THE HIGH COURT

[2026] IEHC 393

Record No. 2025/1553P

Between:-

YEOKSEE OOI

Plaintiff

-and-

IRELAND AND THE ATTORNEY GENERAL, THE COURT SERVICES OF COUNTY WICKLOW, JOSEPH BURKE, PROMONTORIA SCARIFF DESIGNATED ACTIVITY COMPANY, BLACKWATER ASSET MANAGEMENTAND THE COUNTY REGISTRAR OF WICKLOW

Defendants

Judgment of Mr. Justice Oisín Quinn delivered on 18 June, 2026

I. INTRODUCTION

1. The plaintiff (Ms. Ooi) lived at Dromin House (the "House") in Wicklow from 2006 until 24 February 2025 when the House was repossessed by the fourth defendant ("Mr. Burke"). Mr. Burke had been appointed by a warrant of 14 October 2024 (the "Warrant") issued in the name of the seventh defendant (the "County Registrar"). That appointment followed the issue of an execution order dated 25 September 2024 taken out by solicitors for the fifth defendant ("Promontoria") who had obtained an order for possession of the House from the Circuit Court by order of 18 January 2023, which order provided for a stay of eighteen months. On taking possession of the House on 24 February 2025, Mr. Burke handed the property over to the sixth defendant ("Blackwater") who were agents of Promontoria. A receiver on behalf of Promontoria then sold the House on 4 July 2025.

2. The House was owned by Ms. Ooi's partner who had borrowed money from another bank, secured against the House, which he had failed to repay. The debt and security were acquired by Promontoria who then obtained the possession order.

3. Ms. Ooi had been living at the House from 2006 with her partner and their three children who were all still living there at the time that possession was recovered. Ms. Ooi's youngest child was under eighteen and was attending sixth year in a nearby school where he was sitting his mock leaving certificate exams at the time of the eviction. The second child was a young adult and was attending second year in a university in Dublin. The eldest child has special needs and was at home in the care of his parents, and in particular in the care of Ms. Ooi who had retired as a doctor in 2013 to provide full time care to this child.

4. These proceedings were commenced on 25 March 2025, at a time when the House had not yet been sold. Initially, Ms. Ooi was representing herself but by October 2025 she had legal representation. In these proceedings Ms. Ooi challenges the lawfulness of the Warrant and the recovery of possession of the House. She claims that, *inter alia*, the Warrant was unlawful in that it did not appoint a "Court Messenger" (Mr. Burke was not the Wicklow Court

Messenger, but rather was the Sheriff for Dublin City) and she seeks declarations and damages, including damages for an alleged violation of her rights pursuant to Article 40.5 of the Constitution.

5. The case ran for six days from 12 May 2026 to 21 May 2026. Evidence was given by Ms. Ooi on her own behalf; and then from Mr. Jerry Burke ("Promontoria's solicitor") on behalf of the Promontoria and Blackwater defendants; and then from Mr. Joseph Burke, a Mr. Andrew Cullen (who was the Court Messenger for Wicklow), a Mr. Thomas Gray (a Dublin City Court Messenger and tow truck driver who assisted Mr. Burke with the eviction) and a Ms. Mary Delahanty, now retired, but who had been at the relevant time the Wicklow County Register. These witnesses were called on behalf of what were described as the State Defendants, being the first, second, fourth and seventh defendants. An agreed precis of the evidence of a Mr. David O'Connor, who was appointed as the Receiver, was also submitted as evidence on behalf of the Promontoria and Blackwater defendants. The claim against the third defendant had been discontinued. The defendants were represented in two groups. Firstly, the first, second, fourth and seventh defendants were represented together and filed a full defence which included some preliminary objections and a claim of immunity on the part of the State Defendants. The fifth and sixth defendants were represented together and also filed a full defence with some preliminary objections and, in addition, they claimed an indemnity from the State Defendants in the event that any liability was found to attach to them.

II. SUMMARY OF THE EVIDENCE

6. In 2005, Ms. Ooi's partner purchased the House in his sole name with the benefit of a loan which he had obtained from First Active plc in the amount of €3,000,000. This loan was secured by a mortgage over the House.

7. In 2007, this loan was restructured and Ms. Ooi's partner obtained a new loan facility in the amount of just over €5 million, which was also secured by a mortgage over the House. This second mortgage subsumed and cleared the original loan. When obtaining this loan, Ms. Ooi's partner completed a statutory declaration pursuant to the Family Home Protection Act 1976 on 28 July 2007, stating that the property was not a family home for the purpose of that Act and that no other person had an interest in the House. Apparently, no repayments have been made since 2013.

8. At some point Promontoria acquired First Active's interests in relation to the mortgages over the House. In 2021, Promontoria issued proceedings in the Circuit Court in Wicklow to obtain possession of the House. Ms. Ooi, as a person in occupation of the Home, was served with these proceedings and participated in the case, although she was not named as a defendant.

9. Following a hearing at which Ms. Ooi was heard, an order for possession was made by the Circuit Court in January 2023, with a stay on the order for possession for a period of eighteen months. Ms. Ooi was legally represented at that hearing. According to the parties, the stay imposed by the Circuit Court expired on 7 September 2024.

10. The Circuit Court order for possession was appealed, and the appeal was heard in the High Court on 15 February 2024. Ms. Ooi participated in this appeal. By judgment of Mr. Justice Bradley dated 12 March 2024, the appeal was refused and the Circuit Court order granting possession to Promontoria was affirmed.

11. On 13 February 2024, two days before the hearing of the appeal in the High Court, Ms. Ooi issued different proceedings in the High Court challenging the constitutionality of the Family Home Protection Act, 1976. She sought to rely on the then recent decision of the Supreme Court in *O'Meara v Minister for Social Protection & Others* [2024] IESC 1. Those proceedings (the "Family Home Protection Act proceedings") have yet to come to trial.

12. Ms. Ooi sought an adjournment of her appeal of the Circuit Court possession order to allow that appeal to await the outcome of her Family Home Protection Act proceedings. That application was unsuccessful.

13. The stay on the Circuit Court possession order expired on 7 September 2024. According to Promontoria's solicitor, in advance of the stay expiring, Promontoria and its solicitors took steps to plan for the taking of possession of the House.

14. Promontoria's solicitor explained in his evidence that, based on previous encounters with Ms. Ooi's partner, he anticipated that taking possession of the House might prove difficult. He explained that another judgment had been obtained against Ms. Ooi's partner for in excess of €20 million arising out of monies advanced to him in respect of a potential commercial development relating to a proposed data centre. This money judgment had not been discharged, and the execution process on foot of that money judgment had proven unsuccessful.

15. In short, Promontoria's solicitor explained that an order of *fieri facias* (*fifa*) had issued in execution of the money judgment in October 2022, but when the Court Messenger for Wicklow attended at the House in March 2023, he returned the order unsatisfied. That *fifa* order would not have entitled the Court Messenger to take possession of the House, but rather would have allowed him to seize items of personal property to reduce the outstanding judgment.

16. Mr. Cullen, who as it happens was that Court Messenger, explained in his evidence that he found the attempt to execute the *fifa* order in March 2023 uncomfortable. He described a feeling of apprehension approaching the House. His evidence in this regard was vague and oblique; he referred to long grass (the implication being that it may have concealed animals) and he said that the presence of security cameras gave him a sense of foreboding. He did not like the long driveway or that the property was near enough to his Courts Service office in Bray. Nonetheless, following some interaction by email with Ms. Ooi's partner, following what Mr. Cullen described as his "house call", he agreed in an email of 23 March 2023 that "no further action if any will be taken until the conclusion of the GSOC investigation". None of the witnesses explained what the "GSOC investigation" was about and it did not appear therefore to be considered relevant to this case.

17. In his evidence, Promontoria's solicitor explained that his client understood that Mr Burke, who was the Dublin City Sheriff, would be in a position to assist with the execution of the possession order. It appears from the evidence that someone from Promontoria had a discussion with Mr Burke in August 2024 about assisting with the execution of the possession order.

18. According to Promontoria's solicitor, he was then instructed to contact Mr Burke to see if he could assist. The solicitor explained that he contacted Mr Burke and told him that he understood that Promontoria believed he would be able to assist. Mr Burke confirmed that he could assist and that he had done so once in the past when executing a different possession order for the Wicklow County Registrar.

19. The solicitor did not make notes of any of his discussions with Promontoria, although he indicated that this was not unusual. Consequently, he could not remember the identity of anyone in Promontoria who gave him the various specific instructions that he described he received throughout the process of seeking to execute the possession order. He did recall that Promontoria had used Mr Burke in similar cases previously. He also confirmed that it was agreed at the beginning that Mr. Burke was to be paid by Promontoria.

20. According to Mr Burke, following his call with Promontoria's solicitor, he contacted the Wicklow County Registrar. The outcome of that call was that she confirmed she would be willing to appoint him to execute the possession order.

21. The County Registrar also recalled contact from Promontoria's solicitor during early September 2024. Her recollection was that a message had been left indicating that Promontoria's solicitors wanted the possession order executed. She stated that her impression was that "they didn't know what they were talking about because the Circuit Court office doesn't execute orders — it's the Sheriff's Office." She confirmed that this occurred in September 2024 after the stay had expired. She believed that she left them a message stating that she would "need help" with executing the order.

22. Accordingly, by September 2024 the position reached was as follows:

    (i) Promontoria had contacted Mr Burke, who confirmed he was willing to assist;

    (ii) Promontoria's solicitor had then, on instructions from Promontoria, contacted Mr. Burke who again confirmed he was willing to act;

    (iii) Promontoria had agreed to pay Mr. Burke €17,000 to do the job;

    (iv) Mr. Burke had then contacted the Wicklow County Registrar to confirm his willingness to act and she agreed to appoint him as she "needed assistance".

23. Promontoria's solicitors then contacted the County Registrar's office and were advised that they needed to complete an execution order. The execution order was completed on 25 September 2024. This was done by someone in the office of Promontoria's solicitors. This can be done without notice to the occupiers of the property; see para. 14 of the judgment of McDonald J. for the Court of Appeal in *Mars Capital v Carty & Others* [2026] IECA 40. Counsel for the State Defendants submitted, in the context of his legal argument for a claim for immunity, that the execution order could nonetheless have been appealed to the Circuit Court.

24. Following the filing of the execution order, a standard procedure was then followed in the Wicklow County Registrar's office. This standard procedure was explained by both the County Registrar and Mr. Cullen, the Wicklow court messenger.

25. In practice, it was Mr. Cullen's role to manage the paperwork once an execution order had been filed. He explained that there were a number of template documents on the computer system. He had been the court messenger for Wicklow for nine years, having applied following a job advertisement and interview. He explained that, based on his previous experience at the property in March 2023, he did not feel comfortable executing the possession order in this case. Nonetheless, he outlined the steps normally taken once an execution order is filed, and the steps actually taken by him in this case.

26. Mr. Cullen gave evidence regarding four documents generated by him on 14 October 2024. These documents were each created using templates and they were all dated 14 October 2024. They all appeared with the signature line of the County Registrar (which each misspelt her name). None of them were signed by her but rather Mr. Cullen used a signature stamp to imprint each letter with a stamped signature of the County Registrar. He described that this was the standard procedure he was instructed to follow and he accepted that the County Registrar had not seen any of these letters before he applied her signature stamp. The County Registrar confirmed this during her evidence; see Day 3, page 55.

(i) The first letter of 14 October 2024

27. The first letter was addressed to Ms. Ooi's partner and stated:

> "*I hereby give you notice that an Order for Ejectment for the recovery of the premises/land set out in the Schedule below has been lodged with me for execution.* <u>*I have issued a warrant to my Court Messenger*</u> *to execute the said Order and deliver possession of said premises/land to the Plaintiff on the [blank space].*

If you have any goods/animals on the premises/land, it would be as well for you to have them removed, otherwise my Court Messenger will put them out on the road, and I shall not be responsible for any loss incurred by you.

Schedule

[This was left blank]".

(underlined for emphasis).

28. This letter was sent out and a file copy was kept on Mr. Cullen's file. The date for delivery of possession was left blank and the schedule for describing the premises/lands was also left blank. Mr. Cullen was vague as to why he had left the date for giving up possession blank, but he accepted that a period of time would always be afforded to the occupiers and that efforts would be made to engage with them before any attempt at a forcible repossession would be made. This approach was echoed by the evidence of the County Registrar herself who also indicated that this approach reflected a general practice that had been recommended by meetings of County Registrars that had taken place over the years.

29. While the letter was not signed by the County Registrar, her signature stamp was applied by Mr. Cullen in what he described was the normal way in accordance with his general instructions.

30. This letter stated, incorrectly, that the County Registrar had appointed her court messenger by warrant to execute the order and while the County Registrar in her evidence initially held to the position that she believed she had issued a warrant appointing her Court Messenger (Mr. Cullen) to execute the possession order, it was accepted that no warrant had, in fact, been issued by the County Registrar to Mr Cullen. Indeed, if a warrant appointing Mr. Cullen had been issued, it is clear from the evidence of both Mr. Cullen and the County Registrar that the system in place in Wicklow at the time was that it would have been Mr. Cullen's job to draw up that warrant appointing himself and that he would have stamped the County Registrar's signature on that warrant. Based on his evidence alone I am satisfied that, whatever the County Registrar may have genuinely believed had happened, no warrant was issued appointing Mr. Cullen.

(ii) The second letter of 14 October 2024 was a letter to Promontoria's Solicitors

31. This letter acknowledged payment of the execution fee and stated:

"We have now issued our four-day demand letter.

Our Court Messenger will call on the debtor personally to assess the situation within one month, and we will revert to you in due course."

32. This letter was sent out and a file copy kept on Mr. Cullen's file. The letter was also stamped with the County Registrar's signature.

33. However, there was no clarity as to what the "four-day demand letter" referred to. Equally no such visit by the Court Messenger "within one month", or at all, occurred. Nonetheless, both the County Registrar and Mr. Cullen explained that this would have been the normal practice.

34. Faced with the uncomfortable disconnect between the standard practice of the County Registrar to enforcing possession orders over homes and what actually happened in this case, the County Registrar described a number of steps which she believed may have happened that I am satisfied on the evidence did not happen.

35. Firstly she explained she believed that Mr. Cullen had in fact visited the house in March 2023 as part of the repossession process. I am satisfied that this did not occur for a number of reasons. Firstly, the possession order was stayed at that point in time. Secondly, there was

no execution order issued in respect of the possession order at that time. This was confirmed by Counsel for Promontoria. Indeed it is not clear, given that the Circuit Court order for possession was stayed, that Promontoria could even have applied for an execution order at that time. Thirdly, the County Registrar separately confirmed in her evidence that no steps to take possession would take place until an execution order had been taken out. She made that clear when, during her evidence, she separately described her interactions with Promontoria's solicitors in September 2024 and where she stated that "the repossession order only takes effect when an Execution Order on foot of that Repossession Order issues from the Circuit Court Office" (Day 3, page 23, line 26).

