable that he is not familiar with certain of these important rules that govern the conduct of proceedings. It is for this reason that I explain here in general, high level terms why the majority of the orders he seeks cannot be made and are refused. This is a general summary only, intended to be easily understood, and does not set out comprehensively the law on any of these matters.

6. The first fundamental flaw with the Plaintiff's Motion is that most of the orders he seeks are simply not matters that can be addressed by a motion. In plenary proceedings such as these, a motion that is issued before the trial of the action (termed an "*interlocutory motion*") may generally be used to deal with procedural applications, applications to strike out proceedings or pleadings, or applications to achieve a temporary outcome (such as an injunction) until the case can be heard and determined. Motions are typically determined on affidavit only and are not intended or designed as a mechanism to get a final decision on the merits of any dispute or issue. A final declaration as to the rights of the parties, for example, should not be sought by way of

a motion. There are other obstacles to the orders Mr Hogan seeks, but this is a basic, fundamental ground on which the reliefs sought in paragraphs 2, 7, 8, 9, 10, 12, 13, 14 must be refused.

7. A second important point is that, when the High Court and the Court of Appeal have heard and adjudicated on the rights of two parties regarding a specific property and leave to appeal to the Supreme Court has been refused, that is a final, binding decision as to the parties' rights with regard to that property. A person who is dissatisfied with the outcome cannot seek to directly or indirectly challenge it in separate proceedings (absent clear evidence of fraud in obtaining the earlier judgments, which is not applicable here). The rights of Mr Hogan and Tarbutus with regard to the Property were decided in the legal process that has already concluded and the Irish legal system and constitutional order do not allow the parties to re-argue their positions in further legal proceedings. This rule is an overriding obstacle to several of the orders sought by Mr Hogan (including at paragraphs 2, 11, 12, 13 of the Motion).

8. A third important obstacle to the orders sought by Mr Hogan is that a party to proceedings can generally only seek temporary orders preventing something from happening (such as an injunction or a stay pending the determination of the proceedings),if the same orders are sought on a permanent basis in the proceedings. The purpose of the temporary order is to maintain the situation until the Court can decide at the full trial whether a permanent order in those terms should be made. The Plaintiff's Motion appears to be based on a misunderstanding that orders can be sought by a motion which do not relate to what is sought in the plenary summons. This is simply not permissible and on this ground the order sought in paragraph 1 of the Motion must be refused.

9. A fourth point that Mr Hogan appears to misunderstand is that an obvious typographical or similar error or abbreviated or anonymised description of a property in a pleading, judgment or order, is rarely (if ever) a basis to alter the outcome of proceedings or affect the rights of the parties. Even if there is a drafting error in a judgment or order, it can be corrected under Order 28, Rule 11 of the Rules of the Superior Courts. In this case, there is no relevant error in the definitive orders of the High Court or the Court of Appeal in the Tarbutus Proceedings. The repeated

complaint by Mr Hogan about the references to the Property cannot result in any remedy in his favour and the order sought by Mr Hogan at paragraph 7 of his Motion cannot be granted.

10. Each of the orders sought by Mr Hogan are addressed below, but the summary here is intended to provide a clear account of some of the primary reasons why I find the Plaintiff's Motion to be misconceived and why the orders sought must be refused.

11. By their Motion, the Tarbutus Defendants seek to have the Proceedings against them struck out on various grounds. For reasons that will be addressed below, the judgments in the Tarbutus Proceedings do render these Proceedings against Tarbutus unsustainable and bound to fail and the Proceeding as against Tarbutus should now be struck out as bound to fail.

12. The result is that these Proceedings can now only continue as against the First and Fourth Defendants.

13. I do not however grant the "*Isaac Wunder Order*" sought at paragraph 5 of the Tarbutus Motion.

**BACKGROUND**

**Parties**

14. Mr Hogan was registered as the full owner of the Property on 26 July 2001. On 8 September 2005, Bank of Scotland (Ireland) Limited ("*BOSI*") issued a facility letter to the Plaintiff and his co-borrower, Lorraine Hogan, which was accepted on 16 September 2005, and on foot of which the sum of €150,000 was advanced to the Plaintiff and Ms Hogan ("*the Loan*").

15. A mortgage deed was entered by BOSI and Mr Hogan and Lorraine Hogan on 3 November 2006. BOSI was registered as the owner of a burden against the Property on 15 January 2007 ("*the Charge*").

16. BOSI entered an agreement to sell the Loan and the Charge to the First Defendant, Tanager DAC, formerly Tanager Limited (*"Tanager"*) on 5 December 2013. The sale was effected on 14 April 2014 and Tanager was then registered as owner of the Charge from 25 April 2014. The Fourth Defendant, Tom Kavanagh ("*the Receiver*") was appointed as receiver over the Property by Tanager on 13 April 2016.

17. The Defendants' position is that, by deed of transfer dated 30 July 2019, the Second Defendant ("*Tarbutus*") purchased the Property from Tanager.

18. On 9 September 2019, Tarbutus was registered as full owner of the Property.

19. The Third Defendant, Chartered Assets Management Limited ("*Chartered*"), was appointed as Tarbutus' agent to manage the Property.

**Previous Proceedings**

20. On 5 September 2017, Tanager and the Receiver issued proceedings against Mr Hogan and Lorraine Hogan (record number 2017/8017P) ("*the Tanager Proceedings*"), seeking orders to restrain interference with the Receiver, among other orders. Those proceedings were discontinued by Tanager on 17 February 2020.

21. On 8 September 2020, Tarbutus brought proceedings against Mr Hogan in relation to the ownership and control of the Property (record number 2020/6225P) (*"the Tarbutus Proceedings").* Tarbutus sought various interlocutory orders to secure possession of the Property and related ancillary matters.

22. The Tarbutus Proceedings were heard in the High Court (Holland J.) on 15 and 20 October 2021. The judgment of the High Court was delivered on 15 December 2021. Mr Hogan appealed to the Court of Appeal; the appeal was heard in November 2022 and refused by judgment of Donnelly J. (Whelan and Butler JJ. Concurring) dated 8 February 2023.

