Approved/no redactions needed

THE COURT OF APPEAL
CIVIL

Neutral Citation Number: [2026] IECA 151
Court of Appeal Record Numbers: 2025/236, 2025/237
2025/238 & 2025/239
High Court Record Numbers: 2021/5661P, 2022/729p
& 2022/730p

Costello P.

Pilkington J.

McDonald J.

BETWEEN/

JERRY BEADES

PLAINTIFF/APPELLANT

-AND-

KBC MORTGAGE FINANCE UNLIMITED COMPANY FORMERLY KNOWN AS IIB HOMELOANS LIMITED AND PEPPER FINANCE CORPORATION (IRELAND) DAC

DEFENDANTS/RESPONDENTS

AND BETWEEN

JERRY BEADES

PLAINTIFF/APPELLANT

-AND-

JAMES ANDERSON AND PEPPER FINANCE CORPORATION (IRELAND) DAC

DEFENDANTS/REPONDENTS

AND BETWEEN

JERRY BEADES

PLAINTIFF/APPELLANT

-AND-

JAMES ANDERSON AND PEPPER FINANCE CORPORATION (IRELAND) DAC

DEFENDANTS/RESPONDENT

JUDGMENT of Mr. Justice McDonald delivered on 29th July 2026

Introduction

1. These appeals are all brought by the Appellant against a judgment of the High Court (Dignam J.) delivered on 27th June 2025 ([2025] IEHC 363) and against the orders made on foot of that judgment, namely the following:

(a) The order made in High Court proceedings record number 2021/5661p (*"the first action"*) on 28th July 2025, on foot of the first respondent's motion dated 23rd February 2022, by which it was ordered that the proceedings against that respondent were struck out under the inherent jurisdiction of the High Court on the grounds that they are frivolous and vexatious and bound to fail and, by which, the High Court refused the appellant's application to re-examine the above judgment:

(b) The order made in the first action on 28th July 2025, on foot of the second respondent's motion dated 7th April 2022, by which it was ordered:

(i) that the proceedings against that respondent be struck out pursuant to O. 19, r. 28 of the Rules of the Superior Courts (*"R.S.C."*) and the inherent jurisdiction of the High Court on the grounds that they constitute an abuse of process, do not disclose a reasonable cause of action and are frivolous and vexatious and bound to fail; and,

(ii) that the appellant be prohibited from issuing further proceedings without leave of the High Court in respect of 31 Richmond Avenue, Fairview, Dublin 3 and 21 Little Mary Street, Dublin 1 against any of the first respondent, the firm of Deloitte and any partners or employees of Deloitte; and

(iii) that the appellant's application to review the above judgment was refused;

(c) the order dated 28th July 2025 made in High Court proceedings record number 2022/729p (*"the second action"*), on foot of the motion dated 8th April 2022 brought by both of the respondents in the second action, by which it was ordered that:

(i) the proceedings should be struck out pursuant to O. 19, r. 28 and the inherent jurisdiction of the High Court on the grounds that they constitute an abuse of process, do not disclose a reasonable cause of action and are frivolous and vexatious;

(ii) the appellant's application to review the above judgment was refused;

(d) the order dated 28th July 2025 made in High Court proceedings record number 2022/730p (*"the third action"*), on foot of the motion dated 20th April 2022 brought by both of the respondents in the third action, by which it was ordered that:

(i) the proceedings should be struck out pursuant to O. 19, r. 28 and the inherent jurisdiction of the High Court on the grounds that they constitute an abuse of process, do not disclose a reasonable cause of action and are frivolous and vexatious;

(ii) the appellant's application to review the above judgment was refused.

2. At a later point in this judgment, it will be necessary to consider the High Court judgment in more detail. At this point, it is sufficient to record that the principal basis on which each of the respondents sought to have the actions struck out was that the appellant was attempting to re-litigate matters that had already been determined or that he was attempting to litigate matters which could have been determined in earlier proceedings but were not raised by him at that time. Relatedly, it was contended that the claims made in the actions represented a collateral attack on final and binding decisions made by the High Court, Court of Appeal and the Supreme Court (as described further below).