36. Next, the County Registrar at several points early in her evidence suggested that she had actually appointed her Court Messenger, Mr. Cullen to assist in executing this possession order. While this would have been consistent with the standard documents on her system that were issued and stamped with her signature, I am satisfied that it did not happen in this case for the reasons set out above in para. 30.

37. Next, the County Registrar explained that it would be normal practice to engage, or to try to engage with the occupants of a home due to be repossessed. In this context she again sought to lean back in to what happened in March 2023 in the context of the money judgment against Ms. Ooi's partner. However I am satisfied that there was no effort to engage here with the occupants in the context of the possession order. Essentially after 14 October 2024 when the warrant appointing Mr. Burke issued, neither the County Registrar nor her Court Messenger had any engagement or made any effort to engage with Ms. Ooi or any of the occupants of the House. They essentially left the process entirely to Mr. Burke. He in turn, as his own evidence and documents issued by him confirmed, acted entirely thereafter on the explicit instructions of Promontoria, which he received through Promontoria's solicitors. As will be seen, this led to a most dramatic departure from what would normally have happened.

38. Finally, faced with the stark reality that there appeared to have been no engagement from the County Registrar after the appointment of Mr. Burke, the County Registrar in her evidence sought to suggest that she had been kept regularly informed by Mr. Burke in writing by email of the various developments that were taking place. This evidence, in fairness to the legal team for the State Defendants, was not led in direct evidence, rather it was offered by the County Registrar in response to probing questions during cross examination. As this account jarred with the evidence of Mr. Burke (who had not suggested he had done this) and did not tally with the documents produced by the parties either through discovery or by way of agreed books and documents appended to witness statements, Counsel for the State Defendants was offered the opportunity to re-examine the County Registrar. While this was declined, the next day, Counsel for the State Defendants confirmed that as far as could be gleaned from the file, there had been no such communications (see Day 4, page 4). I accept that the County Registrar in giving her evidence in this regard may have genuinely assumed this had happened, however it was not correct.

39. Overall, the evidence clearly demonstrated that after the appointment of Mr. Burke on 14 October 2024 neither the County Registrar nor her Court Messenger, Mr. Cullen took any interest in or played any part in, whether supervisory or otherwise, Promontoria's efforts through Mr. Burke to recover possession of the House. While the County Registrar said rather vaguely that it "was very clear at all times, that Mr. Burke would conduct the execution according to my instructions … or be answerable to me" (Day 3 page 47) there were no concrete examples of her ever giving Mr. Burke instructions. Indeed, Mr. Burke's evidence was clear that at all times he took his instructions from Promontoria's solicitors and that he did not check with her if she agreed with those instructions, nor did he ask her to approve of them but rather he simply "informed her as to what the position was" (Day 2, pages 82-85). To the extent, as will be considered below in the context of the discussion on the law, that the law requires the County Registrar and Court Messenger to take responsibility for executing court orders for possession, this responsibility was entirely, on the facts of this

case, abdicated and surrendered to Promontoria and Mr. Burke. Consequently, all of the normal steps that would have been taken by the County Registrar and her Court Messenger and that had evolved over years of experience and practice were abandoned. On the facts as transpired here this was critical in several respects, not least because the County Registrar confirmed that her normal practice would always be to instruct her Court Messenger to defer taking possession if an occupier was seeking access to the Courts.

(iii) The third letter of 14 October 2024 was to Ms. Ooi's partner

40. This letter had not been appended to Mr. Cullen's witness statement. Nonetheless it was in a book of correspondence. This letter was dated 14 October 2024 and bore the signature stamp of the County Registrar, but, as far as Mr. Cullen could recall (unlike the first two letters described above) it was not sent. However, the letter is important as it reflects the established practice in Wicklow. The letter stated:

> *"An Ejectment Order has now been issued in order that clear possession can be obtained from you of the lands and premises at [left blank].*
>
> ***I therefore request that you make arrangements to hand over possession to me or my Representative on or before 11.00am ONE WORKING DAY PRIOR TO [left blank].***
>
> *If you fail to do so, then I will proceed to eject you or anyone else in occupation without further notice. Needless to say this action will, in addition, result in further expense and publicity to you.*
>
> ***<u>Please treat this Notice as FINAL AND URGENT"</u>***

41. The words underlined and in bold above, are as *per* the letter which appeared behind Tab 4 of an agreed book of correspondence. Again, a key date was left blank. Given that the letter was actually stamped with the County Registrar's signature, Mr. Cullen was asked whether or not it was intended that this letter should go out if, after the process outlined in the earlier letters, no resolution had been achieved. He indicated he would just send this out after the process (i.e. the contact and engagement and visit during the first month) but would nonetheless leave it with the same date. He was also unclear as to how long would be afforded by the date left blank at the end of the second paragraph. At one point in his evidence he suggested he would send it out with this date blank but that sometimes a date would be inserted. He was clear though, that if a date was inserted, that it would be a date instructed to him by the County Registrar; see Day 2 pages 140-142.

42. Given that this letter was not appended to Mr. Cullen's witness statement or addressed by him in his witness statement it may well be that Mr. Cullen had not thought about this letter much in advance of giving his evidence. However, as far as his evidence went, I am satisfied that the key dates that Mr. Cullen would normally insert in these letters for the handing over of possession would be inserted by him on the explicit instructions of the County Registrar as the person who he considered, quite correctly, to be in charge. It was certainly clear that he did not consider that either he, much less the judgment creditor, had the authority to dictate these dates.

43. The evidence from the County Registrar and Mr. Cullen, when considered in the context of the template letters they used for executing possession orders, indicates that after the first letter the Court Messenger would call on the debtor personally to assess the situation within one month. The County Registrar gave evidence as to this normal practice (see Day 2, page 146 and Day 3, pages 84 to 89 in particular). She explained that the matter had to be handled with great sensitivity and that there would be an effort to engage with the debtor which would include calling to the house and seeking to assess the situation. She described in particular that it was important to assess whether or not there were any children or vulnerable adults at the premises. In the context of this case, she accepted that Ms. Ooi's

adult child with special needs would come into the category of a vulnerable adult. In addition in the context of giving a description as to what the normal procedure would be, she explained that if she understood that an occupant was making any application to court that time would be afforded to allow this to happen (Day 3, page 95).

(iv) The fourth letter of 14 October 2024

44. The fourth letter was another template letter dated the 14 October 2024 and bearing the County Registrar's signature stamp. This one was addressed to Ms. Ooi's partner and it purported to appoint the Court Messenger Mr. Cullen to execute the possession order. This letter had been left out of both the documents appended to Mr. Cullen's witness statement and the book of correspondence.

45. It was not in dispute that legally this did not constitute a warrant appointing Mr. Cullen. On the other hand it may have contributed to the County Registrar's mistaken belief that she had issued a warrant appointing Mr. Cullen.

46. The letter was apparently sent out and stated:

> *"I hereby authorise and empower Andrew Cullen, Court Messenger, of WICKLOW SHERIFF'S OFFICE, and his/her assistants to execute the within Court Order.*
>
> *Given under my hand this day: 14/10/2024."*

47. Notwithstanding this, the evidence shows that no valid warrant appointing Mr Cullen was ever issued. Mr Cullen himself confirmed he had not prepared such a warrant and Counsel for the State Defendants confirmed that no such warrant existed on the file. Accordingly, while the County Registrar believed she had issued such a warrant, this was incorrect.

48. Notwithstanding the preparation by Mr. Cullen of this letter and the affixing by Mr. Cullen of the County Registrar's signature stamp to this letter, Mr. Cullen indicated he did not wish to execute the possession order and that he informed the County Registrar of this. His position was linked to his earlier feelings of foreboding. The County Registrar in her evidence indicated that she accepted that assistance would be required and she observed that while the role of Court Messenger was very important that it was not a particularly well paid role.

49. The evidence indicated that the County Registrar concluded that she would "need assistance" and decided to appoint Mr Burke. The evidence also shows that Mr. Burke had been identified by Promontoria, and that when he himself suggested his appointment that the County Registrar agreed.

The Warrant of 14 October 2024

50. Accordingly, while on 14 October 2024, Mr. Cullen had printed off and signature stamped a letter to the occupier stating that the County Registrar was authorising and empowering "Mr. Cullen, Court Messenger" to execute the possession order, in fact it seems that at some point later that day, on the instructions of the County Registrar, Mr. Cullen printed off a draft warrant and inserted the name "Joseph Burke" with an address of "Dublin City" in the Schedule for "Court Messengers and Bailiffs" and included no other names. The County Registrar told Mr. Cullen to put in Mr. Burke's name. In turn, she did so because Mr Burke had contacted her and told her he was willing to act. He in turn had done that, following conversations with someone in Promontoria and Promontoria's solicitor who had asked him if he would act and who had agreed to pay him.

51. As the evidence disclosed, she believed (see Day 3, pages 63 and 66 for an example), incorrectly as it transpired, that she had issued a warrant appointing Mr. Cullen.

52. In addition, she made it clear in her evidence that she intended that Mr. Cullen would assist her in this. In answer to questions during cross examination she stated "My court messenger

would always be empowered to assist …. He's my court messenger, he has to be authorised"; see Day 3, page 63.

53. Her belief about a second warrant is understandable in that, based on her evidence and that of Mr. Cullen, she left the production of all these documents to Mr. Cullen who could apply her signature stamp to them without her having to review the documents in advance.

54. Indeed the County Registrar accepted she could not remember or say that she had reviewed the warrant appointing Mr. Burke before Mr. Cullen applied her signature stamp (Day 3, page 56 to 57).

55. In addition, the County Registrar believed that the legal backdrop gave her "ample authority to appoint a bailiff, along with a court messenger or such, to appoint such assistance as I needed to carry out the order of the court"; see Day 3 page 43. While she believed that legally she could appoint someone to assist "along with a court messenger" and while she believed she had actually appointed her court messenger, the evidence shows that she did not do so.

56. The County Registrar also stated that her understanding was that at the time this warrant was issued that the template of the warrant would have been available to the public via a website and a member of the public could download the template of the warrant (Day 3, page 108). Counsel for the State Defendants did indicate later in the hearing after the evidence had closed, that as of May 2026 in any event this was not possible.

57. It is important at this point in the chronology of events as borne out by the evidence, to pause and bear in mind that any consideration of the Warrant (as compared with the earlier consideration of the four letters) must take place against a more formal legal back drop. The warrant is the key document under the legislation that gives authority to the person who turns up at the doorstep of a home with legal permission to forcibly enter the home and take possession of it as part of the execution process of court orders.

58. This legal back drop will be considered in more detail below in the **Discussion** section of this judgment, nonetheless it is useful to set out a short description of this legal back drop at this point.

59. The execution of possession orders is governed by the *Enforcement of Court Orders Act 1926*, particularly sections 3 to 5. Section 5 provides:-

> *"5.—(1) Every court messenger when assisting the [County Registrar] in the execution of an execution order or when executing an execution order for an [County Registrar] shall be furnished by the [County Registrar] with a warrant in writing signed by the [County Registrar] and authorising the court messenger by name to execute or assist in the execution of that particular execution order, and no court messenger shall execute or take part in the execution of any execution order unless duly authorised so to do by such warrant as aforesaid.*
>
> *(2) It shall be the duty of every court messenger executing or assisting in the execution of an execution order, at any time after entering on any lands or premises under such execution order and before removing therefrom any property, to produce on demand to the person in apparent possession of such lands or premises the warrant issued to him under this section by the [County Registrar].*
>
> *(3) A court messenger executing or assisting in the execution of an execution order in pursuance of a warrant duly issued to him under this section shall have all the powers which would be vested by law in a bailiff employed by an [County Registrar] for that purpose.*
>
> *(4) A warrant issued by an [County Registrar] under this section shall not lapse or be prejudiced by reason of such [County Registrar] ceasing to hold office but every*

> *such warrant shall lapse and terminate on the court messenger named therein ceasing to hold office."*

The 1926 Act was enacted on 29 May 1926 and initially referred to "under-sheriffs" as opposed to county registrars. However under-sheriffs were phased out and over the next number of decades their functions were gradually transferred on retirement to county registrars. As a result of other reforms the position is that in Dublin City and County and in Cork the enforcement of court orders is carried out by Sheriffs (the volume of work in those locations was considered too extensive for county registrars), whereas elsewhere the enforcement job falls to the county registrar, who exercises the power formally vested in the under-sheriff. There is a comprehensive description of this history in the judgment of Allen J. for the Court of Appeal in *Start Mortgages v Kavanagh* [2025] IECA 127.

60. As can be seen, section 5 of the 1926 Act provides that every court messenger assisting a county registrar in the execution of an execution order or when executing an execution order "*shall be furnished by the [County Registrar] with a warrant in writing signed by the [County Registrar] and authorising the court messenger by name to execute or assist in the execution of the particular execution order*".

61. At any time after they have entered the lands in question, section 5(2) places a duty on every court messenger who is executing or assisting in the execution of an execution order to produce on demand to the person in "apparent possession" of the lands the warrant issued by the County Registrar.

62. It is clear that this requirement serves as an essential safeguard, given that execution may involve forcibly entering and taking possession of a person's home. It is, to say the least, somewhat surprising therefore that this essential safeguard was absent in the system here where the Court Messenger could print off and complete a warrant naming himself, or indeed anyone else, and then stamp it with the County Registrar's signature without her reviewing the document.

63. In this case the Warrant was printed off and filled in by Mr. Cullen and named only "Joseph Burke" with an address of "Dublin City" in the schedule to the warrant for Court Messengers and Bailiffs.

64. In considering the Warrant it is also important to note that the State Defendants submitted in the context of an earlier interlocutory application on behalf of Ms. Ooi, where she sought to have the validity of the Warrant decided by way of preliminary issue, that the full factual circumstances giving rise to the issue of the Warrant had to be considered. They contended before Mulcahy J. that "all the circumstances surrounding the issuing of the warrant" needed to be heard in evidence. Mulcahy J. accepted this point and for that reason, along with others, he declined to direct the hearing of a preliminary issue; see *Ooi v Ireland & Ors* [2025] IEHC 392. Surprisingly then at this plenary hearing, the State Defendants initially sought to avoid having to call the County Registrar as a witness and hoped to just rely on her witness statement, which was narrow and did not reflect the extent of the evidence she actually gave about the full circumstances of the issue of the Warrant.