23. The issues in the Tarbutus Proceedings are conveniently summarised by Holland J. at [25] (and replicated in the judgment of Donnelly J. at [12]). Among the claims made by Mr Hogan that are relevant here are the following:

    a. The sale of the Property to Tarbutus was a sale to a "dormant company";

    b. The sale was at an undervalue, a fraud on Mr Hogan and constituted unjust enrichment of Tarbutus;

    c. There was a failure to identify the beneficial owners of Tarbutus which vitiated the sale; Tarbutus is the lawful owner of the Property and is properly registered as the owner of the Property on Folio 8118L.

    d. As Mr Hogan was in possession, there could be no sale as mortgagee;

    e. There was a confrontation on 14 July 2020, which affects the outcome of the proceedings.

24. The High Court and Court of Appeal considered and rejected Mr Hogan's grounds for resisting the reliefs sought by Tarbutus. Among the findings made by the Court of Appeal in the Tarbutus Proceedings were that Tarbutus was the full registered owner of the Property, the Register was conclusive evidence of title and the threshold for rectification of the Register was not met. Tarbutus was found to be presumptively entitled to the injunctions prohibiting trespass by Mr Hogan.

25. Mr Hogan made an application to the Supreme Court for leave to appeal, including on the grounds that the sale of the Property was invalid as Mr Hogan did not provide his consent and the PRA improperly failed to recognise beneficial interests in land. By determination dated 19 May 2023, leave to appeal was refused ("*the Supreme Court Determination*"). The Supreme Court determined that Mr Hogan showed no basis for any entitlement to be in possession of, or in receipt of, rents of profits from the Property. The Court also referred to points raised about the name and identity of Tarbutus' legal representative and found they were "*devoid of merit*".

**These Proceedings**

26. On 18 September 2020 (ten days after the issue of the Tarbutus Proceedings), Mr. Hogan issued a plenary summons seeking damages for the alleged illegal sale of the Property, the rectification of the register in respect of the Property, among other orders. There is some apparent confusion concerning the date of issue, and there seems to be some belief that the Proceedings were issued before the Tarbutus Proceedings, but the filing date recorded in the Central Office is 18 September 2020. Mr Hogan delivered a statement of claim on that date also.

27. Mr Hogan's claim in these Proceedings is based on his contention that the sale of the Property was illegal as none of the Defendants had the lawful power, authority and/or consent to effect such a sale and it was sold at an undervalue. Mr. Hogan also claims in the Proceedings that the registration of the Property on 9 September 2019 under the name of Tarbutus was an act of fraud. He alleges breach of his constitutional rights, unlawful trespass and slander on his title. Mr. Hogan also challenges the appointment of the Fourth Defendant as a receiver. He makes specific complaints about the registration of the charge on 25 April 2014 and alleges in the Proceedings that Bank of Scotland (Ireland) could not have effected any transfer of the charge to Tanager including on the ground the Bank of Scotland (Ireland) Limited was then dissolved.

28. There are claims of unjust enrichment, fraud and conversion in relation to the transactions that have taken place with regard to the Property and Mr Hogan specifically alleges that Tarbutus appears to be a "*brass plate type company*". Mr. Hogan makes this allegation that there was a false registration of the property and an act of fraud on the Property Registration Authority contrary to s.119 of Registration of Title Act, 1964.

29. He also makes certain allegations with regard to the Second Defendant being on notice of the alleged unjust enrichment including owing to alleged connections with a solicitor who Mr Hogan asserts acts for the Second Defendant and allowed his offices to be used for the carrying out of that company's business.

30. The orders sought in the Proceedings include:

    a. Rectification of the Register;

    b. A declaration that the Fourth Defendant could not be validly appointed;

    c. A declaration that the Plaintiff conducted himself lawfully;

    d. Damages for the unlawful sale of the Property, unjust enrichment, trespass, conversion, sale at an undervalue, slander, breach of constitutional rights;

    e. Aggravated and exemplary damages.

31. Tarbutus delivered its defence on 24 June 2021 in which a full traverse is made.

32. Tanager and the Receiver delivered a joint defence on 19 July 2021, in which it is denied that the Property was sold at an undervalue. The right to relief is denied.

33. There were no steps taken in the Proceedings between 19 July 2021 and 6 June 2023, when Mr Hogan issued a notice to admit facts. This notice – which was the first step in almost 23 months in these Proceedings – came a few weeks after the Supreme Court Determination in the Tarbutus Proceedings.

**The Plaintiff's Motion**

34. By his Motion, Mr Hogan seeks nineteen different orders, although he accepted at the hearing of the Motion that paragraphs 3, 4, 5 and 6 are moot (save that he asserts they are relevant to the application to join Eire to the Proceedings). The orders pursued can be broadly summarised under six headings.

35. First, he seeks a stay on the completion of the liquidation of Tanager (paragraph 1), related to alleged offences of selling property while registered as a credit servicing firm only, and alleged failures to comply with consumer protection legislation.

36. Second, he seeks a number of declarations on the premise that he is entitled to equitable ownership of the Property, that he never consented to forego or waive his rights as owner of the Property, and that he cannot be dispossessed and that Mr Seymour could not lawfully recover possession of the Property (paragraphs 2, 12, 13, 14).

37. Third, he seeks orders related to the registration of the Property:

- A declaration that the Property is not properly registered under the descriptions listed (paragraph 7);

- An order to restrain Tarbutus from attempting to sell the Property or interfere with the tenant residing there, owing to the error in the registration (paragraph 11).

38. Fourth, he seeks certain declarations related to the Court of Appeal not being properly named as "Court of Appeal" (paragraph 8).

39. Fifth, there is a prayer for certain declarations related to Tarbutus' solicitor (paragraphs 9 and 10).

40. Sixth, there are orders sought related to the parties to the Proceedings:

- An order to strike out the defective appearance of Tarbutus and Chartered (paragraph 16);

- An order to join Éire as a defendant (paragraph 15);

- Orders to make various persons notice parties to the Proceedings (paragraph 17):

    **a.** Deloitte,

    **b.** O'Donnell Murray Solicitors,

**c.** Tailte Éireann,

**d.** James Seymour,

**e.** Kieran Gilmartin (the Motion also references the Legal Services Regulatory Authority, but Mr Hogan confirmed at the hearing of the Motion that this was not being pursued).