3. In para. 60 of his judgment, the High Court judge referred to the following observation of Costello J. (as she then was) in *Morrissey v. Irish Bank Resolution Corporation* [2015] IEHC 200 (*"Morrissey"*), at para. 5, which succinctly explains the underlying principles:

> *"It is a fundamental principle of law that a party should not be entitled to re-litigate matters or raise issues which have already been determined by a final judgment of a court of competent jurisdiction between the same parties and their privies. This is known as the principle of res judicata. But beyond the strict limitations of res judicata the courts have long recognised that there may be abuse of*

process outside of the relatively confined limitations of the rule and the courts have always been prepared to balance the rights of parties to have their cases heard and determined by the courts with the rights of the opposing parties to fair procedures in the conduct of litigation and, where necessary, to strike out proceedings if they amount to an abuse of process."

4. As Costello J. explained in that paragraph, the first principle described by her is known as *res judicata.* The second principle is wider and it includes, for example, the rule in *Henderson v. Henderson* (1843) 3 Hare 100. The long line of case law based on that decision establishes that the jurisdiction invoked by the respondents in this case is not confined to circumstances where an issue has previously been decided in earlier proceedings. The court has a similar power in cases where an issue could and should have been raised in the earlier proceedings unless there are special circumstances which excuse or justify the failure to have done so.

5. Both principles share a common purpose, namely that there must be finality to litigation. Once a final and binding decision has been made and all avenues of appeal have been exhausted or have not been pursued within the applicable time limits, that is the end of the court process. Parties involved in that process cannot return to court later and seek to relitigate the issues. Nor can they, in the absence of special circumstances, seek to raise issues in new litigation which could have been – and which should have been – raised in an earlier process before the courts. These are necessary and essential safeguards to ensure that parties are not subjected to the stress and expense of endless litigation. They are also a necessary incident of the requirement that court orders are respected and obeyed.

6. The principles described by Costello J. in *Morrissey* are also underpinned by an important public interest in ensuring that valuable court time is not wasted and that access to justice is managed fairly and efficiently. Access to justice is, regrettably, a finite resource. Other litigants should not have to compete for access to that resource with those who have already exhausted the court process and whose claims have been rejected. Other litigants have a constitutionally protected right of access to the courts. Their right of access should not be undermined or curtailed as a result of the amount of court time required to deal with repeat litigation or manifestly unmeritorious claims.

The principal grounds of appeal

7. Although the appellant, in his notices of appeal, made a wider series of complaints about the decision of the High Court to dismiss his proceedings, the appellant narrowed the focus of the appeal in his written and oral submissions to the Court. He argued that the High Court judge had misapplied the rule in *Henderson v. Henderson*. He made a number of arguments in that context. These included a contention that the High Court had failed to find that there had been a fraud on the court in earlier proceedings for possession of the properties described below. This was based on a contention that an allegedly unexecuted mortgage had been presented to the court in the 2006 possession proceedings (described below) as a duly executed document and that the court had been similarly misled, at that time, in relation to the terms of a letter of loan offer. He also argued (and this was described by him as a *"core"* ground of appeal) that the High Court had failed to conduct *"a mandatory ex officio assessment of unfair terms in the underlying consumer mortgage contract* *pursuant to Council Directive 93/13/EEC (the 'Unfair Terms Directive')"*. On that basis, the appellant maintained that the application of the rule in *Henderson v. Henderson* violated EU law.

8. In addition, the appellant also sought to argue that the relevant mortgagee had sold its mortgage loan book to a third party prior to the making of the order for possession against him in 2008 and that this had the effect of reducing the status of the mortgagee to no more than a *"mortgage manager"* with no independent enforcement rights. As discussed further below, this issue was not raised in any of the affidavits placed by the appellant before the High Court.

