AN ARD CHÚIRT

[2024] IEHC 682

Uimhir Thaifead 2021/6617P

Idir

CONLETH CINNÉIDE agus MAIRÉAD CINNÉIDE agus SEÁN CINNÉIDE

Gearánaithe

agus

AN tÁRD-AIGHNE agus TAILTE ÉIREANN, agus SEÁN Ó CEALLAIGH agus ÁINE MÁIRE DE BLÁCA agus PJ BROIN & ATURNAETHA CO. agus CEANTÁLAITHE MAC LIAM

Cosantóirí

THE HIGH COURT

Record No. 2021/6617P

Between

CONLETH KENNEDY and MARGARET KENNEDY and JOHN KENNEDY

Plaintiffs

and

THE ATTORNEY GENERAL and THE PROPERTY REGISTRATION AUTHORITY and JOHN KELLY and ANNE MARIE BLAKE and PJ BYRNE & CO. SOLICITORS and WILSON AUCTIONEERS

Defendants

Judgment of Mr. Justice Conor Dignam delivered on the 29th day of November 2024

1. This judgment concerns an application by the first and second-named defendants ("the State defendants") for an Order striking out the plaintiffs' Statement of Claim pursuant to Order 19 Rule 28 of the Rules of the Superior Courts insofar as it relates to them on the basis that it does not disclose a reasonable cause of action and/or an Order under the Court's inherent jurisdiction striking out the plaintiffs' claim on the basis that it is bound to fail or is frivolous and vexatious.

2. This application was due to be heard through Irish but when the matter first came on for hearing the plaintiffs decided to proceed through English. I have therefore prepared this judgment in English.

3. The principles applying to applications to dismiss claims either under Order 19 Rule 28 of the Rules of the Superior Courts or under the Court's inherent jurisdiction are well-established. It is not necessary to set them out in full. They are considered in such cases as, for example, *Barry v Buckley [1981] IR 306*, *Salthill Properties Limited v Royal Bank of Scotland plc [2009] IEHC 207*, *Lopes v Minister for Justice, Equality and Law Reform [2014] IESC 21*, *Keohane v Hynes [2014] IESC 66*, *Clarington Developments Limited v HCC International Insurance Company plc [2019] IEHC 630*, *Kearney v Bank of Scotland [2020] IECA 92*. The principles, particularly in relation to the exercise of the Court's inherent jurisdiction, have recently been stated by the Court of Appeal in *Scotchstone Capital Fund Ltd & anor v Ireland & anor [2022] IECA 23*, and in *McAndrew v Launceston Property Finance DAC & anor [2023] IECA 43*.

4. In summary, the jurisdiction, whether under Order 19 Rule 28 or the Court's inherent jurisdiction, is subject to a number of overarching principles: first, the default position is that proceedings should go to trial and that a person should only be deprived of a trial when it is clear that there is no real risk of injustice; second, it is a jurisdiction to be exercised sparingly, given that it relates to the constitutional right of access to the courts; third, the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the case is frivolous or vexatious or bound to fail or that it is an abuse of process, and the threshold to be met is a high one; fourth, the Court must take the plaintiff's claim at its high-water mark; fifth, the Court must be satisfied not just that the plaintiff will not succeed but cannot succeed; and sixth, the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the utilisation of pre-trial procedures such as discovery or by the evidence at trial.

5. It is not necessary to consider these principles in detail in the following circumstances.

6. The Statement of Claim and an Amended Statement of Claim do not properly plead the facts grounding the plaintiffs' claim against any of the defendants. However, it is possible to discern from those documents, the other papers which were before the Court, and the third-named plaintiff's summary of the facts at the hearing that the proceedings arise from the sale by a receiver (the eighth and ninth-named defendants) appointed by the seventh-named defendant (Promontoria (Oyster) DAC) of lands owned by the first and second-named plaintiffs. The lands were sold to the third-named defendant. The fourth-named defendant is a solicitor in the fifth-named defendant solicitor's firm and she acted for the purchaser, the third-named defendant. I presume that the sixth-named defendant was the auctioneer who acted for the receiver in the sale. After the sale was completed, the second-named defendant ("Tailte Éireann" or "the Property Registration Authority") registered the third-named defendant's ownership of the lands on the 30th January 2019. The plaintiffs claim that this sale was unlawful, void and has no force or effect as being, inter alia, an attack on the plaintiffs' property rights and they seek relief against the third to ninth-named defendants in respect of it.