65. The Warrant had the logo of the Courts Service printed at the top. It was headed "Possession" and had an internal Wicklow Court Service record number which was entered by Mr Cullen. This was their own filing number and was not intended to be the record number of the possession proceedings.

66. It was then headed "WARRANT ON ORDER LODGED FOR EXECUTION" and it referred to the title of the case and gave the address of the property.

67. The Warrant then continued as follows:

"By Mary Delehanty (sic) County Registrar to my Court Messenger and Bailiffs whose names and addresses are set out in the First Schedule hereto for this purpose, but not otherwise.

By virtue of an Order as described in the Second Schedule hereto to me directed and delivered and dated as set out in the said Second Schedule, I command you and each of you and that you jointly and severally enter the lands set out in the said Order to have possession of the said lands and premises with the appurtenance thereto annexed, as by said order I am commanded. And for doing so this shall be you sufficient Warrant."

68. It was then date stamped with a Bray Court Office stamp as the "14 Oct 2024".

69. Then there was a space for the County Registrar to sign the warrant and Mr Cullen confirmed that he applied the County Registrar's signature stamp.

70. There was then a section headed First Schedule and in brackets the form stated "(Set out names on Court Messengers and Bailiffs)."

71. There was then a box with a column for names and a separate column for addresses. The only entry was the name "Joseph Burke" and the address was simply "Dublin City". Mr. Cullen confirmed that he filled in these details.

72. There was then another heading "SECOND SCHEDULE" with the following information set out:

Date of Order:	*25/09/2024*
Type of Order:	*Warrant of Execution*
Title of Action:	*Repossession*
Description of Premises:	*Lands and Premises*

73. There was then a paragraph that read:

"The Court Messenger will have the original Court Order and it is suggested that a copy of the Court Order be annexed to the additional Warrants."

74. Finally, the Warrant had a further date stamp from the Bray Court Office of 16 Oct 2024 and the evidence was that this was when the original warrant was sent to Mr. Burke.

75. Accordingly, the Warrant as issued did not name the County Registrar's Court Messenger, notwithstanding the fact that Mr. Cullen, who was the Court Messenger, had printed off and completed a letter which he signature-stamped with the County Registrar's signature, addressed to Ms. Ooi's partner, informing him that she had issued a warrant to her Court Messenger to execute the order for possession.

The execution of the Warrant

76. The Warrant was initially emailed to Mr. Burke. The next day, on 15 October 2024, Mr. Burke then sent a letter addressed to the occupiers of the gate lodge on Dublin City Sheriff notepaper, indicating that the County Registrar had appointed him as her agent to execute the order for possession, and he attached a copy. In his evidence, Mr. Burke confirmed that he had not noticed, or realised, that the County Registrar had not actually signed the Warrant. The Warrant had initially been sent to him via email, and he indicated that he would not, accordingly, have noticed that it was a stamped signature. When the original arrived in the post some days later, he could not recall having personally received or handled it, and if he did, he had not paid any particular attention to it. He indicated that it may well have been someone in his office who simply filed the original warrant away when it arrived.

77. Mr. Burke's letter of 15 October 2024 stated:

> *"You must now vacate the property by midnight on Tuesday, 22 October 2024."*

It continued:

> *"I shall attend without further notice to you on a date after this date to take Possession of the property. If you have any goods on the premises you should remove them before this date, because if I have to remove them and put them out on the street, I will not be responsible for any loss incurred by you due to breakage, theft, or damage."*

78. In relation to the steps Mr. Burke described taking at this juncture, he explained that he had only ever been in this position once before, where he was asked to execute a possession order by another County Registrar.

79. The legal position is that, as Dublin City Sheriff, he is in an analogous position in Dublin City to the County Registrar in Wicklow. Accordingly, while he had a protocol and procedure which he followed as Dublin City Sheriff, he did not have a specific one for this role where he was acting as the agent of someone in an equivalent position to his normal position in another county.

80. Accordingly, it appears that he wrote his letters on Dublin City Sheriff headed paper without giving the matter much thought, even though he was not acting in that capacity, and even though it must have appeared to recipients that he was writing in his capacity as Dublin City Sheriff.

81. As he had only ever been in this position once before, he confirmed that he was not even sure whether he had insurance to cover the work he was proposing to do.

82. As well as writing to the occupiers of the gate lodge, he also wrote to Ms. Ooi's partner by letter of 15 October 2024 in similar terms. He enclosed a copy of the execution order and stated that the property must be vacated by midnight on Tuesday, 22 October 2024.

83. He also wrote a similar letter addressed to the occupiers of the House. Accordingly, it appears that Mr. Burke wrote three letters: one to Ms. Ooi's partner, one to the occupiers of the gate lodge, and one to the occupiers of the House. Each of these letters was on headed notepaper stating, "Office of the Dublin City Sheriff" and each gave the occupiers one week's notice.

84. In addition, Mr. Burke described how he called to the property on 15 October 2024 and had a brief meeting with Ms. Ooi's partner. He said that he asked for a further meeting the following day and, in advance, sent an email on 16 October 2024. The letters of 15 October 2024 had been delivered by hand, and Mr. Burke repeated in his email of 16 October that the occupants were required to vacate the property by midnight on Tuesday, 22 October 2024.

85. As with his letters, Mr. Burke signed his email of 16 October as "Joseph Burke, Dublin City Sheriff". There was some reference to matters concerning the Gardaí by Ms. Ooi's partner, and Mr. Burke indicated in his email of 16 October 2024 that he was satisfied that it did not impact the validity of the order for possession. Mr. Burke also confirmed that he was aware that there had been an appeal of the Circuit Court order for possession, that this had been unsuccessful, and that the stay of 18 months had now expired.

86. Ms. Ooi's partner replied by email that morning, referring to proceedings concerning the family home, issued in February 2024, involving Ms. Ooi's claim regarding the constitutionality of provisions of the Family Home Protection Act.

87. By further email on 16 October 2024, Mr. Burke replied, reiterating that the County Registrar for Wicklow had appointed him as her agent, that he had agreed to act in that role, and that

this was “not unusual”. This was incorrect, as according to Mr. Burke’s evidence, this had only occurred once previously during Mr Burke’s time as Dublin City Sheriff.

88. Mr. Burke then stated:

> *“I am not obliged to look behind the execution order and I will execute the order as advised in my earlier email unless I am directed not to do so by [Promontoria], as I am obliged by law to do so.”*

89. While that statement may have been correct had Mr. Burke been acting in his normal capacity as Dublin City Sheriff, it was not strictly correct at this juncture, as he was acting as the agent of, and, legally at least, under the direction of the County Registrar.

90. Ms. Ooi’s partner sent a further email later that evening (16 October 2024), stating that he had visited Bray District Court and that “your documents are not in order”. It is unclear what he was referring to in that regard.

91. The following morning, by email dated 17 October 2024, Mr. Burke replied that he was satisfied his paperwork was in order. He stated:

> *“I am in regular contact with the County Registrar for Wicklow and we are both satisfied the execution order and her warrant appointing me are valid, and I am obliged to execute the order.”*

92. It is not clear what Mr. Burke was referring to, as neither he nor the County Registrar gave specific evidence of any such discussions at that time.

93. The next day, 18 October 2024, Ms. Ooi applied to the High Court on an *ex parte* basis for an order prohibiting Mr. Burke from carrying out an eviction of Ms. Ooi and her family from the House. This application was made in Ms. Ooi’s Family Home Protection Act proceedings, which named Ireland, the Attorney General, Ms. Ooi’s partner, and Promontoria as defendants.

94. In her grounding affidavit filed on 18 October 2024, Ms. Ooi explained that she was acting as a litigant in person. Having set out the background, she referred to the fact that her eldest child had special needs. She explained that she was originally from Malaysia, had come to Ireland, studied medicine in UCD, and had practiced as a doctor and eye surgeon until she retired to care for her eldest child.

95. She outlined the background to the financing arranged by her partner and why she believed it was unconstitutional that her unmarried status left her without the protections otherwise provided by the Family Home Protection Act. She further explained the background to her proceedings and her opposition to the possession proceedings. She claimed that her constitutional challenge to provisions of the Family Home Protection Act 1976 was arguable, referring to the decision of the Supreme Court in *O’Meara v. Minister for Social Protection & Others*. She accordingly sought an order restraining possession being taken of the House. She exhibited the letter from the County Registrar dated 14 October 2024, which Mr. Cullen had prepared and signature-stamped, indicating that the Court Messenger had been appointed by warrant to execute the order. She also exhibited Mr. Burke’s letter of 15 October 2024 addressed to the occupiers of the house and signed by him as Dublin City Sheriff.

96. Having heard the application, the High Court on 18 October 2024 granted an order against Promontoria on an *ex parte* basis prohibiting execution of the possession order for the eviction of Ms. Ooi and her family, and this order was continued until 25 October 2024. That order was subsequently continued until the decision of Cahill J. on 19 November 2024. Mr. Burke was notified of the making of this order on 18 October and confirmed that he would comply.

97. It appears that the primary party that contested the application was Promontoria. Consequently, there can be no doubt that Promontoria was aware of the specific situation at the House, including that Ms. Ooi's children were residing there and that the eldest child had special needs. Promontoria was represented by the same firm of solicitors and counsel in those proceedings as in these proceedings. Accordingly, while it is not clear whether any representative of Promontoria actually read all the documentation or attended any court hearing, there can be no doubt that, from a legal perspective, Promontoria was aware of the circumstances on the ground. It may also be observed that no officer or employee of Promontoria gave evidence in this case.

98. The interlocutory application was heard by Cahill J., who delivered judgment on 19 November 2024, [2024] IEHC 663. In addition to Ms. Ooi's application, Promontoria brought an application seeking to dismiss her claim as bound to fail. Cahill J. described the reliefs sought as follows:

> *"In addition to the declaration that s. 2 of the Act of 1976 is repugnant to the Constitution, Ms. Ooi seeks various additional declaratory reliefs, including:*
>
> > *(a) a declaration that s. 2 permitted Promontoria, as well as the third defendant (Mr. McDonagh), to violate the constitutional rights of Ms. Ooi and her children contrary to Article 45.2(iv) of the Constitution;*
> >
> > *(b) a declaration that Ms. Ooi and her children are entitled to reliefs pursuant to s. 5(2) of the Act of 1976;*
> >
> > *(c) a declaration that the conveyance of Dromin House is of no effect in relation to Ms. Ooi's rights under ss. 2 and 5(2) of the Act of 1976; and*
> >
> > *(d) damages.*
>
> *There is also a specific claim that Dromin House was described as a 'retail unit' in a compromise agreement entered into in 2013, and that this constituted a misrepresentation designed to avoid the application of the Act."*

99. The State defendants did not seek to strike out Ms. Ooi's claim. Accordingly Cahill J. did not have to determine whether the constitutional claim was arguable. However, the Court did consider whether Ms. Ooi had an arguable claim against Promontoria, given that it had the benefit of a possession order.

100. Cahill J. concluded that it was arguable that, if Ms. Ooi succeeded in her constitutional challenge to section 2 of the Family Home Protection Act, she might be entitled to a remedy against Promontoria. She concluded that if section 2 of the Family Home Protection were to be found to be unconstitutional that it could not be said that there was no reasonable cause of action, or prospect of Ms. Ooi succeeding in recovering a remedy against Promontoria. In reaching that conclusion she noted that it was the choice of Promontoria to press for its possession proceedings to be heard and determined first and that this undermined its insistence that the possession order could not be interfered with and that these proceedings were bound to fail. Accordingly, Cahill J. refused Promontoria's application to strike out Ms. Ooi's claim. However, for a variety of reasons (including delay and the likelihood that Ms. Ooi would not ultimately succeed in obtaining a permanent injunction) she also refused to grant interlocutory relief restraining possession.

101. Cahill J.'s decision was delivered on 19 November 2024. On the following day, 20 November 2024, Mr. Burke wrote to Ms. Ooi's partner stating that he understood the application for an injunction had been unsuccessful. He continued:

> *"I am instructed to immediately execute the order as the interim order granted by the High Court has now expired and I am now notifying you that you must vacate the property by 12 midnight tonight and you should ensure all other occupants vacate the property by midnight tonight.*
>
> *I will execute the order without further notice to you and this email is being sent as a courtesy…"*

102. In his evidence, Mr. Burke confirmed that he had been informed of the outcome by Promontoria's solicitor, who also confirmed that he had received instructions from his client to execute the order immediately and he had passed those instructions to Mr. Burke. Neither party made notes of these conversations, and the solicitor could not recall who within Promontoria had issued the instructions.

103. It follows from the evidence that Mr. Burke was acting in accordance with the strict instructions from Promontoria through its solicitor. While he had originally given seven days' notice in his letter of 15 October 2024, he now acted on fresh instructions, requiring the occupants to vacate by midnight that same day.

104. In addition to that email, Mr. Burke sent a further email to Ms. Ooi herself at 14:05 on Wednesday, 20 November 2024, stating:

> *"Madam,*
>
> *Please note you must vacate the property by midnight tonight as I plan to execute the order immediately as your application for an injunction was unsuccessful."*

105. As before, this was signed by Mr. Burke as "Dublin City Sheriff." In effect, this communication gave Ms. Ooi less than 12 hours' notice. At that time, Mr Burke, Promontoria's solicitor, and Promontoria were aware that Ms Ooi was residing in the property with three children, one of whom was a minor and one of whom had special needs.

106. The evidence further indicates that none of these instructions were subject to any oversight from the County Registrar, who played no role in this stage of events. While the County Registrar believed she may have been sent documents by Mr. Burke about the various court developments, it transpired that she was mistaken in that belief. It is also clear from her evidence as to her normal practice that what was being proposed on Wednesday, 20 November 2024 differed from the approach the County Registrar indicated she would ordinarily adopt.

107. Faced with this situation, Ms. Ooi made an application that afternoon to Ms. Justice Cahill who directed that an application for a further injunction, pending an appeal to the Court of Appeal, be notified to the defendants and to Mr. Burke, and the matter was listed for Monday, 25 November 2024.

108. On 25 November 2024, the High Court granted a further order staying execution of the possession order until the first directions hearing of Ms. Ooi's appeal to the Court of Appeal. This first directions hearing was listed for 13 December 2024. By that stage, Ms. Ooi had also issued a motion with the Court of Appeal for an injunction restraining execution pending the determination of the appeal.