<u>The three actions commenced by the appellant</u>

9. In order to understand the issues which arise, it is necessary to identify a number of features of these proceedings. In the first action, which was commenced on 4th October 2021, the appellant (acting in person) issued a plenary summons in which he sought an order setting aside an order for possession made against him on 23rd June 2008 in High Court proceedings record number 2006/623 sp. (*"the 2006 possession proceedings"*) under which he was ordered to deliver up possession of two properties to the first respondent in the first action then called IIB Homeloans Limited (which I will refer to as *"IIB"*). The claim for possession was advanced on the strength of a mortgage dated 12th June 2003 which IIB claimed had been provided by the appellant as security for a loan to purchase two tenanted properties. The first property was 31 Richmond Avenue, Fairview, Dublin 3 while the second was 21 Little Mary Street, Dublin 1. The order for possession was made by Dunne J. following an exchange of affidavits and after hearing at which she heard arguments from counsel for IIB and counsel for the appellant.

10. In the first action, the appellant makes the case that the mortgage on which IIB relied in the 2006 possession proceedings was never signed by him. The defendants to that action are IIB as the party which successfully sought possession of the properties and the second respondent (*"Pepper"*) in its capacity as successor in title to IIB. In a draft statement of claim, it is alleged that all actions taken on foot of the mortgage are invalid including the appointment of a receiver. An alternative case is made that, even if the mortgage is valid (something which the appellant strongly denies), there is *"no valid facility letter attached or connected to the purported ... mortgage and even if there were a facility letter attached ... no such letter offers the property as security."* As outlined further below, this alternative case is a repetition of the case made by the appellant in his defence of the 2006 possession proceedings.

11. Similar allegations are made by the appellant in the second and third actions. Those actions were commenced by plenary summonses issued by the appellant (acting in person) issued on 23rd February 2022. The second action relates to the Richmond Avenue property while the third relates to the Little Mary Street property. The defendants are Mr. James Anderson, the receiver appointed by Pepper over the properties on 8th October 2021 (*"the Receiver"*) and Pepper itself. The claims made in both actions are virtually identical. In the statements of claim delivered in May 2022, the appellant claims that the appointment of the Receiver is invalid on the basis (so it is alleged) that the mortgage was not signed or executed by either the appellant or IIB. A similar alternative case is advanced to that described above in the context of the first action.

12. The appellant complains that the Receiver and Pepper have trespassed on his property and that they have relied on what he characterises as a *"defective mortgage"* to oust him and the tenants from the properties. He also claims that, in contravention of the Forcible Entry Act 1381, the Receiver and Pepper encouraged others to criminally damage the locks in order to effect a forcible entry upon the properties. Those elements of his complaints are only relevant in the event that the appellant continues to have any rights in respect of the properties. The respondents contend that it has been conclusively determined in the 2006 possession proceedings and in a more recent Court of Appeal decision that he has lost any such rights.

13. Fundamentally, there are two aspects to the appellant's claims as pleaded in the statements of claim. The first is the claim that he never signed the mortgage. The second is the claim that, even if there is a valid mortgage, there was no valid letter of offer.

14. In so far as the first aspect is concerned, the appellant, in para. 20 of the draft statement of claim in the first action, makes the following allegation in respect of the mortgage:

> *"The Plaintiff on a closer examination of the mortgage documents believes that there* [sic] *were not signed by him and that anything that flows from this is tainted and cannot or should not be relied upon to grant any of the orders that were granted against the Plaintiff and any one in occupation of the premises."*

15. This allegation is explained in more detail in an affidavit sworn by the appellant on 21st April 2022 in response to KBC's motion in the first action in which he stated in paras. 3 to 7 as follows:

> *"3. I say that on the 29th January 2021 I received a report from Dave*

Madden Documentation Examiner that identified certain irregularities on the documents … under which the order of possessions had been granted in relation to 31 Richmond Avenue and 21 Little Mary Street. Mr. Madden concluded that I had not signed the indenture dated 12th June 2003...