7. Various matters are pleaded against the State defendants arising from these claims and from Tailte Éireann's registration of the third-named defendant's ownership of the lands. That ownership is, of course, disputed – that is at the core of the proceedings – so when I refer to the third-named defendant's ownership that is not to be taken as a finding as to ownership. The pleaded claims against Tailte Éireann, in summary, are that it, as custodian of the Registration of Title Act 1964, acted *ultra vires*, in breach of duty, in breach of its constitutional obligations and the plaintiffs' constitutional rights, and misapplied statutory law by assisting the other defendants in registering a transfer of title which was on foot of an unlawful sale. It is also pleaded that the registration by Tailte Éireann of the third-named defendant's title was not permitted by law and was fraudulent and *ultra vires* and that Tailte Éireann's conveyance of the benefit/interest of a legal charge was a fraudulent transaction. It is specifically pleaded that it was a "statutory fraud" pursuant to section 30 and 30(1) of the Registration of Title Act 1964. There is also a plea that Tailte Éireann and other defendants were relying on or using invalid statutory law having regard to the Constitution and that the use of statutory law is against the provisions of the Constitution. The pleaded claim against the first-named defendant ("the Attorney General") is unclear but appears to be two-fold: he is responsible for supervising Tailte Éireann and therefore is vicariously liable for Tailte Éireann's acts or omissions and directly liable for not supervising it adequately; and there were no legal provisions in place to protect the first and second-named plaintiff and therefore the State has not protected their rights.

8. However, at the hearing, the plaintiffs, through the third-named plaintiff, clarified that the limit of the relief being sought against Tailte Éireann is an Order directing that the register be rectified and that there was no case in fraud being made against the State defendants. They explained that they believed that they had to bring plenary proceedings to seek the rectification of the register on the basis of the decisions in *Tanager v Kane [2019] 3 IR 385* and *Bank of Ireland Mortgage Bank v Cody 2021 2 IR 381.* That, of course, is correct, but it does not explain why the case against the State defendants was pleaded in the way that it was. In any event, the plaintiffs agreed with the following summary of their case against Tailte Éireann: the transactions between the other defendants leading to the transfer to the third-named defendant were fraudulent and Tailte Éireann has to rectify the register to put the property back into the first and second-named plaintiffs' names. It follows from the fact that the only relief that the Plaintiffs are seeking against Tailte Éireann is the rectification of the register (if they succeed against the other defendants) that they are not maintaining the claim against Tailte Éireann that it acted wrongfully, unlawfully or *ultra vires* in the ways referred to in paragraph 7 above.

9. The relief sought against the Attorney General remains unclear. The third-named plaintiff explained that what they want from him is "*to undo the wrong that was done to my parents.*" This clearly suggests that the Attorney General is joined in respect of the claim for rectification of the register. That is certainly the case in respect of the first claim against him, ie. that he is responsible for supervising Tailte Éireann's maintenance of the register. I do not believe that it is quite so certain in respect of the second claim as it may be that the plaintiffs are claiming damages for the State's alleged default in not having sufficient protections in place to properly vindicate their constitutional rights.

10. Thus, it seems to me that the claims against Tailte Éireann and the first claim against the Attorney General on the one hand and the second claim against the Attorney General on the other have to be treated separately.

11. In circumstances where they have made clear that all that they are seeking against Tailte Éireann is the rectification of the register, the proceedings against Tailte Éireann and the first claim against the Attorney General can be readily dealt with. An Order directing the correction of the register depends entirely on the plaintiffs succeeding in having the transactions between the other defendants set aside. In those circumstances, were it not for commitments given in open court by Counsel for the State defendants, I would be inclined to direct the plaintiffs to deliver an Amended Statement of Claim to properly plead the narrow case that is made in respect of Tailte Éireann and the Attorney General and to

then place a stay on those proceedings pending determination of the proceedings against the other defendants.