109. When the matter came before the Court of Appeal for directions on 13 December 2024, it appears that an agreement was reached about the injunction. Ms. Ooi was representing herself, and Promontoria was represented by its solicitor. Prior to the matter being formally called, a hearing date of 13 January 2025 became available. It appears that Promontoria's solicitor and Ms. Ooi agreed that the injunction could continue until that date, and that Ms. Ooi's motion would also be adjourned to that date. Accordingly, on a consent basis, Costello P. extended the injunction to 13 January 2025, and, so far as was explained in evidence, Ms. Ooi's motion was likewise adjourned to that date.

110. Ms. Ooi's appeal was heard by the Court of Appeal on 13 January 2025. It appears that, due to inadvertence, neither Ms. Ooi (who was representing herself) nor Promontoria (who were represented by solicitor and senior counsel) adverted to the motion also being listed. Accordingly, nothing happened to the motion, and, following the hearing, judgment was reserved. Strictly speaking, therefore, it appears that the court order restraining execution of the possession order lapsed as of 13 January 2025.

111. However, Promontoria's solicitor indicated in evidence essentially that he did not consider it appropriate to seek to execute the possession order while awaiting the judgment of the Court of Appeal.

112. The judgment of the Court of Appeal was delivered electronically on Friday morning at about 11am on 21 February 2025. Ms. Ooi's appeal was unsuccessful, and the decision of Cahill J. was upheld. The Court of Appeal also relied on Ms. Ooi's failure to provide an undertaking as to damages as part of its reasoning in refusing interlocutory relief. Ms. Ooi received the judgment by email at approximately 11:00 a.m. on Friday, 21 February 2025.

113. Promontoria's solicitor notified Mr. Burke shortly thereafter. As far as he could recall, he had received instructions from a representative of Promontoria to execute the possession order with immediate effect. He could not recall the identity of that person and had made no note of the conversation. Mr. Burke similarly recalled receiving instructions to execute immediately.

114. Accordingly, Mr. Burke wrote to Ms. Ooi and her partner by letter dated 21 February 2025, sent during the afternoon. Ms. Ooi stated that she received this letter at 16:14 that afternoon.

115. In this letter on headed paper entitled "OFFICE OF THE DUBLIN CITY SHERIFF", Mr. Burke again indicated that the County Registrar had appointed him as her agent to execute the possession order. He stated that he understood that the appeal had been determined and that the stay on execution was no longer in place (in fact, the stay had lapsed on 13 January 2025). Mr. Burke continued in his letter:

> *"I am instructed to immediately execute the Order and I am now notifying you that you must vacate the property by 12 midnight on Sunday 23 February 2025 and you should ensure all other occupants vacate the property by this time."*

The letter concluded:

> *"I strongly urge you to comply with the order by vacating the property by the specified date and hand over the keys to me to avoid a forcible eviction."*

This letter was again signed by Mr. Burke "Dublin City Sheriff".

116. Mr. Burke confirmed in evidence that this letter, including the associated timeframe, was issued strictly in accordance with the instructions he had received from Promontoria through its solicitor. He also confirmed that he did not seek any input, instruction, or confirmation from the County Registrar as to whether this approach was appropriate. It was clear from his evidence that he did not consider that he himself had any discretion in the matter. Mr. Burke did state that he believed, based on what he had been told about the history involving Ms. Ooi's partner, that it was prudent to act swiftly. However, he did not identify any specific history involving Ms. Ooi herself that justified this approach. He also stated:

> "*When I went to execute the order, I decided that it was prudent not to give a significant period of time on this occasion, because I felt it might make it more difficult to carry out my function*."

117. On the following day, Saturday, 22 February 2025, Mr. Burke received a letter from Ms. Ooi referring to his correspondence. In that letter, she stated that she was preparing an

emergency application to the Supreme Court and intended to seek an urgent hearing in light of the implications for her and her children. She requested that the eviction not proceed pending that application and undertook to keep him informed within 48 hours. She stated that the letter should be treated as notice of her intended application.

118. The evidence indicates that Mr. Burke did not communicate this development to the County Registrar. It is also clear from the County Registrar's evidence that, in circumstances where she is responsible for execution of a possession order, it is her practice to await the outcome of any pending court applications. Notwithstanding this, it appears that a decision was made, following discussions between Mr. Burke and Promontoria's solicitor, not to delay or await any such application.

119. Accordingly, between Friday, 21 February and Monday, 24 February 2025, Mr. Burke made arrangements to take possession of the property. He assembled a team of five individuals who normally worked with him as Dublin City Sheriff, including Mr. Gray, a tow truck driver who was also a Dublin City court messenger. In addition, approximately ten members of a security company, K-Tech, were engaged, and a further group of approximately ten to fifteen individuals from Blackwater were arranged to attend to take a handover of possession following execution.

120. On Sunday morning, 23 February 2025, Mr. Burke sent an email to Ms. Ooi (copied to Promontoria's solicitor), acknowledging receipt of her letter and stating:

> *"My position remains as outlined in my letter to you on Friday, you must vacate the property by midnight tonight. I am obliged to execute the order and will do so without further notice to you."*

121. Mr. Burke confirmed that this communication was sent on the instructions of Promontoria's solicitor. The evidence shows that all parties were aware at this point that Ms. Ooi lived in the home with three children, including one minor and one with special needs.

122. Ms. Ooi's partner sent an email, signed "The McDonagh Family," addressed to Mr. Burke and one of his assistants, stating:

> *"Please be advised we will not be vacating our family home tonight at midnight."*

123. In addition, Ms. Ooi's partner sent a detailed letter on Sunday, 23 February 2025, reiterating issues some of which he had previously raised in relation to the borrowings, the debt, and an alleged Garda investigation, the details of which were not explored in this hearing. He referred to earlier correspondence from March 2023 in which Mr. Cullen had indicated that no further action would be taken pending the outcome of a Garda investigation. His letter further challenged the legality of steps taken in the process and stated that he would be making an urgent application to set aside the execution order. He concluded by calling on Promontoria not to pursue what he described as an unlawful seizure of his property. This letter was copied to Ms. Ooi and Promontoria's solicitor.

124. Ms. Ooi's partner also sent a further email to Mr. Burke elaborating on his concerns regarding the legality of the process, including making specific reference to the special needs of one of his children.

125. At 22:11 on Sunday evening, Mr. Burke sent an email to Ms. Ooi's partner stating:

> *"I have been lawfully appointed by the Wicklow County Registrar to execute the order on her behalf. I will show you the document appointing me when I attend to take possession."*

126. Ms. Ooi's partner replied shortly thereafter, stating that this was not acceptable and requesting that the relevant documentation be provided immediately by email to allow him to verify the appointment.

127. Mr. Burke responded shortly afterwards, attaching a copy of the Warrant and asking:

> *"Please confirm you will have vacated by midnight tonight."*

This email was sent at 22:26.

128. The following morning, Mr. Burke and his team assembled at a nearby car park in Delgany. Mr. Gray also gave evidence in relation to these events. Mr. Gray described a briefing that took place and confirmed that, during that briefing, nothing was said about Ms. Ooi residing in the property or about the potential presence of any children. He was clear in his evidence on this point and stated that, as far as he was aware, no one was given any individual briefing on such matters either. In fact, he recalled that, a day or two earlier, Mr. Burke had told him that Ms. Ooi had left the property. Overall, Mr. Gray estimated that there were approximately 17 individuals present, with an additional 10 to 15 individuals from Blackwater (Day 2, pages 100–101).

129. Mr. Gray, who was also a Dublin City court messenger, gave evidence as to his understanding of standard practice in repossession cases. He stated that normally a seven-day notice would be given, followed by a visit to the property to assess who was residing there, including whether there were children or vulnerable individuals. He indicated that, based on the briefing given in this case, those present did not know that anyone would be in the house and that he was unaware of the potential presence of the three children (Day 2, pages 105–106).

130. As events unfolded that Monday morning, the family experienced what was, at least from the children's perspective, a relatively normal start to the day. Ms. Ooi left the house at approximately 7:45 a.m. with her two youngest children. Her middle son was dropped at Bray DART station and he travelled into Dublin for university. Her youngest son was taken to his school in Bray, where he was sitting a mock Leaving Certificate examination. Ms. Ooi then travelled into Dublin to attend the Four Courts, where she hoped to seek a continuation of the stay pending an application to the Supreme Court. Her eldest son remained at home with Ms. Ooi's partner (Day 1, pages 64–65).

131. Upon arriving at the Four Courts, Ms. Ooi explained that she was unable to make an application to the Court of Appeal.

132. Meanwhile, during that morning, Mr. Burke proceeded to take possession of the house. The circumstances of this were described in evidence by both Mr. Burke and Mr. Gray. Mr. Gray recounted an incident in which he observed a shotgun being pointed through an open window, which resulted in the Garda Armed Response Unit being called to the scene. While this incident did not involve Ms. Ooi, who was in Dublin at the time, it was introduced in evidence, presumably in the context of the State Defendants contention that the full circumstances of the issue and execution of the warrant are relevant. As the incident is the subject of pending criminal proceedings, it is not necessary to set out further details here. In any event, its relevance to the issues to be determined in these proceedings is modest.

133. Ultimately, with the assistance of a family member, Ms. Ooi's eldest son left the House. Mr. Burke then took possession of the property and handed it over to the representatives of Blackwater who were present. Neither Ms. Ooi nor her two other sons, who had left the property earlier that morning, ever returned to the House thereafter.

134. Ms. Ooi made an application for leave to appeal to the Supreme Court from the decision of the Court of Appeal, which was delivered electronically on Friday, 21 February 2025. This application was made on 3 March 2025, the order of the Court of Appeal having been perfected on 28 February 2025. Her application to the Supreme Court was unsuccessful; see the determination of the Supreme Court dated 26 May 2025, [2025] IESCDET 70.

135. As can be seen, her application was only submitted after the Court of Appeal order refusing her appeal had been perfected, which occurred on Friday, 28 February 2025. By that stage, Promontoria and Blackwater had obtained possession of the House.

136. In her evidence, the Ms. Ooi described losing her home of twenty years in these circumstances as humiliating and traumatising. This was the only home her children had known.

137. She then described what happened in the aftermath of losing the home. She explained that she had not been allowed to re-enter the property to retrieve any possessions, but was instead sent photographs and asked to identify the items she required. She stated that only essential items were returned to her and her children.

138. Ms. Ooi also gave evidence as to her circumstances following the eviction. During her evidence on day one (from page 117 onwards), she stated that initially she and her children lived with her brother-in-law, the same relative who had assisted in removing her son with special needs from the house on the day of the eviction. She said they stayed there for a few days before moving to her partner's mother's house.

139. She described both living arrangements as challenging. At her partner's mother's house, she said there were already two lodgers residing there, and she and her three children had to share two rooms. Two of the sons slept in one room, while she shared a room with her son with special needs. Her youngest son had successfully completed his leaving certificate and was now, like her middle son, also in a university in Dublin. She explained that she had ceased working as a doctor in 2013 in order to care for this son, and that she was largely reliant on borrowing from friends.

140. While her application for leave to appeal to the Supreme Court had been pending, these proceedings were commenced on 25 March 2025. Meanwhile, having obtained possession, Promontoria appointed a receiver, who subsequently sold the property. The sale closed on 4 July 2025.

141. Accordingly, Ms. Ooi's claim in these proceedings is confined to a claim for damages and for declarations.

III. SUBMISSIONS

(i) Summary of the Plaintiff's Submissions

142. Mr. John Kennedy, SC (appearing with Mr. Rory Kennedy, BL) made very helpful oral and written submissions.

143. Mr. Kennedy, SC firstly made it clear that he was not challenging the validity of the possession order made in the Circuit Court and upheld on appeal. Rather he stated that the case was fundamentally about the Warrant and how the eviction was carried out. In other words, he contended that even though Promontoria were entitled to possession it must be taken lawfully and with respect to the plaintiff's rights.

144. His central point was that the 1926 Act required, at a minimum, that either the County Registrar execute the execution order herself or the County Registrar can issue a warrant which must name the Court Messenger as one of the people who will execute the execution order. Mr. Kennedy, SC relied on the judgment of Stack J. in *Everyday v Carroll* [2025] IEHC 626 (para.s 36 to 46 in particular) as authority for this proposition. If further assistance is required, then specific individuals can also be named as bailiffs on this warrant. However, it was a legal error of substance to issue a warrant which omitted to appoint the Court Messenger, he contended. He said the pre-printed material on the Warrant supported this interpretation of the legal requirements.

145. Consequently, in this case he submitted that the eviction was unlawful because it was carried out by someone who had no legal authority. The Warrant only named "Joseph Burke" of "Dublin City" and he was not a Court Messenger for Wicklow. Therefore, Mr. Kennedy, SC contended that the delegation to Mr. Burke was invalid, and the eviction was unlawful.

146. Mr. Kennedy summarised his 'central' claim as being that only court messengers can lawfully execute possession orders and Mr. Burke was not a court messenger. Consequently, he submitted that the warrant improperly authorised a bailiff alone and therefore the County Registrar had unlawfully delegated her powers. Consequently, he submitted that the warrant was not properly issued or validated and therefore, the eviction was unlawful, in particular as Article 40.5 of the Constitution means that strict compliance with the law is required; he cited the Supreme Court decision in *Moore v. Dun Laoghaire-Rathdown Co. Council* [2017] 3 IR 42 in this context, and para.s 38-42 in particular.

147. Next, separate to the above point, he contended that the overall circumstances here meant that the Warrant had not validly issued due to the County Registrar not signing the Warrant and not even reviewing the Warrant before Mr. Cullen applied her signature stamp. He relied on section 5(1) of the 1926 Act and the Supreme Court decision in *DPP v McCormack*, 20 July 1984 and the judgment of Henchy J. for the proposition that a rubber stamp signature could be deemed good "unless it was shown that it was not affixed by [the person required to sign the document]". He submitted that the County Registrar must make the decision, she must review the Warrant and then she must sign it or apply the signature stamp and he contended that these requirements were not met here. His submission accordingly did not exclude the proposition that it may have been in order for the County Registrar to have applied her own signature stamp having reviewed the document but he contended that the evidence did not support this happening.

148. Next, he submitted that the legal requirements mean that persons assisting the Court Messenger as bailiffs should be named. He submitted that in this case, there was no one else named on the Warrant other than Mr. Burke even though almost twenty people had turned up on the day of the eviction.

149. He submitted that all of the circumstances of the execution of the Warrant had to be considered and that on the facts here the recovery of possession had not been executed in accordance with Ms. Ooi's Article 40.5 rights. This was her "dwelling" and the "inviolability" of the dwelling means that any interference must be strictly lawful and carried out in a manner that is reasonable and proportionate. He said the circumstances here could not be described as having involved a reasonable or proportionate exercise of state power given the circumstances of Ms. Ooi and her children. There had been minimal engagement with Ms. Ooi and minimal regard for her particular circumstances and that of the children. The County Registrar had not performed any oversight or taken any regard for the timescale being deployed by Mr. Burke on Promontoria's instructions.