41. This Motion is grounded on an affidavit sworn by Mr Hogan on 9 January 2024.

42. There was no replying affidavit filed in reply to the Plaintiff's Motion, save for a one-page affidavit sworn by the liquidator of Tanager.

43. As the Plaintiff's Motion was issued first, I will determine that Motion before turning to the Tarbutus Motion.

**Assessment of the Plaintiff's Motion**

44. The Plaintiff's Motion will be addressed under the six headings of the reliefs sought.

**(a) Stay on the Liquidation of Tanager**

45. In his grounding affidavit, Mr Hogan refers to oral evidence given by Richard Murray in the Tarbutus Proceedings to the effect that Tanager was a "bank" and asserts that Tanager was restrained from taking the enforcement steps it took by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 and by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018, and that the company may not be liquidated pending the determination of the questions of criminal liability.

46. In his replying affidavit, the liquidator of Tanager, Mr Shane McCarthy, avers that the liquidation cannot be finalised while there is ongoing litigation and that he had seen no evidence of the commission of offences by Tanager or its directors.

47. Mr Hogan swore a further affidavit in which he set out extracts from the digital audio recording of the hearings on 15 and 20 October 2021 in the Tarbutus Proceedings with a view to showing the commission of offences. The focus of the affidavit was on evidence and submissions about Tanager having acquired and sold the Charge and about Tanager being "the bank" and "the vendor". In his replying affidavit, Mr Hogan contends that Tanager and its directors acted contrary to consumer protection and credit servicing legislation, including by acting as a bank and buying and selling title to property without authorisation to do so.

48. At the hearing of the Motion, Mr Hogan opened several sections of the Act of 2015 including the definitions of "credit servicing" as inserted into section 28 of the Central Bank Act 1997 by section 1(f) of the Act of 2015 and section 1(a) of the Act of 2018. He emphasised that "credit servicing" does not include enforcing a credit agreement. He also opened sections 44(1), 43(1), 43(3)(b), 43(3)(j), 43(2), 45(1), 46(1) and (2) of the Consumer Protection Act 2007.

49. Counsel for Tanager in replying oral submissions noted that the reference to Order 74 was incorrect and proceeded to set out a series of reasons on which he said the relief sought in paragraph 1 should be refused. He pointed out that there is no basis for stopping the liquidation which commenced in September 2023 in these Proceedings and that Mr Hogan is attempting to compel the liquidator to bring a complaint about something that is completely unfounded based on a comment made by a solicitor under cross-examination, which is an unjustified and inappropriate application. Counsel for Tanager stated that the relief sought is beyond the remit of what can be ordered in these Proceedings and that there is no basis to compel the liquidator to do what Mr Hogan asks. He also asserted that there is no basis to believe any criminal offence has been committee and that the argument concerning credit servicing is irrelevant in context of these Proceedings and entirely beyond their scope.

50. I agree with counsel for Tanager that these points bear no correlation to anything pleaded in the Statement of Claim or any relief in the Plenary Summons. There is nothing in the Plenary Summons or Statement of Claim concerning these matters and

it would be wholly inappropriate to grant any interlocutory relief on the basis of the matters now sought to be raised by way of motion.

51. In any event, and even if this were not so, what is sought by paragraph 1 of the Motion is an order restraining the completion of the liquidation of Tanager. Mr McCarthy has confirmed on affidavit that the liquidation will not conclude while these Proceedings are in being.

52. Insofar as Mr Hogan is seeking to compel Mr McCarthy to report suspected criminal offences, that is not a matter that properly arises as part of these Proceedings or which can be dealt with in an interlocutory motion. The orders sought are refused.

**(b) Declaration concerning Mr Hogan's equitable ownership of the Property**

53. This is addressed in the grounding affidavit at [7] to [10]. Mr Hogan avers that he has lawful possession, is in receipt of rents, and that the Property cannot therefore be sold. He asserts that the order of Mr Justice Holland is not 'legally safe' as it allows for a 'back door' for allowing the criminal theft of his property.

54. The extracts from the transcript of the hearing in the Tarbutus Proceedings that are set out in Mr Hogan's replying affidavit show submissions made by him in those proceedings to the effect that he had possession and therefore equitable title and the Property could not therefore have been sold and he was lawfully in possession of it. This mirrors paragraph 2 of the Plaintiff's Motion.

55. At the hearing of the Motion, Mr Hogan's position was that he never sold the Property, never conveyed the legal or equitable title to the Property and never received monies for its sale. He emphasised that no court order was ever made for the possession of the Property and that he was never sued for monies owed on the Property.

56. The position of Tanager and the Tarbutus Defendants on this relief is that it was already determined in the Tarbutus Proceedings and cannot now be re-agitated. Counsel for Tanager submitted that the issues sought to be advanced by paragraphs 12 and 13 of the Motion are res judicata. He contended that paragraph 14 is utterly irrelevant in the

context of these Proceedings, as it concerns steps taken after the sale of the Property and that there is no right to declaratory relief regarding same in these Proceedings.

57. It is clear in my view that the orders sought in paragraphs 2, 12, 13, 14 are not appropriate or permissible orders to seek by way of motion. They are also not the type of reliefs which can or should be granted in the absence of oral evidence and a full hearing. While I appreciate that Mr Hogan is a litigant in person and may not have understood this fact, it is simply impermissible to use a motion to obtain final orders such as the orders set out in paragraphs 2, 12, 13 and 14. For this reason alone, the orders sought in those paragraphs must be refused.

58. Moreover, even if the procedure was correct and the orders could be sought by the Plaintiff now, the alleged equitable title and right to possession of Mr Hogan has already been definitively determined against Mr Hogan by the High Court, the Court of Appeal and leave to appeal to the Supreme Court was refused. Tarbutus was granted an injunction to restrain trespass by Mr Hogan. The Court of Appeal has unequivocally rejected Mr Hogan's complaints about the process whereby the Property was sold to Tarbutus and the sale was recorded on the Register. Donnelly J ruled that "*[t]he procedure adopted here is and was a process permitted by law*".