12. However, Counsel on behalf of Tailte Éireann stated in open court that Tailte Éireann has no interest in the identity of the owner(s) of the lands other than his statutory responsibility to ensure that the register is properly maintained and that, if the register requires to be rectified after the claim against the other defendants is determined, that will be done. In those circumstances, there is no benefit to be gained by the plaintiffs from the maintenance of the current proceedings against Tailte Éireann or the first claim against the Attorney General and it is appropriate to strike them out. It was held in *Scotchstone Capital Fund Ltd & anor v Ireland & anor [2022] IECA 23* that a case may be frivolous and vexatious even where it has a reasonable chance of success but would confer no tangible benefit on a plaintiff (see paragraph 290 (d)). This will be done without prejudice to the plaintiffs' right to issue proceedings in the event that the register is not rectified if that is required following the determination of the proceedings.

13. This gives rise to the question of whether the Court can strike out part only of the claim against the Attorney General, i.e., the first claim but not the second. I deal with this below.

14. Before doing so, I propose to consider the case that is pleaded against each of the State defendants (other than the claim in fraud as the plaintiffs have clearly stated that they are not making a case in fraud against them) in case I am wrong in my understanding that the plaintiffs are not maintaining their pleaded claim that Tailte Éireann acted wrongfully, unlawfully or *ultra vires* in the ways set out at paragraph 7 above.

15. I am satisfied that such a claim against Tailte Éireann should be struck out under Order 19 Rule 28 and under the Court's inherent jurisdiction in the following circumstances.

16. Section 118 of the Registration of Title Act 1964 provides for an immunity for Tailte Éireann in respect of the exercise of its powers. Section 118 provides:

> "118. The Authority shall not, nor shall any person acting under its authority or under any order or general rule made in pursuance of this Act, be liable to any action, suit or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act, or any order or general rule made in pursuance of this Act."

17. Section 29 of the Tailte Éireann Act 2022 provides that references in any enactment to the Property Registration Authority shall be construed as references to Tailte Éireann.

18. In circumstances where the plaintiffs have made clear that they are not alleging fraud against Tailte Éireann, there is no allegation that any steps taken by Tailte Éireann were not "*bona fide done or omitted to be done in the exercise or supposed exercise of the powers*" under the Act. Even if the claims that Tailte Éireann acted wrongfully or *ultra vires* or in breach of the plaintiffs' rights are being maintained that does not amount to a claim that it was not acting *bona fide* in the exercise or supposed exercise of its powers.

19. It has to be said that there appears to be no authority on section 118. I was directed to *O'Connor v Legal Aid Board [2022] IECA 216* by counsel for the State defendants. While that case is somewhat helpful on the question of the possible liability of the Attorney General for the acts or omissions of Tailte Éireann, it is not particularly helpful on the question of Tailte Éireann's immunity under section 118.

20. The plaintiffs suggested during the hearing that section 118 is inconsistent with section 7(1) of the Act which provides that Tailte Éireann shall be a body corporate which may sue and be sued in its corporate name. I see no basis for concluding that the two sections are inconsistent. Section 7(1) simply permits Tailte Éireann to be sued and section 118 confers an immunity on the body in respect of certain suits. The plaintiffs also submitted that section 118 may be unconstitutional but gave no basis for this argument. The State defendants addressed this (relying on *Christian v Dublin City Council [2012] 2 IR 506*) but in circumstances where no grounds for the argument that section 118 is unconstitutional were advanced I do not propose to address this.

21. Thus, section 118 has the effect that, on the case that is pleaded by the plaintiffs (with the exception of fraud which is not being maintained), they can not succeed in obtaining the relief that is currently sought against Tailte Éireann in the pleadings and the claim is therefore bound to fail.

22. It also seems to me that the plaintiffs' pleaded claims against Tailte Éireann are in certain respects fundamentally flawed and in these respects could not succeed. It is pleaded that Tailte Éireann, by registering the ownership of the third-named defendant, conveyed the benefit of or interest in a legal charge. There is no legal basis for the plea that the act of registration conveys title. It is also pleaded that Tailte Éireann offered assistance to the other defendants. The plaintiffs explained that the "assistance" they were referring to was the act of registration by Tailte Éireann. There is no basis upon which it

could be concluded that this amounts to anything other than the performance by Tailte Éireann of its statutory functions.