150. As a result of the Warrant being invalid he submitted that Promontoria and Blackwater were essentially trespassers and accordingly damages could be awarded against them.

151. Consequently, he was claiming declarations and damages as against both the State Defendants and Promontoria and Blackwater.

(ii) Summary of the Submissions of the State Defendants

152. Mr. Patrick Leonard, SC (appearing with Mr. Niall Ó hUiginn, BL) appeared for the State Defendants and made very helpful and oral and written submissions.

153. Firstly, Mr. Leonard, SC submitted that the issues to be determined must be confined to those set out by the pleadings. He contended that a number of factual matters relied upon by the plaintiff arose outside the pleaded case and ought not to be considered. Specifically, he said that the issue around the signature stamp was not pleaded.

154. Mr. Leonard, SC submitted that the central pleaded issue is a challenge to the validity of the Warrant, in particular on the basis that it issued to Mr. Burke who was not a court messenger, whereas he is in fact the Dublin City Sheriff. He said therefore that the plaintiff must be confined to the claims limited to allegations that the Warrant is invalid, together with claims of breach of constitutional rights and trespass arising from the events of 24 February 2025.

155. Secondly, Mr. Leonard, SC submitted that the core claim of the plaintiff is legally incorrect and that the 1926 Act does not preclude a county registrar from appointing anyone as a 'bailiff' and Mr. Burke was so appointed. In this regard, he placed reliance on the historical framework of execution set out in an old but leading textbook called *The Law Relating to Sheriffs in Ireland*, *by Dixon and Gilliland, 1888*, in which undersheriffs and bailiffs carried out such functions and he submitted that the 1926 Act did not abolish this common law position. He contended that the plaintiff bears the burden of establishing that the earlier powers no longer subsist, and that in the absence of clear statutory language to that effect, those powers must be taken to continue. In summary he said that the statutory scheme permits the continued appointment of persons analogous to bailiffs, such as Mr. Burke. Mr. Leonard, SC contended that the decision of Ms. Justice Stack in *Everyday v Carroll* was an interlocutory decision and accordingly it did not appear that the points being advanced by him at this plenary hearing had been raised.

156. Thirdly, Mr. Leonard, SC said that even if the plaintiff's points about the signature and related technical points were in the case that they were not good points. He submitted that the law takes a pragmatic approach to technical defects and the court should not invalidate the warrant for minor or technical errors; again he referred to *Dixon and Gilliland* and page 17 in particular. He submitted that, ultimately, the County Registrar had made the decision to appoint Mr. Burke and had been content to leave the drawing up of the warrant to Mr. Cullen. There was no substance therefore to the technical points of the plaintiff. He also contended that the judgment referred to by Mr. Kennedy, SC of the Supreme Court in *DPP v McCormack* was a "short judgment" (it is seven pages) and that other cases adopted a different, broader position to challenges to documents based on "signature" points; he referred to the English Divisional High Court decision in *R. v. Brentford Justices* [1975] 1 QB 455 as setting out a more preferable approach to "signature" cases. In *R. v. Brentford Justices* for example, the Divisional Court indicated that a facsimile signature of a judge could be properly applied to a summons by the judge or a clerk or employee with the justice's specific or general authority. That covered the manner in which Mr. Cullen had signature-stamped the Warrant in this case, he contended. He also cautioned against deciding anything about signatures on documents that might have wider implications.

157. He then submitted that the contention that all persons involved in the execution of the warrant must be expressly named or authorised in the warrant itself was wrong (and not pleaded). He submitted that the case law and established practice recognise that those executing such orders may act with assistants, without the necessity of identifying each individual in advance. He submitted, citing Birmingham P. for the Court of Appeal in *Forde v. Judge Doyle & Others* [2018] IECA 382 that "courts should be slow to invalidate warrants on the grounds of typographical, grammatical or transcription errors which are neither calculated to mislead, nor in truth, do mislead any reasonable reader of the words"; see para. 26 of *Forde*.

158. Fourthly, Mr. Leonard, SC relied on a point pleaded in the Defence that the claim should have been brought by means of judicial review and was accordingly out of time. A proper challenge to the Warrant, he contended, should have issued by way of an application seeking leave for judicial review within three months of 14 October 2024, i.e. on or before 13 January 2025, whereas here the proceedings had issued in March 2025. On that basis, he contended that the present proceedings were both out of time and an abuse of process, and he cited established jurisprudence reflected in decisions such as *O'Donnell v Dun Laoghaire* [1991] ILRM 301 and *Crowley v Ireland* [2022] IEHC 596.

159. Fifthly, Mr. Leonard, SC submitted that the State Defendants, and in particular the County Registrar and Mr. Burke had immunity from suit. In the alternative, they were immune from claims for damages. The County Registrar, he contended, was actually acting in a quasi-judicial or statutory capacity and therefore enjoyed immunity from suit in respect of her actions taken in that role. This immunity, he submitted, extended to Mr. Burke and to all those acting under the authority of the County Registrar. As part of this submission he suggested that the issue of the Warrant could possibly be "appealed" as a decision of the County Registrar to the Circuit Court. Her decision to issue the execution order of 25 September, 2024 could certainly be appealed to the Circuit Court he contended. In relation to the immunity submission he cited *Beatty v Rent Tribunal* [2006] 2 IR 191 concerning a statutory tribunal and *Crowley v Ireland* [2022] IEHC 596, at para.s 41 to 44 in particular.

160. On the issue of damages, Mr. Leonard, SC contended that the plaintiff had suffered no compensatable loss. He emphasised that a valid order for possession existed and that the plaintiff had no legal entitlement to remain in the property. Any loss suffered therefore arose from the lawful enforcement of that order rather than from any actionable wrongdoing on the part of the defendants. He submitted therefore that at most, any identified defect would warrant declaratory relief rather than an award of damages. If there was to be any damages he referred to a number of cases that suggested damages should be low or very modest; such as *Abraham v Oakley Park Developments* [2016] IEHC 790 (para.s 83-87) and *McNulty v Commissioner of An Garda Síochána* [2016] IEHC 632 (para.s 83-91).

161. In addition, Mr. Leonard, SC submitted that no proper basis had been established for liability on the part of Ireland or the Attorney General; there was no allegation "the Attorney General did something wrong" he observed. He submitted that no material facts had been pleaded which would ground such a claim, and that no distinct wrongdoing on the part of the State had been identified. The claims against those defendants were therefore said to be unsustainable.

162. Finally, he submitted, that irrespective of the foregoing, there was no basis for aggravated or exemplary damages.

(iii) Summary of the Submissions of Promontoria and Blackwater

163. Mr. Andrew Fitzpatrick SC (appearing with Mr. Ross Aylward, BL) appeared for these defendants and made very helpful oral and written submissions.

164. Mr. Fitzpatrick, SC submitted that the plaintiff's case against Promontoria and Blackwater was, when the pleaded case was properly analysed, both narrow and diffuse. Blackwater, he said, was scarcely addressed at all. As to Promontoria, he submitted that the claim reduced to this: it became a trespasser only if the warrant was invalid. No independent wrongdoing was pleaded. No freestanding case in tort or constitutional law was advanced. The claim depended entirely on the alleged invalidity of the Warrant, he contended.

165. Mr. Fitzpatrick, SC submitted that the Circuit Court possession order must be given weight as the plaintiff was fully heard in that case and a stay of eighteen months was afforded. This was where her constitutional rights under Article 40.5 were addressed. In that regard he referred to *Irish Life and Permanent v Duff* [2013] 4 IR 96 and para.s 42 to 52 in particular. Once the stay expired, the obligation to vacate was no longer contingent he contended, it was absolute and what followed, he submitted, was the lawful enforcement of that entitlement. He referred to O'Hanlon J. in *Wymes v Tehan*, 8 December 1988 at page 8 in particular and to McDonald J. for the Court of Appeal in *Mars Capital v Carty* [2026] IECA 40 at para. 14 in particular where he states, "Execution is the consequence that inevitably follows where an order of a court granting possession has not been obeyed".

166. Mr. Fitzpatrick, SC submitted that the execution process was, in substance, lawful. The involvement of Mr. Burke arose through the County Registrar and Promontoria did not purport to exercise the function itself, he contended. Therefore, even if defects were alleged

in the wording or execution of the warrant, they did not convert the execution into wrongdoing on the part of Promontoria. He submitted that from the perspective of Promontoria and Blackwater, after the expiry of the stay, prompt execution was permissible and no additional notice was required.

167. Mr. Fitzpatrick, SC addressed the case law around the idea of a "special bailiff" discussed in *Dixon and Gilliland* and raised by the court as to whether it had an application here. He accepted that, in some circumstances, liability may follow where a creditor selects the individual who executes the process however he submitted, that was not this case. In this case, he submitted that the appointment was made by the County Registrar and the evidence did not support any selection by Promontoria in the relevant legal sense. Accordingly, the principles around a "special bailiff" did not arise.

168. In any event, Mr. Fitzpatrick, SC submitted that there was an absence of any pleaded agency case or equivalent plea of a "special bailiff". He contended that in a claim where agency is alleged, a close examination of the material facts needs to be considered and he gave the decision of Irvine J. for the Court of Appeal in *Unitherm Heating Systems v BHT Group*, [2015] IECA 191 as an example. In this case it was simply not pleaded and not put to witnesses he contended. He submitted that the evidence proceeded on a different footing, namely, that Mr. Burke acted for the County Registrar. In those circumstances, he said it would be impermissible to introduce an agency or equivalent case after the evidence and that would offend basic fairness to his clients.

169. Notwithstanding those points, Mr. Fitzpatrick, SC accepted that Promontoria funded the execution and sought expedition but that, he said, was unremarkable, and would have been likely confirmed by Mr. Burke if the issue was clearly in the case and Mr. Fitzpatrick, SC had asked him about it. Either way however, this did not establish control or alter the legal relationship, he contended. Legally, the bailiff (Mr. Burke) remained subject to the authority of the County Registrar irrespective of what actually happened.

170. Mr. Fitzpatrick, SC submitted that Article 40.5 did not arise as against his clients and he observed that Mr. Kennedy, SC had pointedly declined to advance any argument that there might be horizontal effect against his clients, irrespective of how the evidence had developed; he referred to *ZG v Ireland & Others* [2025] IESC 49 and para.s 70 *et seq.* of the judgment of O'Donnell CJ. In any event, Mr. Fitzpatrick, SC contended that the constitutional protection was provided in the judicial process culminating in the possession order. In addition, he submitted that the impulse to "fashion a constitutional remedy" in a dispute between private individuals should only be considered if existing common law remedies are inadequate and the plaintiff had failed to plead out or make any case that there was an ineffectiveness in traditional tort law; he referred to Hogan J.'s judgment in *Sullivan v Boylan* [2013] IEHC 104.

171. Next, Mr. Fitzpatrick, SC submitted that the plaintiff lacked a sufficient legal interest to ground claims in trespass or damages as she was not the legal owner and she remained in occupation contrary to a court order at the time of the alleged "trespass". In those circumstances, he contended that no actionable loss could be said to arise from the execution, even if irregularities arose.

172. In any event, as against his clients, Mr. Fitzpatrick, SC submitted that there was actually no pleaded wrong and certainly no basis for any aggravated or exemplary damages. He submitted that lawful conduct, even if distressing in consequence, does not attract relief.

173. Mr. Fitzpatrick, SC also noted that reliance on Article 8 of the European Convention on Human Rights had been abandoned.

174. In conclusion, Mr. Fitzpatrick, SC submitted that no liability arose against his clients as the order for possession was valid, the execution followed lawfully and no agency was established. In particular no constitutional wrong on the part of his clients was made out

and so, no damages were recoverable. The claims against the fifth and sixth defendants, he submitted, should therefore be dismissed. He said however that in the event that any liability was found against his clients that they were clearly entitled to an indemnity from the State Defendants.

IV. DISCUSSION

175. It is important at the outset to identify the true nature of the plaintiff's claim. As was made clear in the submissions of Mr. Kennedy SC, this is not a challenge to the validity of the possession order obtained by Promontoria. Rather, the plaintiff's case is directed to the lawfulness of the execution process, and in particular the validity of the warrant of 14 October 2024 and the manner in which it was executed.

176. This distinction is critical. However, the entitlement to possession does not carry with it an entitlement to recover possession by any means. The recovery of possession of a dwelling must be carried out strictly in accordance with law, and in a manner consistent with the constitutional protection afforded to the dwelling under Article 40.5. It is an exercise of executive power by public officials controlled by legislation.

(i) The statutory framework and the centrality of the Court Messenger

177. The execution of possession orders is governed by the Enforcement of Court Orders Act 1926. Section 5 provides for the issuing of a warrant by a county registrar to a court messenger, authorising the execution of an execution order.

178. There is an issue of statutory interpretation involved here. However, it is not a question of the plaintiff bearing a burden of establishing, as the State Defendants submitted, that the legislation had explicitly altered the earlier arrangements. An issue of statutory interpretation is an exercise that "*requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden";* see the Court of Appeal in *Hanrahan v Revenue Commissioners [2024] IECA 113* at para. 98 in particular*.*

179. The statutory language in the 1926 Act places the court messenger at the centre of the execution process. The warrant is to be furnished to the court messenger, and that warrant must authorise the court messenger by name to execute or assist in the execution of the order. While the form of the Warrant used in this case refers to "Court Messengers and Bailiffs", the structure of the section makes clear that the court messenger is not merely one possible actor among many, but rather the primary statutory officer through whom the execution process is to be carried out.

180. Section 3(2) of the 1926 Act provides that all execution orders of the Circuit Court shall be executed by the county registrar "in the like manner and with the like powers, rights and authorities and subject to the like duties and obligations as similar writs of execution of the High Court have heretofore been executed by the under-sheriff". Counsel for the State Defendants contended that this provision in the context of the 1926 Act and in the context of the pre-existing law (as largely described in *Dixon & Gilliland*, 1888) meant that the County Registrar could appoint someone like Mr. Burke and was not required to appoint a court messenger as well. *Dixon & Gilliland, The Law Relating to Sheriffs in Ireland* (1888) ("*Dixon & Gilliland")* is a textbook which provides authoritative insight into the pre-existing common law and statutory principles governing the execution of court orders.

181. I am satisfied that this submission is incorrect for five reasons.

182. Firstly the words above in section 3(2) of the 1926 Act are not targeted at *who* the County Registrar could appoint but rather are directed at the *manner* of execution and the *powers, rights and authorities* of execution together with the *duties and obligations* of execution.