59. These points cannot now be advanced by Mr Hogan. It is wholly misconceived and impermissible for Mr Hogan to seek to set aside the order of Holland J. in these Proceedings or to re-agitate his claim to be entitled to possession of the Property. There can be no collateral attack on the order of Holland J. by means of a motion of this nature.

**(c) Declarations regarding the description of the Property**

60. At paragraph 7 of the Notice of Motion, Mr Hogan seeks a declaration as to the description of the Property.

61. In this grounding affidavit, it is asserted by Mr Hogan that there was no valid appeal as there is no judgment concerning the Property. This is based on the abbreviated and anonymised addresses and folio references in the judgments of the Court of Appeal

("*Folio ****L County Y*", "*Apartment 9B, B…..Village, B….. County Y*" and similar). Mr Hogan asserts there was no legal identification of the Property.

62. This relates to the anonymised references to the Property which were included in the judgment of the Court of Appeal in the Tarbutus Proceedings. What Mr Hogan contends is the connection between that judgment and these Proceedings is not clear.

63. The order sought is not within the scope of the Proceedings and is not an appropriate or permissible order to seek by way of motion. The orders sought are refused on this basis alone.

64. However, even if that was not a sufficient basis to refuse the reliefs, the declaration sought is entirely and wholly misconceived. The orders of the High Court and the Court of Appeal fully set out the correct address of the Property. It is misguided to suggest that the use of punctuation to anonymise the Property in the judgment of the Court of Appeal could have an effect on the conclusiveness of the Register or impact on the Orders of the High Court or Court of Appeal. There is no merit to this point.

65. Mr Hogan also seeks an order to restrain Tarbutus from attempting to sell the Property or interfere with the tenant residing there, owing to an alleged error in the registration (paragraph 11). It is not clear from the grounding affidavit what this is based on. It has been determined by the High Court and the Court of Appeal and recorded by the Supreme Court Determination that the Register is conclusive evidence of the title of Tarbutus and that Mr Hogan failed to show there was an error such as to require rectification of the Register. The Court of Appeal unequivocally found that Tarbutus had established its title to the Property and was entitled to an injunction restraining trespass by Mr Hogan. There is no basis on which a contrary case could now be entertained by motion or otherwise.

**(d) Declarations concerning the Court of Appeal**

66. Mr Hogan's contention in his grounding affidavit and in oral submissions at the hearing of the Motion is that the Constitution refers to "the Court of Appeal", that there is no

"Court of Appeal" in Ireland, and that the judgment of the Court of Appeal is not legally valid as it is not a legal court of Ireland.

67. The same ground for refusing the relief sought in paragraph 2 applies to this order also. The order sought is not an interlocutory relief and it is not appropriate or permissible for it to be pursued by means of a motion. It is also unrelated to anything pleaded in the Plenary Summons or Statement of Claim. For these reasons alone, it needs to be refused.

68. However, even if the application for this order was properly made, the point is inherently and utterly unmeritorious. The addition or omission of the word "the" is a matter of no constitutional or legal weight or moment. This is a vexatious claim.

**(e) Declarations related to legal representatives of Tarbutus**

69. There are a series of points made by Mr Hogan on affidavit regarding Tarbutus' solicitor, Mr Murray. He also addressed these points in oral submission at the hearing of the Motion.

70. While there were wide-ranging contentions made by Mr Hogan, the crux of the complaint is that because Mr Murray changed from O'Donnell Murray Solicitors to RM Legal Partners, but filed papers in the Supreme Court in the name of the former, he was not properly on record and could not have filed those papers. He also asserts that O'Donnell Murray Solicitors were never registered at the address stated in the registration documentation filed by Tarbutus and as such legal ownership could never have been registered to Tarbutus. Mr Hogan averred that Mr Murray is also the unrevealed client as he is in an unrevealed partnership with the directors and shareholders of Tarbutus and Chartered and should be struck off the roll of solicitors.

71. There is nothing in the Plenary Summons or Statement of Claim concerning these matters, several of which appear to have arisen after the issue of the Proceedings. There is simply no basis on which the declarations sought can be made. The request is misconceived and the orders sought are refused.

72. Even if an application could be made for relief, there are no grounds for seeking any orders concerning Mr Murray or his representation of Tarbutus. The application is based on fundamental misunderstandings about procedures and indeed about the facts. The determination as to whether to grant leave is a matter within the overriding discretion of the Supreme Court pursuant to Art.34.5.4° of the Irish Constitution (which came into effect on 28 October 2014). This is so regardless of whether a respondent delivers a respondent's notice. There is no basis whatsoever for a contention that the Supreme Court was misled or that Mr Hogan was denied a right to appeal to the Supreme Court, as he contends.

73. Insofar as an allegation is made about Mr Murray being an undisclosed client and a declaration is sought to this effect (Notice of Motion, paragraph 10), this is not a permissible or appropriate matter to raise by way of motion; it is not related to any issue pleaded in these Proceedings; and is not a matter which can be the basis of any interlocutory orders. While not strictly necessary to go further, I would observe that the only grounds cited for this complaint are entirely speculative, it appears to lack any evidential basis, and it is also a point which cannot result in any remedy or relief in favour of Mr Hogan. Moreover, Holland J. has determined that the identity of the beneficial owners of Tarbutus was irrelevant and the allegations related to there being undisclosed beneficiaries were addressed and rejected by the Court of Appeal.

74. A related issue is addressed at paragraph 16 of the Notice of Motion, in which Mr Hogan seeks to have the appearance of the Tarbutus Defendants entered on 17 August 2020 struck out on the basis of an alleged issue with the address. There is no legal basis or justification for the proposition that an erroneous address invalidates an appearance. This relief falls to be refused on that basis alone. Even apart from that conclusion, the facts are not established. Mr Hogan points to CRO documentation which shows the address of O'Donnell Murray Solicitors being registered with the CRO by a filing made on 9 May 2023 as "38-39 Fitzwilliam Square West". That is the same address that was recorded on Folio 8118L as the address of Tarbutus on 9 September 2019 and it is the same address given by O'Donnell Murray Solicitors on the Defence delivered for the Tarbutus Defendants in these Proceedings on 24 June 2021.