23. As discussed above, while it is unclear, it is possible to discern that there are two claims in the pleaded case against the Attorney General. The first is that he is responsible for supervising Tailte Éireann and is therefore vicariously liable for the acts or omissions of Tailte Éireann and that he is directly liable for his failure to properly supervise. For example, at paragraph 31 of the Statement of Claim it is pleaded that "*The Plaintiffs claim that the registration made by the second named defendant of the third named defendant's 'Legal Title' of the Title of the plaintiffs' property, supervised by the first named defendant, was not permitted by law, and was fraudulent and ultra vires, pursuant to communication dated 12th February 2020, by the second named defendant.*" The second claim is that he, as the legal advisor to the Government, failed to put in place proper safeguards to avoid what is alleged to have occurred in this case, ie., the registration of a transfer of ownership on the basis of a fraudulent transaction, and therefore failed to vindicate the plaintiffs' rights. For example, at paragraph 17 of the Amended Statement of Claim it is pleaded "*The Plaintiffs claim that the first named defendant, wrongfully acted ultra vires, in that office, under the provisions of the Constitution, and failed to, refused, and neglected to prevent an unlawful attack on the plaintiffs' fundamental rights, pursuant to the Constitution.*" This theme was repeated at the hearing.

24. I am satisfied that the first of these can not succeed and is therefore bound to fail. There is no basis in law for the claim that the Attorney General is responsible for supervising Tailte Éireann and is therefore vicariously liable for its acts or omissions or directly liable for a failure to adequately supervise that body. Section 9(3) of the Registration of Deeds and Title Act 2006 expressly provides that the Property Registration Authority "*is independent in the performance of its functions.*" Section 8(6) of the 2022 Act provides that Tailte Éireann "*shall, subject to the provisions of this Act, be independent in the performance of its functions.*" The independence in the exercise of its functions conferred and prescribed by section 9(3) and section 8(6) is entirely inconsistent with the claim that the Attorney General is responsible for supervising Tailte Éireann.

25. The State defendants relied on *O'Connor v Legal Aid Board, The Minister for Justice and Equality, Ireland and the Attorney General [2022] IECA 216* in which the plaintiff sought to make the second, third and fourth-named defendants vicariously liable for the manner in which the Legal Aid Board dealt with the plaintiff. This case is of some assistance but it is not directly on point. Section 3(3) of the Civil Legal Aid Act 1995 provides that "*The Board shall, subject to the provisions of this Act, be independent in the exercise of its functions.*" Section 7(3) provides that "*Nothing in this Act shall be construed as enabling*

the Minister to exercise any power or control in relation to any particular case with which the Board is or may be concerned." Section 7(3) must be understood in the context of section 7(1) which provides that "*The Minister may, by order, from time to time as occasion requires, issue to the Board such general directives as to policy in relation to legal aid and advice as he or she considers necessary.*" Faherty J on behalf of the Court of Appeal held against the plaintiff primarily on the basis of section 7(3), though having regard to section 3(3). She said:

> "65… Thus, it is in context of s.7(3) of the 1995 Act (and having regard to the provisions of s.3 of the 1995 Act) that the plaintiff's claims at paras. 7 and 8 of the general indorsement of claim to the plenary summons and para. 92(e) and (f) of the statement of claim that the State defendants bear vicarious liability for the alleged wrongs of the Board fall to be considered.
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> 66. In my view, on any logical or reasonable reading of the provisions of s.7(3) of the 1995 Act, they amount to a statutory bar to the plaintiff's reliance on the alleged vicarious liability of the State defendants for the acts of the Board of which he complains. Having regard to the provisions of s.7(3), the specific acts in respect of which the plaintiff says the State defendants are vicariously liable clearly fall into the category of a "particular case with which the Board is … concerned". The nature of the claims being made by the plaintiffs against the Board, viewed against the provisions of s.7(3) of the 1995 Act, means that the plaintiff's 5432P proceedings on their face disclose no reasonable cause of action against the State defendants…"