4 On the 3rd February 2021, Dave Madden wrote to me that he had examined the Mortgage... and established that in his opinion … 'it was strongly probable' that Jerry Beades did not author the 'JERRY BEADES' signature on the Mortgage…

5 Mr. Maddens report agreed with the opinion that I formed that I had not signed any of the documents that were used to get the order for possession, and that was the reason I sought the examination of documents by Mr. Madden which confirmed the opinion I had held.

6 I say that I now realise that in fact the mortgage does not purport to be signed by anyone. Having considered the hand writing in the description of the mortgaged properties of the Schedule on page 13 of the mortgage, it is clear that that is the same handwriting that wrote. 'Jerry Beades' on page 14. This was merely someone preparing the mortgage to be signed, sealed and delivered.

7 It is now abundantly clear that this mortgage was prepared for execution and the name Jerry Beades was inserted not purporting to be a signature but merely a printed name to identify the name of a person who it may have been proposed to execute the mortgage deed…"

<u>The relevant pre-existing decisions</u>

16. Having described, in broad terms, the claims made by the appellant in the three actions, it is next necessary to consider the pre-existing decisions of the courts which are relevant to the claims sought to be advanced by the appellant in those actions. This involves a consideration of the decisions made in the 2006 possession proceedings brought by IIB on foot of the 2003 mortgage and a number of additional decisions in other proceedings in which similar claims raised by the appellant were expressly rejected by the courts.

The 2006 possession proceedingsto recover possession of the properties

17. The allegations made by the appellant in these three actions should be seen against the backdrop of what transpired during the 2006 possession proceedingswhich were brought on foot of the mortgage dated 12th June 2003 over both properties. In those proceedings, IIB claimed the mortgage was put in place as security for a loan facility of €1.2 million issued pursuant to a letter of offer dated 20th May 2003. The mortgage deed was exhibited in the usual way in the affidavit of Shane Reid sworn on 12th December 2006 grounding the special summons. The execution page was an integral element of the exhibit and the form of execution of the mortgage was there for all (including the appellant) to see. The name *"Jerry Beades"* appears in handwriting on that page along with the signature of a witness who appears to have been the appellant's solicitor. If that was not the appellant's signature, that would have been immediately apparent to the appellant. It is noteworthy that Mr. Reid's affidavit was sworn approximately 18 months before the hearing before Dunne J. on 23rd June 2008. There was, accordingly, ample time available to the appellant to interrogate the case made against him by IIB.

18. The appellant (then represented by solicitor and counsel) defended the 2006 proceedings. Affidavits were sworn both by him and his solicitor in response to the claim made. In his affidavit sworn on 25th February 2008, the appellant made the case that the loan offer exhibited by IIB (and on which IIB relied) was not the same as the loan offer provided to him and which he claimed that he had accepted. This line of defence strongly suggests that the appellant gave specific attention to the exhibits to Mr. Reid's affidavit grounding the special summons. As noted above, those exhibits included the mortgage which Mr. Beades now claims does not bear his signature.

19. In his affidavit, the appellant also made a number of other points which are not immediately relevant to the issues on this appeal. However, there is one averment which is very relevant for present purposes. At para. 5, the appellant swore as follows:

> *"The Mortgage was approved* ***and signed*** *for 1.2 million and the sum advanced was only 1.15 which should of left a €50,000 sum to cover repayments. For some reason un be known to Jerry Beades this did not happen. This money should have been available to meet the repayments at the early stage of the loan."* (emphasis added)

20. Notwithstanding the case now sought to be made by the appellant in the three current actions, no allegation was made by him in that affidavit that the mortgage had never been signed by him. On the contrary, as the above extract from his affidavit makes very clear, he swore on oath that the mortgage had been signed.