75. Mr Hogan has sought to draw certain conclusions from the filing of the address with the CRO on 9 May 2023. However, at the hearing of the Motion, the position of Tarbutus' counsel was that the address was correctly as stated on the appearance that was entered. It would have been preferable if there was an affidavit sworn on behalf of Tarbutus setting out the relevant facts but, in any event, Mr Hogan has not demonstrated any basis on which a determination can be made at this interlocutory stage that the correct address for Tarbutus was not as stated on the appearance at the time of its entry. The relief sought can only be refused.

76. In paragraph 16 of the Notice of Motion, there is also a bald reference to an amendment of the Statement of Claim, without explanation of the amendments proposed. This is misconceived and cannot be a basis for seeking any order of the Court and, for the avoidance of doubt, is refused.

**(f) Addition of parties to the Proceedings**

77. By paragraphs 15 and 17, Mr Hogan seeks to add "Éire" as a defendant and five other parties as notice parties to the Proceedings.

78. With regard to the application to join the State, Mr Hogan contended that there was a failure by the courts to uphold the law and his property rights and he claimed that there was false imprisonment of him and his tenant and that the Revenue was defrauded by underpaid stamp duty. He made various other complaints about Tanager being held out as a bank and related matters and asserted that he was looking for compensation from the Irish state and it was for this reason that he sought to join Éire as a party.

79. Counsel for Tanager made the submission that there is no demonstration of a remedy against the State. Insofar as Mr Hogan sought to make allegations against judges and to point to a remedy against them in damages to justify joining the State, same was misconceived and wrong.

80. I agree with counsel for Tanager. The reasons set out by Mr Hogan on affidavit and in oral submissions do not demonstrate any valid basis on which "Éire", the State or any emanation of the State should be named as a defendant to these Proceedings. There

is no basis for any claim for relief against the State. Mr Hogan's rights with regard to the Property have been heard and determined by the High Court and the Court of Appeal and leave to appeal to the Supreme Court was refused. The relief sought is misconceived and is refused.

81. Turning to the "notice parties", Mr Hogan has outlined different grievances against each of the proposed "notice parties", Deloitte, O'Donnell Murray Solicitors, Tailte Éireann, James Seymour, and Kieran Gilmartin.

82. Mr Hogan alleges that Deloitte acted unlawfully in procuring the sale of the loans and Property and depriving him of his legal title to the Property.

83. He alleges that Dillon Eustice are part of a conspiracy against him, having drafted the form for registration of the sale of the Charge in the Land Registry but not disclosing same to Mr Hogan. He complains that Dillon Eustace sought multiple adjournments of the injunction against him in the Tanager Proceedings, including three adjournments after the Charge had been sold to Tarbutus, without disclosing this to him or the Court.

84. It appears to be claimed that O'Donnell Murray are conflicted and a party to the matters complained of regarding Mr Murray and should be joined as a notice party for these reasons.

85. It was alleged that Mr Murray has an undisclosed beneficial interest in Tarbutus and is also professionally conflicted as he sometimes acts as a receiver and may be conflicted with regard to reporting actions as a credit servicer if he profits from such actions. Mr Hogan claims that Mr Murray should be struck off the roll of solicitors.

86. With regard to Tailte Éireann, Mr Hogan states on affidavit that this body must be made a notice party to the proceedings as it is accountable for the defective paperwork in regard to registration of the Property and is liable for purporting to transfer title to a dormant English company and an alleged failure to adhere to the law and protect property rights.

87. Mr Hogan seeks to join Mr Seymour on the basis that he acted ultra vires in seeking to take possession of the Property.

88. Mr Gilmartin is sought to be joined on the basis that he is also alleged to be an undisclosed beneficial owner of Tarbutus and involved in the same conspiracy and collusion as Mr Murray.

89. There was no replying affidavit by Tarbutus, or by any of the proposed new notice parties. Tailte Éireann did send a letter on 16 January 2024 addressed to Mr Hogan stating that it would obey any court orders made in the proceedings and that it is not necessary for Tailte Éireann to be party to the Proceedings for that purpose. This position was reiterated in oral submissions on behalf of Tailte Éireann. It was also pointed out in oral submissions on behalf of Tailte Éireann that it has no interest to protect in these Proceedings. By letter dated 6 February 2024, Mr Hogan set out his position that Tailte Éireann did need to be so joined, including an apparent allegation that Tailte Éireann had acted against him and references to his "*equitable possession*" being denied.

90. At the hearing of the Plaintiff's Motion, counsel for Tanager emphasised that there are no rules which permit the joinder of notice parties to plenary proceedings and that, even if the rules governing public law proceedings did apply, there would have to be some pecuniary or proprietary rights or some interest in the proceedings before the joinder of a notice party can be justified. The purpose of such joinder is to allow the parties in question to address and protect their own interests, not to seek a remedy against them. He pointed out that it is firmly established that, if relief is being sought against a party, they should be joined as a defendant (citing *Yapp v. Children's University Hospital* [2006] 4 IR 298).

91. Counsel for Tanager also made the point that considerations of cost and efficiency are relevant when an application is made to join several notice parties to proceedings, particularly when none of those parties have indicated any interest in being so joined. A clear concern about escalating costs and delay was articulated.

92. I agree with the submissions made on behalf of Tanager (and adopted by counsel for Tarbutus). There is no legal basis for the joinder of any person as a "*notice party*" to these Proceedings. The application is misconceived and must be refused. Even if this was a judicial review proceeding in which the joinder of a notice party could be considered, the facts here do not support any such application. What Mr Hogan is seeking to do is to join additional parties to the proceedings for the purpose of seeking orders against them, but without demonstrating a stateable basis for any such orders. The proposed notice parties have no interest to protect in these Proceedings.

93. This application is fatally flawed and must be refused as a matter of fact as well as law. Further, many of the points relied upon by Mr Hogan to justify his application to join these parties to the Proceedings (questions about the alleged undisclosed beneficial ownership of the Property, the registration of Tarbutus' title, the adjournment of the Tanager Proceedings, the sale of the Property) have all been heard and determined in the Tarbutus Proceedings. There can be no enlargement of the parties to, or issues in, these Proceedings.