183. Secondly, the purpose of the 1926 Act was, in part, for the new state to introduce a new system of *who* would execute orders of possession. This is, in part, clear from section 4 of

the 1926 Act which provided for a newly styled role of "Court Messenger". Section 4(1) provided for this in explicit terms, stating:

> "*Every [County Registrar] shall, subject to the approval of the Minister, appoint such number of persons (<u>who shall be styled and are hereinafter referred to as court messengers</u>) as the Minister shall sanction to act for him and otherwise assist him in the execution of execution orders under this Act."*

Nonetheless, despite this new "styled" name, it is clear that the court messenger, albeit under the control of a new administration, was essentially a person who would perform the role of the "bailiff", a title that likely had unpopular connotations from the 19th and early 20th century in Ireland.

184. This interpretation is in turn reinforced by the wording of section 5(3) of the 1926 Act which provides that:

> "*A court messenger executing or assisting in the execution of an execution order in pursuance of a warrant duly issued to him under this section shall have all the powers which would be vested by law in a bailiff employed by an under-sheriff for that purpose."*

185. Thirdly, section 5(1) provides for the formal requirements that every court messenger must be authorised by "a warrant in writing signed by the [county registrar]". The requirements of transparency, similar to those as previously existed, are then echoed in the provisions of section 5(2) which places a duty on the court messenger to produce "*on demand to the person in apparent possession of such lands or premises the warrant issued to him under this section by the [county registrar*]". The State Defendants interpretation would allow this requirement to be easily by-passed if a county registrar could avoid appointing their court messenger.

186. Fourthly, this interpretation is not altered by the description of the common law, legislation and practices as described in *Dixon & Gilliland*, rather it is reinforced by it. As this was a central point of Counsel for the State Defendants it is necessary to refer to *Dixon & Gilliland* in some detail (this text will be returned to again below in the context of the immunity arguments of the State Defendants).

187. The modern office of county registrar performs functions broadly analogous to those historically exercised by the sheriff and under-sheriff. *Dixon & Gilliland* makes clear that the execution of court orders, particularly those involving orders for possession, was regarded as an onerous and sensitive function involving the potential for forcible interference with property and homes. The legislation and case law referred to in *Dixon & Gilliland* indicate that there were significant procedures around this exercise of power and established scenarios where liability could arise and, in turn, there were rules and practices that emphasised transparency.

188. So, for example, it is clear that the onerous nature of the role (seizing possessions and homes or other lands) meant that the position was not necessarily considered an attractive one and only limited categories of people were exempted from having to serve; see *Dixon & Gilliland,* Chapter 1, pages 2-3.

189. Next, there was significant formality and transparency to the appointment, involving the taking of an oath and the recording of the nomination in the *Dublin Gazette*; see *Dixon & Gilliland,* Chapter 1, pages 4-5.

190. A person appointed who then refused to undertake their duties could be prosecuted, including on indictment. Furthermore, a sheriff could not "act outside his bailiwick and he cannot act outside his own county under any writ"; see *Dixon & Gilliland,* Chapter 1, page 6.

191. Chapter II of *Dixon & Gilliland* then deals with the position of Under-Sheriff, Bailiffs and Special Bailiffs. On page 12 the authors state that the sheriff must appoint the under-sheriff in writing under his hand and within a month after so appointing him was required to transmit a duplicate of the appointment to the office of the Exchequer Division to be there filed on the records of that office.

192. In addition the under-sheriff before entering on the duties of his office was also required to take an oath, the terms of which were provided by legislation and that legislation provided that the oath must be written on parchment and was also to be taken and filed with the same formalities as the oath of the high sheriff; see *Dixon & Gilliland,* Chapter II, page 12. There are then various requirements for transparency set out on page 17.

193. Overall, this account of the position in the late 19th century indicates that the appointment of persons to execute court processes was considered a formal and onerous process. The taking of an oath specified in the legislation was required. The oath would be recorded on parchment and lodged in a special office of the 'Exchequer Division'. The names of under-sheriffs and bailiffs were recorded in a manner that was transparent and subject to inspection. This account means it is implausible that the precise requirements set out in the 1926 Act could simply be by-passed by a county registrar not appointing one of her court messengers and simply appointing anyone she thought fit (as contended for by the State Defendants).

194. Fifthly, I agree with the analysis of Ms. Justice Stack in *Everyday v Carroll* [2025] IEHC 626 that the 1926 Act contemplates the appointment of court messengers and that "warrants can only be issued to named individuals who have first been appointed as court messengers"; see para. 36. While Ms. Justice Stack's conclusion was reached in the context of assessing whether a serious issue had been raised in the context of an interlocutory hearing, I am not persuaded that the additional references to the history as set out in *Dixon & Gilliland* alter that conclusion. Indeed they reinforce it. The only caveat I would add is that the 1926 Act does not preclude the county registrar from naming persons, *in addition* to the court messenger, to assist in the execution process. That proposition is supported by the historical analysis although the persons intended to assist the county messenger should be clearly named on the warrant.

195. It is also clear that this conclusion is consistent with the understanding of both the County Registrar and Court Messenger as reflected in the standard template warrant and letters that they created for their system and which they typically used, although those documents are not a basis for interpretating the legislation.

196. For example, the Warrant contained the following pre-set wording:-

> *"By Mary Delehanty (sic) County Registrar <u>to my Court Messenger</u> and Bailiffs whose names and addresses are set out in the First Schedule hereto for this purpose, but not otherwise … I command you and each of you and that you jointly and severally enter the lands set out in the said Order to have possession of the said lands and premises …"*

197. There was then a section headed First Schedule and in brackets the form stated "(<u>Set out names on Court Messengers and Bailiffs</u>)". Then there is paragraph that reads:

> *"<u>The Court Messenger will have the original Court Order</u> and it is suggested that a copy of the Court Order be annexed to the additional Warrants."*

198. The above wording is consistent with the interpretation that flows from the wording of the 1926 Act and reflects an understanding that the warrant would name a court messenger.

199. The standard pre-set template letters also reinforce this practice. There was a standard letter addressed to the Court Messenger in the following terms:

> *"I hereby authorise and empower Andrew Cullen, Court Messenger, of WICKLOW SHERIFF'S OFFICE, and his/her assistants to execute the within Court Order.*
>
> *Given under my hand this day [date]."*

There was then a standard letter to each plaintiff creditor stating as follows:-

> *"Our Court Messenger will call on the debtor personally to assess the situation within one month, and we will revert to you in due course."*

200. There was a standard letter to the occupant of the property stating:-

> *"I have issued a warrant to my Court Messenger to execute the said Order."*

201. Aside from this context which operated after the introduction of the legislation, I am also satisfied that the interpretation urged on behalf of the plaintiff is consistent with the legal context into which the 1926 Act was introduced. *Dixon & Gilliland* describe the historical position and this emphasises that historically the law required transparency in the execution of these functions, given the fundamental nature of the exercise being carried out. This transparency is not achieved by the State Defendants' argument that a county registrar can essentially appoint anyone to carry out the work.

202. This is to be contrasted with the argument of the plaintiff that contends for a meaning of the 1926 Act that provides for transparent system that balances the position of both sides by having the implementation of the execution order, led by a public official, a court messenger, appointed and employed by the court service office. This also enables the correctness of the warrant and the identity of the person attending to be checked.

203. Against that backdrop, the warrant actually issued in this case must be considered.

(ii) The validity of the warrant

204. The warrant in this case issued on 14 October 2024 and named only "Joseph Burke" of "Dublin City" in the schedule of persons authorised to execute the order. Mr. Burke was not, and was never suggested to be, the court messenger for Wicklow. The duly appointed court messenger, Mr. Cullen, was not named on the warrant at all.

205. On the evidence, and despite the genuine belief to the contrary of the County Registrar, it is clear that no warrant was ever actually issued authorising Mr. Cullen to execute or assist in the execution of the possession order.

206. In those circumstances, the warrant represented a purported delegation of the execution of the court order directly to a person who was not the court messenger, and without the involvement, at least on the face of the warrant, of the court messenger at all.

207. This is not a mere technical defect. It goes to the substance of the statutory scheme. The legislation contemplates that the court messenger will execute the order (with assistance if required), not that the role may be entirely bypassed.

208. Accordingly, I am satisfied that the Warrant, in failing to name the court messenger and in purporting to authorise Mr. Burke alone, did not comply with the requirements of section 5 of the 1926 Act.

(iii) The manner in which the warrant was issued

209. There is a further, and independent, difficulty with the Warrant in this case. The evidence establishes that the Warrant was prepared by Mr. Cullen using a template, and that the County Registrar did not review the document prior to issue, and that her signature was applied by way of a stamp without her having considered the contents of the document.

210. Counsel for the State Defendants contended firstly, that this issue was not pleaded and secondly, that it was not an issue of any substance and *Dixon & Gilliland* at page 17 was relied upon in this regard.

211. First, I am satisfied that this issue is an issue of substance and that it is in the case. The State Defendants argued before Mulcahy J. that the full circumstances of the issue of the Warrant needed to be considered. This issue emerged from that evidence and this evidence was not objected to. Next, in the amended Defence of the State Defendants, it was expressly pleaded that the Warrant "was lawfully prepared and signed by the County Registrar on her own behalf"; see para. 5(b) which was in response to para. 6 of the amended Statement of Claim. Accordingly, I am satisfied that there was no unfairness to the State Defendants as they explicitly joined issue with this subject in their pleadings and adduced evidence from all witnesses relevant to this issue.

212. Turning then to the substance of the submission, Counsel for the State Defendants referred to *Dixon & Gilliland* page 17, where the authors address the question of technical defects in a warrant of appointment, stating:-

> *"The Court will not set aside an execution on the ground of a merely verbal inaccuracy in the warrant; or, if necessary, may even allow a mistake in that document to be amended. Neither will a very strict and technical construction be given to the terms of the warrant. Thus, a warrant directed to four bailiffs, and to any of them, may be executed by any two. So, also, where the sheriff made his warrant to four bailiffs, jointly, and not severally, and one bailiff made an arrest thereon, the Court refused to discharge the defendant on motion, though the judges were of opinion that such a warrant did not authorise such an arrest, and therefore left the defendant to seek his remedy against the officer.*
>
> *Where the execution of a writ has been rendered void by reason of an informality in the warrant, the execution of the writ may be preceded with, on the sheriff making out a proper warrant."*

213. Accordingly, while *Dixon & Gilliland* recognises that, in certain limited circumstances, minor defects in warrants may be overlooked, there is a distinction to be drawn between a *minor irregularity* and a *fundamental defect*.

214. I am satisfied that the defect identified here, the absence of proper authority and signature, goes beyond mere technical irregularity. It constitutes a fundamental failure in the creation and execution of the Warrant itself and it is not comparable to typographical or formal errors of the kind considered in *Forde* or *Brentford Justices.*

215. The absence of proper appointment and authentication of the Warrant by the County Registrar renders the process of issuing the Warrant defective. The failure of the County Registrar to sign or otherwise adopt the Warrant is inconsistent with the level of formality required for the lawful delegation and execution of such powers.

216. The issuing of a warrant authorising entry into and repossession of a dwelling is not an administrative formality. It is an exercise of a statutory power of considerable significance, and one which carries with it obvious implications for the constitutional rights of those in occupation.

217. In those circumstances, the requirement that the Warrant be signed by the County Registrar necessarily implies that the Registrar must apply her mind to the document and make the decision to issue it.

218. On the evidence before the Court, I am not satisfied that that occurred in this case. Rather, the process adopted involved the effective delegation of the preparation and completion of the Warrant to the court messenger, without prior review by the County Registrar. Indeed,

she was so divorced from the preparation of the paperwork that she believed, mistakenly, that she had in fact issued a warrant appointing the court messenger.

219. That process falls short of what the statute requires. The lack of involvement here is not a mere technicality, but goes to the substance of the process required. It reinforces the conclusion that the Warrant was not validly issued. This conclusion is specific to the precise statutory requirement set out in the 1926 Act in relation to warrants and is specific to the factual matrix established here.

(iv) The abdication of statutory responsibility

220. Perhaps the most striking feature of the evidence, which is summarised above in section II of this judgment, is what occurred after the purported issuing of the Warrant.

221. Both the County Registrar and the Court Messenger gave evidence as to the established practice in relation to the execution of possession orders. That practice involves engagement with occupiers, assessment of their circumstances, and, where appropriate, the exercise of discretion as to timing, particularly where vulnerable persons or pending court applications are involved.

222. However, it is clear on the evidence that none of those steps occurred in this case.

223. Once Mr. Burke was identified and the warrant issued, the County Registrar and the Court Messenger took no further active role in the execution process.

224. Mr. Burke, in turn, proceeded to act on instructions received from Promontoria's solicitors, including instructions as to the timing and manner of execution. He did not seek or obtain approval from the County Registrar for those steps.

225. The result, as the evidence demonstrates, was that the execution process was effectively carried out without any meaningful supervision or control by the statutory officer to whom the law entrusts that function. This resonates with the issue identified in *Moore*. There, the law provided that once a possession order had been made by the court, that a warrant for the execution of that possession order could issue, but if the warrant was not issued within six months of the possession order, that the warrant had to be applied for on notice to the defendant. That legal entitlement was seen by the Supreme Court in the context "of the protection of tenants' constitutional and Convention rights in respect of their homes"; see para. 29 of *Moore*.

226. The evidence in this case discloses a clear abdication of the statutory responsibility vested in the County Registrar. The statutory scheme requires that the execution of court orders for possession be carried out under the authority and control of the County Registrar (acting through the court messenger). That did not occur here and consequently this deprives the eviction (being an interference with the plaintiff's Article 40.5 rights) as having been done "in accordance with law".

(v) The immunity argument

227. *Dixon & Gilliland* makes clear that the sheriff was broadly liable for the acts of those conducting the execution process under his authority; see page 18 where the authors state:

> *"The sheriff is civilly liable for the misconduct of the bailiff in executing a writ, even though the act is done contrary to the terms of the writ."*

228. Thereafter, various other circumstances in which a sheriff could be found liable are extensively described in *Dixon & Gilliland,* Chapter 1, pages 6-10. A variety of situations where the under-sheriff could be liable are then described in Chapter II from pages 14 *et seq.* and various scenarios where liability for under-sheriffs and bailiffs could arise are described on pages 18 *et seq.* These principles have direct relevance to the present case.

The historical position demonstrates that, far from immunity, the law imposed extensive responsibility on the office-holder and for those acting under delegated authority.