26. There is no similar provision to section 7(3) in relation to Tailte Éireann. The simple reason for this is that there is also no provision similar to section 7(1), ie., allowing general directives as to policy to be given, so therefore there is no need for a limiting provision such as section 7(3). Faherty J took account of section 3(3) (which replicates section 9(3) of the 2006 Act and section 8(6) of the 2022 Act) but did not have to consider whether it in itself would act as a statutory bar to a finding of vicarious liability of the State defendants for the actions of the Legal Aid Board. Thus, while the case is of some assistance, it is concerned with a different statutory arrangement.

27. I am satisfied that the language of sections 9(3) and 8(6) is clear and unambiguous and that it precludes a finding that the Attorney General is responsible for supervising Tailte Éireann in the exercise of its functions and precludes a finding of liability, either vicarious or direct, against the Attorney General.

28. The second claim that is made against the Attorney General is that he failed to put in place proper safeguards to avoid what is alleged to have occurred in this case, ie., the

registration of a transfer of ownership on the basis of a fraudulent transaction, and therefore failed to vindicate the plaintiffs' rights. This seems to me to be a case against the State rather than the Attorney General. However, that can be addressed by an appropriate amendment in the event that the proceedings should be otherwise permitted to proceed. The case that there are inadequate protections of safeguards in place for the plaintiff's rights seems to me to be a very difficult case to make in light of the provisions of section 97 of the 1964 Act (which provides for the registration of a caution to the effect that no dealing with the land or charge is to be had on the part of the registered owner until notice has been served on the cautioner), section 31 of the 1964 Act (which provides for the correction of the register), and section 120 (which provides for compensation). However, on an application to strike out proceedings, I must be satisfied that the plaintiff can not succeed rather than that he may not or even will not succeed. It seems to me that in those circumstances I can not conclude, having regard to the high bar in question, that this claim against the Attorney General discloses no reasonable cause of action, is frivolous or vexatious or is bound to fail.

29. I am therefore satisfied, having regard to the principles set out above, that the first claim against the Attorney General is bound to fail and that I can not conclude that the plaintiffs could not succeed in the second claim. This gives rise to the question of whether I can dismiss part only of the case against the Attorney General.

30. It was well-established that the Court could not dismiss part only of a plaintiff's claim under Order 19 Rule 28 (Denham J in *Aer Rianta v Ryanair [2004] IESC 23*). However, this is no longer the case under the new Order 19 Rule 28 (in place since September 2023). The question of whether or not the Court could dismiss part only of a plaintiff's claim in the exercise of its inherent jurisdiction to dismiss proceedings which are bound to fail was considered by Collins J in *Ballymore Residential Ltd & anor v Roadstone Ltd & Ors. [2021] IECA 167* and Stack J in *Christian v Symantec Ltd [2022] IEHC 397*. It was also touched upon by Cregan J in *Ryanair DAC v SC VOLA.RO SRL [2022] IEHC 741*.

31. In *Ballymore*, Collins J set out the very weighty policy considerations against the court entertaining dismissing part only of a claim and the arguably "compelling countervailing policy considerations" (see paragraphs 42-47). He said, inter alia:

> "44. The decision of the High Court in *Ennis v Butterly* [1996] IEHC 51, [1996] 1 IR 426 is a case where the High Court considered it appropriate to dismiss part of the action. The defendant had sought the dismissal of the entire action...
>
> 45. There are conflicting policy considerations at play in this context. On the one hand, it appears to be highly undesirable that the High Court might routinely be asked to exercise

the sort of "*blue pencil' jurisdiction*" referred to by Denham J in her judgment in *Aer Rianta v Ryanair*. While her observations were made in the context of an application under Order 19, Rule 28, they have obvious relevance and resonance in the *Barry v Buckley* context also. Denham J explained how the development of such a jurisdiction would have inappropriate consequences:

> "It would have the potential of initiating a whole new jurisdiction of interlocutory applications whereby parties sought to blue pencil (strike out) portions of statements of claim or defences. It could herald a whole new list in the High Court where parties would fight on the pleadings. Such an approach is contrary to the policy of expeditious litigation. It would involve further costs and raise that consideration also. In addition it would involve motions which could be time consuming; as if part of a pleading is to be sought to be struck out, the probability is that at least one party will seek to have the issue analysed in the context of the whole pleading. Thus the entire pleading would be considered by the court. Indeed, there may be great difficulty in analysing a part of a pleading independent of the rest of the pleading." (at paragraph 24)

These are, on any view, powerful considerations.