**The Tarbutus Motion**

94. By the Tarbutus Motion, the Tarbutus Defendants seek an order pursuant to the Court's inherent jurisdiction striking out the Plaintiff's claim against them on the ground that it is frivolous, vexatious and bound to fail or an abuse of process. An order is also sought striking out the Proceedings on the ground they are *res judicata*. In the alternative an order is sought striking out the Proceedings pursuant to Order 19, Rule 28.

95. Finally, the Tarbutus Defendants seek an order restraining Mr Hogan from issuing proceedings against them without first obtaining leave to do so ("*the Isaac Wunder Order*").

96. The Tarbutus Motion is grounded on the affidavit of Mr Richard Murray sworn on 9 February 2024. There, Mr Murray sets out the background to Tarbutus' acquisition of the Charge and summarises the claims in the Proceedings. He then addresses the Tarbutus Proceedings. What he says is that the issues that arise in these Proceedings

"*are identical*" to the issues in the Tarbutus Proceedings and that the matters now sought to be raised either were or ought to have been agitated in the Tarbutus Proceedings.

97. There was no affidavit in reply to the Tarbutus Motion.

**Assessment of the Tarbutus Motion**

98. The Tarbutus Motion was based on the Court's inherent jurisdiction to strike out proceedings on the basis they are frivolous, vexatious, an abuse of process and res judicata. It is only in the alternative that the Tarbutus Defendants rely on Order 19, Rule 28 of the Rules of the Superior Courts.

99. In assessing the discretion and jurisdiction of the Court to strike out proceedings, it must be recorded that, prior to 22 September 2023, there were two distinct bases on which a court could strike out claims (or parts of claims) at a preliminary stage. One was contained in O.19, rr 27 and 28 RSC, the second was pursuant to the inherent jurisdiction of the Court. However, the jurisdiction to strike out proceedings at a preliminary stage is now largely if not entirely codified in the new formulation of O. 19, r. 28, which provides:

> *"The Court may, on an application by motion on notice, strike out any claim or part of a claim which:*
>
> *i. discloses no reasonable cause of action, or*
>
> *ii. amounts to an abuse of the process of the Court, or*
>
> *iii. is bound to fail, or*
>
> *iv. has no reasonable chance of succeeding."*

100. As noted by Simons J in In *O'Malley v. National Standards Authority of Ireland* [2024] IEHC 500 ("*O'Malley v. NSAI*") at [7],

> "*The amendment to Order 19, rule 28 has the practical effect of eroding the previous distinction between the jurisdiction to strike out and/or to dismiss proceedings pursuant to (i) Order 19 of the Rules of the Superior Courts, and (ii) the court's inherent jurisdiction.*"

101. I will therefore consider whether there is a basis to exercise the specific jurisdiction conferred by Order 19, Rule 28 in the first instance. The same legal principles apply to this jurisdiction, as they did to the exercise of the Court's inherent jurisdiction before September 2023.

102. The primary authority relied upon by counsel for Tarbutus in this respect was the judgment of Kennedy J in *Houston v Doyle* [2024] IEHC 104. The following passage was emphasised:

> "*Riordan v. Ireland (No. 5) [2001] 4 IR 463 (" Riordan") and Ewing v. Ireland [2013] IESC 44 (" Ewing") helpfully identify factors which might be indicators that a claim was vexatious. They include: (a) the bringing of further actions to determine an issue already determined by another court; (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person could reasonably expect to obtain relief; (c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights; (d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings; (e)where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings; and (f) where the respondent persistently takes unsuccessful appeals from judicial decisions*" (at [22]).

103. While this is a useful summary of the grounds on which an action may be struck out, I am not satisfied that it describes the situation that arises here. In fact, the situation in *Houston* is quite different to this case.

104. In *Houston*, Kennedy J. explained the background to the strike-out application before him (at [38a]):

> *"the Plaintiff has brought multiple actions and applications in respect of an issue already conclusively determined against her by the High Court and Court of Appeal which have dismissed her proceedings as "collateral attacks" on the judgment mortgages and on the earlier costs orders. These proceedings are yet another collateral attack."*

105. That is not comparable to this case.

106. Mr Hogan has not brought multiple actions and these Proceedings were not, as issued, brought for an improper purpose. I do not consider that Mr Hogan issued these Proceedings for an improper purpose or vexatiously. This is supported by the fact that there was no application to strike the Proceedings out within a reasonable time of their issue and it has not been argued in the context of the Motions before me that the Proceedings were inherently, at their inception, doomed to fail or frivolous or vexatious. Instead, the real gravamen of the Tarbutus Motion is that the issues in these Proceedings as between the Tarbutus Defendants and the Plaintiff have now been determined by the judgments in the Tarbutus Proceedings. Accordingly, at the hearing of the Motions, counsel for Tarbutus placed most emphasis on the proposition that there is a complete overlap between the two cases, such that the doctrine of *res judicata* applies. I propose to similarly focus on the contention that the determination of the Tarbutus Proceedings has intervened to determine the claims which Mr Hogan wishes to make in these Proceedings and that the doctrine of *res judicata* applies.

107. Counsel for Tarbutus relied on *Sweeney v. Bus Atha Cliath* [2004] 1 IR 576 and the principles governing the doctrine of *res judicata* that were set out in that case:

*"There is no doubt as to what the requirements of the plea of res judicata are. They are set out carefully and accurately by the learned High Court Judge and they are, to use the other name of issue estoppel, firstly, that the same question has been decided, secondly, that the judicial decision which is said to create the estoppel was final and finally, that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies. If there was indeed a determination of the same question as has arisen in these proceedings, that is, if there was a judicial determination, then, undoubtedly, the other requirements are met because the judicial decision was final and the parties were the same." (per Keane CJ at [4], Denham and McCracken JJ concurring).*

108. Tarbutus' counsel contended that the claims made and reliefs sought in these Proceedings have been determined in the Tarbutus Proceedings, are an abuse of process and that no relief can be awarded here, in light of the final orders made.