229. The authorities relied upon by Counsel for the State Defendants for the immunity argument (*Beatty* and *Crowley*) are not strictly apposite here. The County Registrar was performing executive functions in drawing up, issuing and executing the warrant. Her role was not analogous, in this respect, to the role of a statutory tribunal or, indeed, her role when making *quasi judicial* decisions, for example in relation to interlocutory motions in litigation. In other words, in issuing and executing warrants, the County Registrar is performing an executive enforcement function rather than adjudicating on a dispute.

230. In addition, while the 1926 Act explicitly addresses the issue of immunity for the predecessors in title to the County Registrar in section 12, that immunity (which is for damage caused during a forcible break-in or for breaking into another's property where the county registrar reasonably believes goods or animals of the debtor might be stored) clearly does not apply here.

231. Accordingly, I do not see any proper legal basis for the contention that both the County registrar and Mr. Burke and all those assisting Mr. Burke on the day were entitled to an immunity. In addition, I am satisfied that the County Registrar is liable for the manner in which the warrant was executed by Mr Burke and that this is consistent with the long-established principles governing the execution of court processes described in *Dixon & Gilliland*.

(vi) The judicial review / abuse of process argument

232. Turning now to the argument on behalf of the State Defendants that any challenge to the lawfulness of the issue of the Warrant should have been brought by judicial review proceedings, I am not satisfied that this is correct.

233. Firstly, this was a case which required the full factual context and circumstances surrounding the issue and execution of the Warrant to be adduced by way of oral evidence and this was always going to require a plenary hearing, as contended for by the State Defendants at the hearing seeking a trial of a preliminary issue. The issues raised in these proceedings concerning the execution of the Warrant would not have been suitable for a hearing on affidavit.

234. Secondly, the primary relief being sought is declarations and damages, and not an order for Certiorari of the issue of the Warrant

235. Thirdly, on the day the Warrant was issued, a letter was sent out by Mr. Cullen stamped with the County Registrar's signature and addressed to Ms. Ooi's partner which stated incorrectly that the County Registrar had appointed her court messenger. This is the first letter of the 14 October 2024 described above in para. 27 *et seq.* of this judgment. This letter stated:-

> "*I hereby give you notice that an Order for Ejectment for the recovery of the premises/land set out in the schedule below has been lodged with me for execution. I have issued a warrant to my Court Messenger to execute the said Order and deliver possession of said premises/land to the Plaintiff on the [blank space].*

Accordingly, it would not have been unreasonable for Ms. Ooi not to have been aware of the potential point which is central to these proceedings. Notably, Ms. Ooi exhibited this letter from the County Registrar dated 14 October 2024, which Mr. Cullen had prepared and signature-stamped, indicating that the Court Messenger had been appointed by warrant to execute the order, in her successful application for the injunction to restrain execution made on 18 October 2024. Furthermore, a copy of the actual warrant does not appear to have been sent to Ms. Ooi until the email from Mr. Burke on Sunday evening 23 February 2025. These proceedings issued on 25 March 2025. In other words, if judicial proceedings had

been commenced at that point Ms. Ooi could have pointed to the fact that she was misinformed by the County Registrar at the beginning that the Warrant had named the court messenger and that she only received a copy of the actual warrant on the eve of the eviction.

236. Fourthly, shortly after the Warrant was completed, the plaintiff had the benefit of a stay that ran continuously from 18 October 2024 up until 13 January 2025, and this in itself is an obvious reason as to why the plaintiff should not be time barred. The execution on foot of the Warrant was stayed. In that sense her proceedings cannot be considered as having been issued as an abuse of process to circumvent judicial review time limits.

237. Finally, the plaintiff during this period was a litigant in person with existing proceedings, challenging the constitutionality of provisions of the Family Home Protection Act, which the state itself does not argue represent an abuse of process, or are unstateable.

238. Accordingly, I am not satisfied that these proceedings required to be brought by means of judicial review proceedings or represent an abuse of process.

(vii) The manner of the execution of the Warrant and Article 40.5

239. The facts surrounding the execution of the warrant are described in detail in section II of this judgment and, in summary, demonstrate that the absence of any meaningful engagement with Ms. Ooi, the failure to assess or accommodate the presence of vulnerable occupants, the urgency with which the execution was carried out and the overlooking of Ms. Ooi's intended application to court, all represented, commutatively, a marked departure from the standards of practice described by the defendants' own witnesses and the County Registrar and the Court Messenger in particular.

240. In addition to the legal issues identified above around the issue of the Warrant and the abdication of statutory responsibility, the separate and independent legal question arises as to what degree, if any, public officials are required to take account of a person's Article 40.5 rights when *executing* an order for possession over a home which is made *following* a judicial process. At one end of the spectrum it might be argued that no account has to be taken of those rights as they have already been considered and accommodated by the judicial process leading to the order for possession. By this argument the process by the public officials is mechanical and devoid of human judgment; once a warrant issues in accordance with the 1926 Act, then forcible possession can be taken without any notice and at any time of the day or night once the order for possession is in effect and irrespective of who is living in the home.

241. This view ignores the legal backdrop that the recovery of possession of a dwelling must be carried out strictly in accordance with law, and in a manner consistent with the constitutional protection afforded to the dwelling under Article 40.5. It is an exercise of executive power by public officials controlled by legislation. In the context of a family home the process happens against the background of Article 40.5 which is engaged even if the persons living there are no longer legally entitled to be there; see *Moore*, para. 35. Secondly, the evidence in this case discloses that this it is not the way that anyone operating the process normally behaved and neither the County Registrar nor her court messenger considered that this was a way in which the process normally would be carried out. Admittedly, it could be contended that simply because public officials in general operate in a way that is proportionate and reasonable (letters, notice, visits, engagement, final letters etc.) and designed to respect people's dignity does not mean that they are legally obliged to so act. Counsel for Promontoria and Blackwater contended that decisions such as *Irish Life and Permanent plc v Duff* [2013] 4 IR 96 indicated that it was during the judicial process leading to the possession order that consideration of Article 40.5 rights arose.

242. However, a critical distinction is required to be observed. Firstly, in this case, unlike *Moore v Dun Laoghaire-Rathdown [2017] 3 IR 42* or *Clare Co Council v McDonagh*, the possession proceedings that led to the court order did not involve the state or any public body, whereas

the *execution* of a possession order which has been granted to a private party *is* the stage that does involve public officials. Even then, any consideration of Article 40.5 rights which may arise during the consideration of a possession order is not with a view to seeing if Article 40.5 can be invoked, for example by a defaulting borrower, to *avoid* a possession order. Rather it can go to issues such as the process or even the remedy. So for example, it demands a high degree of formality and compliance with legal requirements. As Hogan J. states in *Duff* at para. 48 to 50:

> *[48] This assurance of security and protection inherent in the guarantee of 'inviolability' would be fundamentally compromised if peaceable possession of a dwelling could be taken by a lender at almost any time other than by means of a court order without express notice to the borrower in the manner envisaged by Costello J. in Gale v. First National Building Soc. [1985] I.R. 609 merely because the borrower was in default, even if this were to be contractually agreed by reason of the fictions which predate the Act of 2009 in respect of unregistered land we have just examined. Nor could this be assured if the determination as to whether the borrower was in actually in default was to be left to the say so of the lender or whether there was an objective justification for the mortgagee taking possession of the dwelling without any independent determination of these questions by the judicial branch.*
>
> *[49] This conclusion, in any event, merely reflects the new statutory prohibition which (subject to minor exceptions) precludes a mortgagee taking possession of mortgaged property without a court order and which is now provided for in the Act of 2009: see s. 97(1) of the Act of 2009.*
>
> *[50] None of this is to suggest that a defaulting borrower can invoke Article 40.5 of the Constitution to avoid having to yield up possession where a court so orders, no more than Article 40.5 can be invoked to justify the unlawful construction of a dwelling on another's land or the construction of a dwelling without planning permission: see, e.g., Wicklow Co. Co. v. Fortune[2012] IEHC 406, (Unreported, High Court, Hogan J., 4th October, 2012). It is, however, to say that those elements of formal notice, foreseeability and an independent determination of the objective necessity for possession of the dwelling are presupposed by the guarantee of inviolability and these protections cannot be assured outside the judicial process or, at least, something akin to the judicial process.*

243. If one leaves aside the debate about the meaning of "inviolable", it is not controversial to observe that, in this context and as against the public officials, Article 40.5 rights entitle a person to demand strict compliance with the law; for example the provisions in the 1926 Act or the terms of the Warrant. The more open question is as to whether those rights extend to imposing any other obligations on public officials as to the *manner* in which they execute a warrant.

244. I am satisfied that Article 40.5 does not give the plaintiff any entitlement to substantively thwart the possession order made after a full judicial process. However, I am not persuaded that the reach of Article 40.5, in so far as public officials are concerned, stops once the possession order is granted. If it can apply to the state in the context of the process of *obtaining* a possession order or *issuing* a warrant, then there is no convincing principled basis for excluding its ambit from the *manner* in which the possession order or warrant is *executed*, at least so far as the public execution machinery is concerned.

245. The circumstances here are that the plaintiff and her children had no relationship with either Promontoria or its financial predecessor and, in this case, the House was undoubtedly their home. Accordingly, while the public officials were lawfully charged with executing the possession order there is nothing intrinsic to that task that precludes public officials from taking account of the plaintiff's Article 40.5 rights in the *manner* of the execution of the

possession order. In legal terms, that means no more than behaving in a manner that is broadly reasonable and proportionate. In practical terms, that means, as it happens based on the evidence in this case, no more than behaving in the manner that they themselves had decided was the appropriate way to behave, as described in detail in section II of this judgment.

246. Counsel for Promontoria and Blackwater contended, by reference in particular to the Supreme Court decision in *ZG v Ireland* [2025] IESC 49, that the reach of Article 40.5 should not be extended "horizontally" to Promontoria or Blackwater, and certainly not in a case where the argument was not clearly pleaded or made. While there was a general claim for damages for breach of Article 40.5 (that on one view applied to all the defendants), I have considerable sympathy for that submission as Counsel for the plaintiff did not in truth push an argument that there should be a horizontal application of Article 40.5 as against Promontoria and Blackwater. While horizontal effect has arisen (for example in cases like *Meskell v CIE* [1973] IR 121, where the underlying rationale for horizontal effect does not appear to have been debated, and *Herrity v Independent Newspapers* [2009] 1 IR 316, where it was) the precise boundaries of that legal landscape in the context of Article 40.5 are unclear. Consequently, it is not terrain to embark upon readily where the argument is not made and debated and where there is, in any event, in this case a remedy available against a state defendant.

247. The State Defendants however are in a different position. The execution of a possession order is precisely where the Oireachtas has determined that the state, through the County Registrar, does become involved. In addition, the State Defendants contended in advance of the trial that the full circumstances around the execution of the Warrant were relevant. Their witnesses, without objection, gave evidence about the usual practice in relation to both the issue and execution of warrants. Furthermore, as a matter of principle, there is no convincing reason why Article 40.5 should be limited in its scope as against the State Defendants so as not to encompass the *manner* in which an order for possession of a home is executed. After all, albeit as against a different factual backdrop, the circumstances in *Moore* led the Supreme Court to conclude that the manner of the execution of the warrant in that case violated the plaintiff's Article 40.5 rights; see para.s 38 to 45. As to how to assess such a claim, the authorities cited by the parties included *Rouske v Sweden*, ECtHR 25 October 2013, which refers to an assessment based on proportionality in the context of Article 8 rights, which echoes the reference to proportionality by the Supreme Court in *Clare Co Council v McDonagh* [2022] 2 IR 122. Proportionality in turn involves a consideration of reasonableness and the position of all of the parties involved. However proportionality does not require a re-evaluation of the entitlement to possession, but rather operates as a constraint on the manner in which public powers are exercised in enforcing that entitlement.

248. Applying this conclusion to the facts as described in detail in section II, I am satisfied that, in relation to proportionality and reasonableness in the context of Article 40.5, the standard to be applied should take account of the evidence given by the County Registrar as to her established practise based on years of experience and knowledge of the practise of other county registrars and including her account of the standard that emerged from meetings held with other county registrars. The detail of this is set out comprehensively in section II of this judgment. In approaching the issue in this manner I am conscious that this is analogous to the approach applied by the courts in the context of the standard applied to medical professionals in the context of medical negligence claims; see Clarke CJ in *Morrissey v HSE* [2024] 1 IR 103 who explains that the standard of approach expected of a medical practitioner is not set by the courts, but by the profession itself. That is not to say that it is not ultimately for the court to carry out the assessment of the actions of public officials in the context of respect for constitutional rights.

249. Any assessment of a claim of a violation of a person's constitutional rights involves an assessment of the position of both sides. In this case that means weighing and considering the position of Promontoria, who had obtained a possession order on foot of the security it

had acquired. There may clearly be other plaintiffs with orders for possession who are in different circumstances when it comes to seeking to take possession or repossession of a property. However, in the context of a proportionality assessment it is not irrelevant that Promontoria acquired the security as a financial institution from another financial institution, and accordingly the value of the asset from their perspective is reflected in its monetary value on a resale basis. There was no evidence to suggest in this case that there was any particular urgency from the point of view Promontoria. This emphasises the need for the County Registrar not to mechanically follow the instructions of the plaintiff creditor, but rather to exercise her public functions in a way that balances rights.

250. The plaintiff resided in the property with her three children, one of whom was a minor and another of whom had special needs. Those facts were known to the relevant parties. The evidence shows that the plaintiff was given extremely limited notice at critical stages of the process, including, at one point, less than 12 hours' notice to vacate the property. The execution ultimately took place following a relatively short period of notice after the determination of the Court of Appeal, and in circumstances where Ms. Ooi had indicated an intention to seek further relief from the courts.

251. Article 40.5 of the Constitution protects the inviolability of the dwelling. While that protection does not prevent the lawful execution of a possession order, it does require that any such execution be carried out strictly in accordance with law and in a manner that is reasonable and proportionate. This conclusion is confined to the conduct of the state officials involved in the execution process. It does not affect the validity of the underlying order for possession, nor does it impose an obligation on those public officials to defer execution indefinitely. It requires only that, in exercising coercive powers of entry and repossession, the state act in accordance with law and in a manner that is objectively reasonable and proportionate in the circumstances. In those circumstances, I am satisfied that the execution of the possession order in this case did not meet the standard required by Article 40.5. This finding is independent of the findings in relation to the lawfulness of the issue of the Warrant (by reason of not appointing the Court Messenger and by reason of the failure of the County Registrar to review and approve the Warrant) and separately, as a result of the lack of any oversight of the process by the public officials charged with the task by the 1926 Act.