46. On the other hand, where a discrete claim or cause of action is clearly bound to fail and where it appears that significant court time and legal costs would be saved if that claim or cause of action were to be excised from the proceedings at an early stage, there are, arguably, compelling countervailing policy considerations in favour of holding that the *Barry v Buckley* jurisdiction should, in principle, be available. It may be that *Ennis v Butterly* should be understood as an example of such approach, though not expressly articulated in such terms. Certainly, the breach of contract claim which was struck out by the High Court appears to have been the primary claim in *Ennis v Butterly* and there can be little doubt but that the striking out of that claim significantly narrowed the scope of the proceedings, with consequent saving in court time and costs."

32. It is important to note that Collins J expressly stated that the issue had not been fully debated in that case and therefore his observations were tentative and obiter.

33. Stack J considered the issue and the competing policy considerations at paragraphs 14 – 20 of her judgment in *Christian v Symantec*, She stated, inter alia:

> "17. If the primary rationale for the [Court's inherent jurisdiction] is to permit the court to regulate its own procedures and prevent abuse of them, it seems to me to follow logically that it is possible to strike out part of a claim. There would seem to be no reason why a claim which constitutes an abuse of process and which, if it were the only matter

pleaded in a statement of claim, would be liable to be struck out as an abuse of process, could not also be struck out in circumstances where it was included in the same action as other claims. The jurisdiction would seem to be sufficiently flexible to be applicable in such case. Indeed, the exercise of the jurisdiction in relation to only part of a claim seems to have been assumed in *Burke v. Beatty* [2016] IEHC 353, discussed further below.

18. It remains the case, however, that the jurisdiction is one to be "exercised sparingly" as cautioned by Costello J. (also at p. 308) [in *Barry v Buckley*]…

19. In considering the application in this case, I am acutely conscious that, regardless of its merits, it can, at best, remove only a limited part of the extremely lengthy statement of claim that has been filed. I note the comments of the Supreme Court *in Aer Rianta c.p.t. v. Ryanair Ltd* as to the undesirability of applications in respect of part of the pleadings, and the consequences of such applications for the courts which could, as outlined by Denham J. at para. 24 of that case, have the potential of initiating a whole new jurisdiction of interlocutory applications whereby parties sought to "*blue pencil*" (i.e., strike out) portions of statements of claim or defences, and it could herald a whole new list in the High Court where parties would fight on the pleadings. The Supreme Court was clear that such an approach would be contrary to the policy of expeditious litigation, would involve further costs, and that such motions could be time consuming and difficult.

20. It therefore seems to me that the inherent jurisdiction of the court should only be exercised in relation to part of the proceedings in very rare and clear cases, where that part of the claim constitutes an abuse of process even though the remainder of the claim is properly brought, or where the defence of that particular aspect of the claim would prove oppressive for the defendant over and above any difficulties presented by the defence of the proceedings as a whole."

34. I agree with the reasoning of Collins J and Stack J. There are very weighty public policy reasons as to why the courts when being asked to exercise its inherent jurisdiction should be very slow to consider striking out parts of a claim. The creation of a "*whole new list in the High Court where parties would fight on the pleadings*" would have a very significant impact on the right of all litigants to access the Courts. However, the courts must also be alert to the adverse impact of permitting the continuation of parts of cases which are bound to fail and the trial of which will consume limited court resources, thereby depleting their availability to hear other cases. It must also be noted that the new Order 19 Rule 28 now allows the Court to strike out parts of a claim. The correct balance is that the Court should be very slow to embark on such a process and should only contemplate doing so in rare and clear cases and, in particular, only where the claim is made up of separate and distinct elements.