109. He pointed to the overlapping issues regarding Tarbutus' title to the Property and the application to rectify the Register. While he accepted that the Third Defendant, Chartered, was not party to the Tarbutus Proceedings, his position was that Chartered is a privy or agent of Tarbutus and that, based on *McCann v. A, B, C* [2015] IEHC 366 ([58] and [59]), is captured by the doctrine of *res judicata*. What Donnelly J found in that case was that, while one of the defendants was not party to the loan agreement or mortgage which had been found to be valid in separate legal proceedings, that defendant was the "*privy*" of a party to the mortgage. On this basis, the defendant in question was bound by the doctrine of res judicata and could not argue that the mortgage was invalid. Donnelly J. applied the definition of a privy in Henry Murdoch, Dictionary of Irish Law (Bloomsbury Professional; 5th Edition, 2009): *"[a] party is the privy of another by blood, title or interest where he stands in his shoes and claims through or under him".*

110. Counsel for Tarbutus relied on this to say that Chartered can rely on the doctrine of *res judicata*. It was contended that the allegations against Chartered are only made against Chartered as agent of Tarbutus and that the points already argued in the Tarbutus Proceedings cannot now be argued against Chartered or Tarbutus.

111. The case was also made that these Proceedings are a collateral attack on the decisions of the High Court and Court of Appeal in the Tarbutus Proceedings.

112. Mr Hogan opposes the Tarbutus Motion and emphasised in his oral submissions that he had attempted to have the two actions consolidated. In replying to this point, counsel for Tarbutus stated that the Tarbutus Proceedings were issued to expedite matters and have control of them. He also pointed to the fact that Holland J. specifically addressed the interaction between the two cases:

> *"As to proceedings 2020/5335P, Counsel for Tarbutus did not oppose my taking a liberal view of Mr Hogan's pleaded Defence in the present action as encompassing issues he raised in those proceedings – in particular his argument, in reliance on Kavanagh v McLoughlin , that Bank of Scotland plc (BoS") had had no power to transfer the Charge to Tanager and, accordingly Tanager had had no title to sell to Tarbutus. Counsel also accepted that Mr Hogan could ventilate his allegations of fraud – but only allegations against Tarbutus – and while denying that such fraud had occurred"* (at [9]).

113. Consequently, Mr Hogan was allowed to ventilate all points he wished to in the Tarbutus Proceedings without the need for a consolidation order. Counsel for Tarbutus contends that he had the full opportunity to deal with the issues he says are live in these Proceedings in the Tarbutus Proceedings.

114. This is a significant point. On the basis of the judgment of Holland J. I am satisfied that Mr Hogan was afforded the opportunity to incorporate any claims or issues from these Proceedings into the Tarbutus Proceedings and that a broad view was taken of his defence in that case to ensure all issues related to the title to, and registration of ownership of, the Property were determined.

115. This results in a readily apparent overlap between the two actions, most fundamentally with regard to Tarbutus' title; and the refusal of Mr Hogan's claims regarding the validity of, and his attempts to rectify, the register.

116. Other issues that were addressed in the judgments in the Tarbutus Proceedings also mirror those Mr Hogan seeks to argue against Tarbutus in these Proceedings, including that the sale of the Property to Tarbutus was a sale to a "*dormant*" or "*brass plate*" company, that the sale was at an undervalue; that the sale to Tarbutus was a fraud on Mr Hogan and constituted unjust enrichment of Tarbutus; that there was a failure to identify the beneficial owners of Tarbutus which vitiated the sale.

117. The findings made by Holland J. and upheld by the Court of Appeal are final determinations that Tarbutus is the lawful owner of the Property and is properly registered as the owner of the Property on Folio 8118L and that there is no basis for the Register to be rectified. Insofar as Mr Hogan in these Proceedings also alleges trespass, it has been finally determined in the Tarbutus Proceedings that Tarbutus is entitled to an injunction to restrain any trespass by Mr Hogan.

118. These facts notwithstanding, Mr Hogan claims there was no determination about his property and that there can be no *res judicata*. This appears to be premised on the inclusion of anonymised references to the Property in the Court of Appeal judgment and an erroneous folio number in an order of Sanfey J. The reasons why such a complaint must and can only fail have already been addressed.

119. To reiterate, there is no merit to these complaints. They are technical attempts to avoid the implications of proceedings in which Mr Hogan fully participated at all stages and they serve only to take up time and cost, of the Defendants and of the Court.

120. Taking the apparent grounds for avoiding the application of *res judicata* in turn, complaint appears to be made about an error in the folio number recorded in an order of Sanfey J. of 5 June 2024. This is irrelevant to the issues in these Proceedings and without merit for several reasons.

121. First, the order in question is not relevant to the Motions before me and is not even addressed to Mr Hogan.

122. Second, the point is of no substance or merit, as the full address of the Property is on the order itself and no confusion can be asserted. Third, the important and inescapable

fact is that the correct folio number (8118L) is included in the final order of Holland J. of 11 January 2022 and in the final order of the Court of Appeal of 2 March 2023 in the Tarbutus Proceedings. It is also a matter of real importance that Holland J. found that Mr Hogan was always aware of the identity of the Property that was the subject of the Tarbutus Proceedings and suffered no prejudice by the omission of the schedule to the summons in the Tarbutus Proceedings.

123. If the complaint is based on the absence of a schedule to the pleadings in the Tarbutus Proceedings, this was dealt with in the judgment of Holland J. where it was found that the statement of claim adequately identified the Property, and leave was also given to amend the pleadings to include a schedule ([10]). No further complaint now lies, or can be made, about the identification of the Property in those proceedings.

124. Mr Hogan also relies on the anonymised references to the Property in the Court of Appeal Judgment. There is no merit whatsoever to this point. The Property was clearly identified and the order (which is the operative expression of the Court's decision) includes the full address and folio number.

125. There is no basis for Mr Hogan to resist the application of the doctrine of *res judicata* with regard to the issues that were decided in the Tarbutus Proceedings.

126. There is no valid basis to distinguish the issues determined in the Tarbutus Proceedings or avoid the finality of the outcome on those issues. I am satisfied that the doctrine of *res judicata* applies with regard to the issues sought to be ventilated against Tarbutus in these Proceedings. I am also satisfied that Chartered is an agent and privy of Tarbutus for the purpose of these Proceedings and is named as a party solely and exclusively in that capacity. Consequently, the determinations in the Tarbutus Proceedings operate to bar the pursuit of these Proceedings against Chartered as well as against Tarbutus.