21. The schedule to the order made by Dunne J. on 23rd June 2008 suggests that the only affidavit placed before the Court on the appellant's behalf was an affidavit sworn by his solicitor, John Connellan on 19th June 2008. No reference is made in the schedule to the appellant's affidavit. In his affidavit sworn on the appellant's behalf, Mr. Connellan made the case that there were two letters of offer from IIB both dated 20th May 2003, one of which was more favourable to the appellant than the version on which IIB relied and which, if applicable, would have had the result that the appellant was not in default in the repayments due on foot of the loan. Mr. Connellan also indicated that the appellant wished to seek rectification of the loan offer on the basis of a mistake.

22. Although the schedule to the order for possession made by Dunne J. does not refer to the appellant's affidavit, it is clear that the affidavit was served on IIB because it is specifically addressed in a replying affidavit sworn by Ms. Gillian O'Reilly on 10th April 2008 (and her affidavit is, in turn, listed in the schedule to the order of Dunne J.). Mr. Connellan also made reference to it in para. 4 of his affidavit sworn on 19th June 2008.

23. There is an agreed note of the judgment of Dunne J. signed by both counsel from which it appears that no reference was made to the appellant's affidavit at the hearing. The note records that Dunne J. did not accept that the appellant had a *bona fide* defence to the claim and that, in those circumstances, she made the order for possession sought by IIB but placed a stay of six months on the order in circumstances where there were tenants in situ.

24. Notably, the appellant appealed to the Supreme Court against the order for possession made by Dunne J. That appeal was heard by the Supreme Court on 29th April 2014 following which judgment was delivered by McKechnie J. on 12th November 2014. It is clear from paras. 29 and 36 of that judgment, that the affidavit sworn by the appellant on 25th February 2008 was relied upon for the purposes of that appeal and that it formed part of the evidence considered by the Supreme Court. Nonetheless, the Supreme Court came to the conclusion that the appellant did not have a *bona fide* defence to the claim for possession and the Court upheld the decision of Dunne J.

25. The judgment of the Supreme Court was delivered by McKechnie J. (*IIB Homeloans Limited v. Beades,* Supreme Court, unreported, 12th November 2014). There are a number of aspects of his judgment which should be noted. In the first place, McKechnie J., at para. 34, referred to the commercial nature of the appellant's interest in the properties. This is relevant to one of the principal issues now raised by the appellant in the current appeal. As explained further below, the appellant has claimed in the course of the appeal to this Court that, in his dealings with IIB in relation to the subject properties, he acted as a consumer. That contention is not consistent with the view of the Supreme Court in 2014. At para. 34 of his judgment, McKechnie J. said:

> *"**The properties in issue were, from Mr. Beades' point of view, a commercial investment**: at the time they were let and had sitting tenants in them. The Bank took the view that this security was virtually unsaleable without vacant possession: such a situation would totally disable the power of sale…"* (emphasis added).

26. In paras. 36 and 37, McKechnie J. described in detail the issues raised by the appellant. It is clear from those paragraphs that the description of the issues was based on the contents of the appellant's affidavit sworn on 25th February 2008. It is also clear from McKechnie J.'s description of the issues that no question was raised at that time in relation to the validity of the execution of the mortgage by the appellant. In para. 39, McKechnie J. disposed of the appellant's contention that the loan had been advanced on the basis of a letter of offer in different terms to that on which IIB had relied in support of its claim for possession. He said:

> *"A few observations can be made on the basis of the facts which, by objective verification, can be regarded as having been established to a high level of probability. The only letter signed by Mr. Beades is the letter upon which the Bank relies. From the Bank's point of view, it would seem extraordinary that it would provide the advance in question on the basis of an offer which had not been signed for or otherwise acknowledged by the intended borrower. From Mr. Beades' perspective, a perspective of experience and long standing and of one* ***deeply rooted in commercial investment****, involving, over many years, much interaction with different lending institutions, it must equally seem extraordinary that he would have obtained this loan without ever signing for it or putting a signature on the offer document,* ***whilst at the same time executing the required security documentation****. This is in circumstances where, throughout the negotiations, he was being advised by his legal advisors. Such a situation, even if uncontradicted by evidence directly to the contrary, must be gravely improbable."*
> (emphasis added).