35. I am satisfied that the two claims against the Attorney General are entirely separate from each other and that in those circumstances it is possible to strike out the first claim even though I am of the view that the second can not be struck out.

36. However, the second claim against the Attorney General is entirely dependent on two things. Firstly, it only arises if the plaintiffs succeed against the other defendants, i.e., in establishing that the underlying transactions by which the lands came into the ownership of the third-named defendant were fraudulent or wrongful. If he fails in that case then there can be no case against the Attorney General (or the State) for a failure to protect against the registration of a transfer of ownership based on a wrongful transaction. Secondly, the claim against the Attorney General (or the State) only arises if the plaintiffs are successful against those other defendants and Tailte Éireann does not correct the register to reflect the outcome of that case. Of course, even if these conditions are met, it does not necessarily follow that the plaintiffs would be successful against the Attorney General or the State, but they could not succeed unless those conditions were met.

37. In those circumstances, it seems to me that the appropriate way to deal with the situation is to place a stay on this aspect of the plaintiffs' claim against the Attorney General pending determination of the claims against the third to ninth-named defendants.

38. In the event that it is necessary to lift that stay then the plaintiffs will have to amend the proceedings to sue Ireland and will have to amend the proceedings to limit their claim against the State to this one aspect in order to reflect this judgment.

39. The State defendants also claim that the proceedings are frivolous and vexatious and an abuse of process on a number of other grounds, including that they raise issues which have been, or could have been, ventilated in related Circuit Court possession proceedings, they are brought for the improper purpose of harassing the third-named defendant and frustrating him gaining possession of the lands, they are suing parties with no connection to the dispute over the lands, they have remained in possession of the lands in defiance of a Circuit Court Order, and fraud is liberally alleged but is nowhere particularised. In light of my conclusions, it is not necessary for me to determine these points.

40. At the beginning of the hearing, the plaintiffs raised an issue which, as I understand it, was raised for the purpose of expressing concern about the conduct of the defendants and for the purpose of applying for an adjournment of the hearing. I noted the concern. I refused to adjourn the hearing and indicated that I would give my reasons when giving judgment.

41. The plaintiffs made the point that the State defendants' motion was based on the original Statement of Claim (the motion was issued prior to the recent delivery of an Amended Statement of Claim) but they, the plaintiffs, had not served the original Statement of Claim on the State defendants. It was submitted in those circumstances that (i) there was something untoward going on between the defendants as the other defendants must have provided the Statement of Claim to the State defendants, and (ii) the State defendants were not entitled to issue a motion to dismiss under Order 19 Rule 28 or the Court's inherent jurisdiction because they should have issued a motion under Order 27 Rule 1 of the Rules of the Superior Courts. I do not believe there is any substance to these points. The plaintiffs were under an obligation to deliver a Statement of Claim. On their admission they did not do so (I am assuming that to be correct, though Counsel for the State defendants disputed this). What the plaintiffs were in effect seeking to do by applying for an adjournment was to benefit from their own default. Related to this, and perhaps more importantly, is the fact that this matter had been before the Court on several occasions and this issue had never been raised by the plaintiffs. The matter previously came on for hearing along with similar motions brought by the other defendants. For unrelated reasons the hearing was adjourned. Notwithstanding that the applications had come on for hearing that day, the plaintiffs did not raise this point at that stage. Nor did they raise it on any subsequent for mention date. On one of those dates I acceded to the State defendants' application that their motion should proceed independently of the motions brought by some of the other defendants on the basis that the reasons for adjourning those motions did not apply to the State defendants. That would have been an appropriate time for the plaintiffs to have raised this point but they did not do so.

42. In those circumstances, there was no basis upon which to adjourn the matter.

43. I will therefore dismiss the plaintiffs' case against Tailte Éireann and will dismiss the plaintiffs' claim against the Attorney General that he is liable for supervising Tailte Éireann. I will place a stay on the balance of the claim against the Attorney General, i.e., that there has been a failure by the State to put adequate protections in place to prevent the registration of a transfer of ownership on the basis of a wrongful or fraudulent transaction, pending determination of the claims against the third to ninth-named defendants. In the event that such a stay is lifted the plaintiff will have to deliver an Amended Statement of Claim.