127. On this ground, these Proceedings are bound to fail as against the Tarbutus Defendants and have no reasonable chance of succeeding against those parties, as the issues and reliefs sought are identical to those determined in the Tarbutus Proceedings. The issues and claims on which Mr Hogan relies on in these Proceedings in seeking relief against the Tarbutus Defendants have been finally and conclusively determined and cannot be

revisited or re-argued. For this reason, there is no reasonable prospect of these Proceedings succeeding against Tarbutus. The Proceedings against Tarbutus are now bound to fail within the meaning of Order 19, Rule 28 and are struck out on that basis.

128. Counsel for Tarbutus also relied on the attacks on Mr Murray and states that this is evidence of an improper motive (applying *Houston* [22]) such as to justify the strike-out the Proceedings. While multiple proceedings seeking to malign and impugn legal representatives can be indicative of abusive litigation, there is in fact nothing in the plenary summons and only relatively limited pleadings in the statement of claim in this case regarding Mr Murray. Mr Murray is not currently a party to the Proceedings and leave to join him as a notice party is refused in this Judgment. While numerous allegations are made about Mr Murray in the context of the Plaintiff's Motion, the Motion cannot expand the scope of the Proceedings (as I already noted in refusing some of the orders sought by Mr Hogan in his own motion). For these reasons, there is no justification for striking out the Proceedings based on the references to Mr Murray in the Statement of Claim and the submissions and affidavit presented by Mr Hogan to substantiate his (unsuccessful) Motion. In any event, the Proceedings are properly struck out as against the Tarbutus Defendants on other grounds.

129. A final matter to address is that Mr Hogan's Motion includes a bare reference to amendments to the Statement of Claim. While regard should be had to a possibility that proceedings may be amended to render a vulnerable case stateable, it is not for the Court to seek to identify the possible amendments:

> "…*it is not for this Court to try and identify amendments that might conceivably save the proceedings as they stand in circumstances where no amendments have been put before the Court, either by way of the plaintiff's 29 January 2018 affidavit grounding his application to amend his statement of claim or otherwise. As said by Haughton J. writing for this Court in Fulham v. Chadwicks Limited & Ors [2021] IECA 72 after reviewing the relevant caselaw, the exercise of the jurisdiction to permit an amendment to 'save the action' required that 'the claimant or his/her lawyers will usually be required to intimate an intention to amend, or at least the general nature of the amendment suggested in response to the motion to dismiss'."* (*McAndrew v.*

*Launceston Finance Property DAC* [2023] IECA 43 [91] per Faherty J, Barniville and Ni Raifeartaigh JJ concurring)

130. There is no specificity as to any proposed amendments and I therefore have only assessed the pleadings in their current form.

**Assessment of the Application for an Isaac Wunder Order**

131. Relatively limited submissions were made regarding the application by the Tarbutus Defendants for an "*Isaac Wunder Order*". It was said that Mr Hogan had already been afforded fair procedures in the Tarbutus Proceedings; that these Proceedings were collateral attacks on the outcome of those proceedings; and that these Proceedings were vexatious and improperly motivated. It was submitted that Mr Hogan does not respect and will not accept the outcome of Court proceedings.

132. Mr Hogan in reply asserted that he had issued only these Proceedings and that the reliefs sought by Tarbutus could have been sought by way of counterclaim in these proceedings, which would have avoided any risk of multiple proceedings.

133. The threshold for making an "*Isaac Wunder Order*" is that the litigant against whom the order is sought has "*habitually or persistently instituted vexatious or frivolous civil proceedings*" (*Riordan v. Ireland (No. 4)* [2001] 3 IR 365).

134. It is an order to be made only in "*very rare circumstances*", as held by Costello J. in *O'Malley v. Irish Nationwide Building Society* (High Court, unreported, 21 January 1994), a case in which a "*great number of proceedings*" had been issued by the individual in question.

135. This has been reiterated more recently in the separate concurring judgment of Collins J. in *Irish Aviation v. Monks* [2019] IECA 309 which 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*" (at [2]).

136. I am also mindful of the caution issued by Collins J. in that judgment that an "*Isaac Wunder Order*" should not be treated as an ancillary order that results from, or automatically accompanies, an order dismissing a claim:

> "*It is, therefore, critically important that a court asked to make an Isaac Wunder order should anxiously scrutinise the grounds advanced for doing so. It should not be seen as some form of ancillary order that follows routinely or by default from the dismissal of a party's claim, whether on its merits or on a preliminary strike-out motion. That is so even if considerations of res judicata and/or Henderson v Henderson arise"* (at [7]).

137. These cases are included in the extract from Delany & McGrath on Civil Procedure (5th Ed., 2023) at 16-137 to 16-161 on which the Tarbutus Defendants relied and are persuasive in the context of the Motion before me.

138. Having weighed the parties' positions on this issue, I find in favour of Mr Hogan. While there have been three cases issued concerning the Property, Mr Hogan has commenced only one of these cases, not a multiplicity of them, and it was not frivolous or vexatious when issued. It is imperative that the outcome of final decisions of the Superior Courts cannot be collaterally challenged and there must be finality in legal proceedings, but there is not sufficient evidence before me to warrant the finding that Mr Hogan has pursued a path of persistent abusive litigation such as justify the making of an "*Isaac Wunder Order*". I am not satisfied that it is proportionate or necessary to make the order sought and it is accordingly refused.

**Conclusions on the Plaintiff's Motion**

139. For the reasons set out in this Judgment, each of the orders sought by Mr Hogan in his Motion is refused.

140. In respect of the Tarbutus Motion, I find that the issues asserted in these Proceedings as against Tarbutus have been determined in the Tarbutus Proceedings, the doctrine of *res judicata* applies and, consequently, these Proceedings are now bound to fail and have no reasonable chance of succeeding as against the Tarbutus Defendants within the meaning of Order 19, Rule 28. The Proceedings are accordingly struck out as against Tarbutus. However, I refuse the order that is sought in paragraph 5 of the Tarbutus Motion.

141. I will list these Proceedings before me at 10.30 am on 14 January 2025 for the purpose of dealing with the allocation of costs and any additional questions that may arise.