252. Finally, as the County Registrar was the public official assigned by law to take responsibility for this process on behalf of the state, I am also satisfied that it is appropriate to make these findings of liability as against all of the State Defendants jointly and severally. Just as Mr. Burke was, as a matter of law, performing his functions in this case on behalf of the County Registrar, she too in turn was performing her functions on behalf of the state.

(viii) The position of Promontoria and Blackwater

253. It is necessary, however, to distinguish between the role of the State Defendants and that of Promontoria and Blackwater. The plaintiff's case against Promontoria ultimately rests on the proposition that, if the warrant was invalid, those acting to take possession became trespassers.

254. There is force in the submission that Promontoria played an active role in identifying Mr. Burke, in funding the execution process, and in seeking its expedition. *Dixon & Gilliland* addresses the situation where a particular bailiff is appointed at the request of the plaintiff creditor, stating at page 19:

> *"If a sheriff, at the request of the plaintiff or his attorney, appoint a particular person to be bailiff for the purpose of an execution, that person is known as a special bailiff. When a plaintiff in an execution procures a sheriff to grant special bailiffs, the plaintiff becomes liable for the acts of such bailiffs in the execution in like manner, and to the same extent, as the sheriff is liable for the acts of his bailiffs."*

Dixon & Gilliland continues on to explain that this however does not alter the liability of the sheriff as "to all other parties the sheriff (as well as the plaintiff) must answer for the acts of the officer who holds his warrant"; see page 20 of *Dixon & Gilliland*.

255. These principles potentially bear on the factual circumstances in which Mr Burke came to be appointed. On the evidence, it was strongly arguable that Promontoria effectively procured the appointment of Mr. Burke. However, no such case was pleaded or pursued. Nor did the state advance a claim for indemnity on that basis. In those circumstances, the issue does not arise for determination, although the authorities demonstrate that such an argument could, in an appropriate case, affect the allocation of liability. In addition, Counsel for the plaintiff did not seek to make a case against these defendants that Article 40.5 might have horizontal effect.

256. In those circumstances, and as I have determined that the plaintiff is entitled to a remedy from the State Defendants, I do not consider it necessary to consider whether Article 40.5 might impose a liability on Promontoria and Blackwater in this case. The execution of a possession order is, by law, a function entrusted to the County Registrar, to be carried out through the statutory machinery established by the 1926 Act. Promontoria was not entitled to execute the order itself; it was required to act through that statutory process. The responsibility for ensuring that the process was conducted lawfully rested, in law, with the County Registrar and those acting under her authority.

257. Mr. Burke, as the individual named on the warrant, was acting (at least purportedly) as the agent of the County Registrar. The fact that, in practice, he took instructions from Promontoria's solicitors does not alter the legal character of his role.

258. In those circumstances, I am not satisfied that Promontoria can be fixed with liability in trespass or for breach of constitutional rights. It did not itself purport to exercise the statutory power of entry; rather, it invoked the machinery of the State to enforce a court order of which it had the benefit.

259. The defects in the process, while serious, arise from the manner in which the State defendants operated (or failed to operate) that machinery. They do not, in my view, render Promontoria liable in damages. A similar conclusion arises in relation to Blackwater, whose role was confined to taking possession following execution.

V. Conclusion

260. The execution of possession orders is a regulated and intrusive function requiring strict compliance with formalities. Consequently, the proper appointment of those exercising enforcement powers is essential. Equally a fundamental defect in a warrant consequently renders any execution on foot of that warrant unlawful.

261. In addition, as discussed in section IV(viii) above, while the authorities make clear that Article 40.5 does not prevent the enforcement of a valid order for possession, the constitutional protection afforded to the dwelling does not cease at the point at which such an order is made or when a warrant is issued. Rather, as far as the state is concerned, the protection afforded by Article 40.5 extends to the manner in which the statutory machinery of enforcement is deployed. This requires not only strict compliance with the statutory framework governing execution, but also requires that the statutory powers are to be exercised in a manner that is reasonable and proportionate, having regard to the circumstances of those affected.

262. In the present case, the absence of any meaningful engagement with the plaintiff or her family, the failure to assess or take account of the presence of a minor and a vulnerable adult, and the imposition of extremely short timeframes for compliance, culminating in execution in circumstances where further resort to the courts was being sought, demonstrate a departure from that standard. These features, taken cumulatively, illustrate not merely a

failure of formality, but a failure in the manner of execution which falls short of what Article 40.5 requires of the state in exercising such powers.

263. The County Registrar, as the responsible office-holder, is *prima facie* liable for the acts of those executing the process, albeit that unlawfulness in the execution of a warrant does not necessarily extinguish the underlying substantive entitlement to possession, though it is relevant to the assessment of damages.

264. Drawing these threads together, and based on the findings of fact described in section II of this judgment, and applying the legal principles discussed in section IV of this judgment, I am satisfied that:

(1) the warrant of 14 October 2024 was not validly issued for two separate independent reasons:

(i) it did not appoint the Wicklow Court Messenger; and

(ii) the Warrant was not reviewed, approved or signed (either by ink pen or signature stamp) by the County Registrar;

(2) the statutory scheme for execution was not complied with, and was in substance abdicated by the relevant public officials; and

(3) the execution of the possession order was not carried out in accordance with the requirements of Article 40.5 of the Constitution.

265. In those circumstances, the plaintiff is entitled to appropriate declaratory relief and to damages as against the State Defendants. However, I am not satisfied that any liability arises on the part of Promontoria or Blackwater, and the claims against those defendants will be dismissed.

VI. Damages

266. In the circumstances of the findings set out above, there was an unlawful interference with the plaintiff's dwelling and a breach of her rights under Article 40.5 of the Constitution.

267. It is necessary, however, to place these findings in their proper context. The unlawfulness arises from the manner in which the possession order was executed, not from the existence of the order itself. Promontoria had obtained a valid order for possession, which had been upheld on appeal, and which entitled it to recover possession of the property. The plaintiff did not have a continuing legal entitlement to remain in occupation indefinitely. The damages to be awarded must reflect that distinction. Equally, however, the fact that there was a lawful possession order does not deprive the plaintiff of her entitlement to damages; see *Moore* at para.s 35 and 50:-

> "…*the starting point has to be to observe that a family home enjoys protection both under the Constitution and under the European Convention on Human Rights. Persons may, of course, lose the right to occupy a family home in accordance with law. It might be said that the Moores lost the formal right to occupy their family home when a valid notice to quit was served. However, there are two relevant considerations that qualify the effect of that statement. One is that the house remained their home, whether they were legally entitled to be there or not, until such time as they were evicted in due course of law.*
>
> *…*
>
> *In those circumstances we consider that the proper course of action to adopt is to make a declaration that the eviction of Ms. Moore, effected on 14 May 2010, was unlawful and to determine that Ms. Moore is entitled to damages at the level of principle."*

268. In addition, as described in *Dixon & Gilliland*, the historical authorities distinguish between defects in execution, and the underlying entitlement to possession. That distinction supports the conclusion that, while the defects identified render the execution of the warrant unlawful, they do not in themselves negate the validity of the underlying possession order. Accordingly, lawful possession could ultimately have been recovered. This distinction is material to the assessment of damages.

269. However, the existence of the possession order does not mean that there is no entitlement to damages. As explained by the Supreme Court in *Moore v Dun Laoghaire-Rathdown* [2017] 3 IR 42 where someone has lost the right to occupy a home in accordance with law that home remains their home until such time as the eviction has been effected in due course of law (see para. 35 of the judgment). Accordingly, in this case that means that the plaintiff could have remained in the home for the period required for the eviction to have been lawfully executed and, in addition, the manner of the eviction, had it been done lawfully, would likely not have occurred in the way it did with the consequential afront to her dignity and associated distress described in section II of the judgment and summarised below.

270. The approach to assessing damages for breach of a constitutional right has been considered in *Shortt v. Commissioner of An Garda Síochána* [2007] 4 I.R. 587 where Murray C.J. states as follows at pp. 610 to 611:-

> *"[77] … in these circumstances I am quite satisfied that the principles relating to the award of damages in tort or for breach of a constitutional right as set out by Finlay C.J. in Conway v. Irish National Teachers Organisation [1991] 2 I.R. 305 at 317 are applicable to the assessment of damages in this case …*
>
> *[78] In Conway v. Irish National Teachers Organisation [1991] 2 I.R. 305, Finlay C. J. stated:- "*
>
> *'In respect of damages in tort or for breach of a constitutional right, three headings of damages in Irish law are, in my view, potentially relevant to any particular case. They are:-*
>
>> *1. Ordinary compensatory damages being sums calculated to recompense a wronged plaintiff for physical injury, mental distress, anxiety, deprivation of convenience, or other harmful effects of a wrongful act and/or for monies lost or to be lost and/or expenses incurred or to be incurred by reason of the commission of the wrongful act.*
>>
>> *2. Aggravated damages, being compensatory damages increased by reason of*
>>
>> *(a) the manner in which the wrong was committed, involving such elements as oppressiveness, arrogance or outrage, or*
>>
>> *(b) the conduct of the wrongdoer after the commission of the wrong, such as a refusal to apologise or to ameliorate the harm done or the making of threats to repeat the wrong, or*
>>
>> *(c) conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff, up to and including the trial of the action.*
>>
>> *Such a list of the circumstances which may aggravate compensatory damages until they can properly be classified as aggravated damages is not intended to be in any way finite or complete. Furthermore, the circumstances which may properly form an aggravating feature in the measurement of compensatory damages must, in many instances, be in part a recognition of the added hurt or insult to a plaintiff who has been wronged,*

and in part also a recognition of the cavalier or outrageous conduct of the defendant.

3. Punitive or exemplary damages arising from the nature of the wrong which has been committed and/or the manner of its commission which are intended to mark the court's particular disapproval of the defendant's conduct in all the circum- stances of the case and its decision that it should publicly be seen to have punished the defendant for such conduct by awarding such damages, quite apart from its obligation, where it may exist in the same case, to compensate the plaintiff for the damage which he or she has suffered. I have purposely used the above phrase "punitive or exemplary damages" because I am forced to the conclusion that, notwithstanding relatively cogent reasons to the contrary, in our law punitive and exemplary damages must be recognised as constituting the same element.'"

271. Accordingly, in assessing damages, I have regard to the evidence of the impact of the events on the plaintiff and her family. The House had been her home for close to twenty years and was the only home her children had known. At the time, she resided there with her three children, including a minor and an adult child with special needs for whom she provided full-time care. The evidence demonstrates that the process leading to the eviction involved very limited notice, and no meaningful engagement with the plaintiff or her circumstances. The execution took place in circumstances which differed markedly from the ordinary practice described by the County Registrar and the Court Messenger, including the absence of any assessment of the position of the occupants or of the presence of vulnerable persons. The plaintiff learnt by email of the outcome of the Court of Appeal hearing at approximately 11am on Friday 21 February 2025. She then received a letter by email that afternoon indicating that she had until midnight on Sunday 23 February 2025 to leave the House. Mr. Burke was informed over the weekend that the plaintiff intended to make an application to court for a further stay on the execution process pending an application to the Supreme Court. Meanwhile, according to Mr. Gray, as far as he knew, none of those attending to carry out the eviction on the Monday morning 24 February 2025 were told about the plaintiff's presence or that of the children or that one of the children had special needs. Indeed it was Mr. Gray's recollection that he had been told a few days earlier that the plaintiff was no longer in the House.

272. The plaintiff described the experience of the eviction as humiliating and traumatising. In the circumstance that arose, one child had gone into school that morning to do a mock leaving examination and one had headed into Dublin to attend university. Neither child nor the plaintiff would ever return to their home. The plaintiff went into the Four Courts and had left her eldest son who had special needs with her partner. The evidence also establishes that, in the aftermath, she and her children were required to move between temporary living arrangements which were difficult and cramped, and which placed additional pressure on the family, particularly in light of her role as carer to her eldest son.

273. These matters justify an award of damages. However, the award must be proportionate to the nature of the wrong established. This is not a case in which the plaintiff was unlawfully deprived of a property to which she had a subsisting legal entitlement. Rather, it is a case in which a valid court order for possession was enforced by a process which failed to comply with the statutory scheme for enforcement and with the requirements of Article 40.5.

274. In that regard, I have had regard to the approach taken in cases such as *Abraham v Oakley Park Developments* [2016] IEHC 790 and *McNulty v Commissioner of An Garda Síochána* [2016] IEHC 632, and the judgments and examples referred to in those cases.

275. *McNulty* concerned incidents in the plaintiff's home on two specific dates which the court found to be a trespass by virtue of gardaí exceeding their authority. An award of €5,000 for

trespass was made. In *Kessopersadh v Keating & Ors* [2013] IEHC 317 (referred to by Baker J. in *McNulty*) there was an unlawful search of the plaintiff's home by gardaí late at night that was considered very upsetting and O'Malley J. assessed general damages for trespass and unlawful entry at €50,000. In *Abraham* an award of €15,000 was made for interference with the enjoyment of the plaintiffs' home which included a dispute over the location of a fence and the painting of a line on the roof of a shed that was said to have crossed a boundary.

276. While the facts in each of these cases are unique to their particular circumstances, in these cases the courts emphasise that, in cases involving trespass or irregularities in the exercise of lawful authority, damages should remain proportionate and not exceed what is necessary to vindicate the right in question. In those circumstances, I consider that a relatively modest award is appropriate, notwithstanding the real distress caused. Doing the best I can on the evidence, I will award damages in the sum of €20,000. That sum reflects the impact on the plaintiff of the unlawful manner in which possession was taken, while also recognising that the underlying entitlement to possession was valid.

Aggravated and Exemplary Damages

277. I am not satisfied that this is a case in which an award of aggravated or exemplary damages is warranted. While the plaintiff plainly suffered real distress arising from the manner in which the eviction was carried out, the evidence does not establish the type of exceptional or contumelious conduct which would justify such awards. The deficiencies identified in this judgment arise from failures in the execution of the statutory process rather than from any deliberate or high-handed wrongdoing. In those circumstances, an award of compensatory damages is sufficient to vindicate the plaintiff's rights.

VII. Form of Order and Declarations

278. There will accordingly be an award of damages in favour of the plaintiff in the sum of €20,000 against the State Defendants. The claim against Promontoria and Blackwater is dismissed.

279. In light of the findings above, I will make the following declarations:-

(i) The Warrant of 14 October 2024 purportedly issued by the County Registrar for Wicklow was not validly issued; and

(ii) The execution of the possession order pursuant to that warrant, including the entry onto and recovery of possession of the plaintiff's dwelling on 24 February 2025, was unlawful and in breach of the plaintiff's rights under Article 40.5 of the Constitution.

280. I will list the matter for final orders and to address the issue of costs.