27. That paragraph is notable for two reasons. It again refers to the commercial nature of the transaction and puts it in the context of the wider commercial investment experience of the appellant. Secondly, it explicitly makes reference to the execution of the security documentation i.e. the mortgage. It is essential to bear in mind that the underlying purpose of both the High Court hearing and the Supreme Court appeal was to determine whether IIB was entitled to possession of the properties on foot of its mortgage or whether the appellant had raised an arguable defence to that claim. Given that very basic fact, it is remarkable that no issue was raised by the appellant in relation to the execution of the mortgage either before the High Court or the Supreme Court. As noted earlier, the mortgage (including its execution page) was there for all to see. If there was any case to be made that the mortgage had not been signed, the appropriate time to raise that issue was in the course of the possession proceedings.

28. In the latter part of his judgment, McKechnie J. addressed a number of legal issues and the test which applies on an application for possession. In para. 51, McKechnie J. identified that the fundamental question was whether it was very clear that the appellant had no defence to the claim. In para. 54, he answered that question in the following terms:

> *"In reviewing the overall evidential situation which the documents in this case disclose, I cannot identify any fact or facts, essential for the application to succeed, which Mr. Beades has put in issue in accordance with these principles. The alleged shortfall in the advanced, the Mendit allegation, the issue regarding the fixed interest rate offer, and the accuracy of the statement of account which issued, have all been comprehensively disposed of against Mr. Beades ... thereby leaving no residual room for further argument on these matters. The only contentious issue relates to which of the offer letters formed the legal basis of the advance. For the several reasons above outlined, I do not believe that Mr. Beades, in his evidence, achieved*

any more than simple assertion, which is not sufficient. Neither is it enough to suggest that the mere presence of a factual dispute, however tenuous, precludes summary disposal... Mr. Beades has not averred to any supporting facts which would even raise the possibility of having a defence in this regard. What he has sworn to is so unrealistic and lacking in support that it could not possibly be described as credible."

29. On foot of that judgment, the Supreme Court made an order on 12th November 2014 dismissing the appeal and affirming the order of Dunne J. That order constituted a final and conclusive determination that the appellant had no defence to the claim for possession and that IIB was entitled to possession of both properties.

The applications under O. 42, r. 24

30. According to the affidavit of Darragh Langan sworn on 21st February 2022 grounding the first respondent's motion in the first action, IIB was given leave on 16th May 2015 by Costello J. in the High Court to issue an execution order addressed to the sheriff to take possession of the subject properties. However, there were perceived to be logistical difficulties in executing that order given the number and make-up of the individual arrangements which the appellant had entered into with persons occupying the properties. This is described in more detail in para. 8 of the 2018 judgment of Costello J. addressed further below.

31. In the years following the order made by Dunne J., IIB changed its name to KBC Mortgage Bank (*"KBC"*). In the course of 2009, a scheme of transfer was executed between IIB and KBC under the provisions of the Central Bank Act 1971. That scheme had the effect of transferring the loans and related securities formerly held by IIB to KBC, including the loan to the appellant and the related mortgage. Furthermore, s. 41 of the Central Bank Act 1971 had the effect that legal proceedings previously carried on in the name of IIB, as at the date of the transfer (which, in this case, was 26th February 2009), fell to be pursued in the name of KBC.

32. Given the transfer to KBC, an order was sought from the High Court that it should be substituted as plaintiff in place of IIB. An order was also sought under O. 42, r. 24 for leave to issue execution in the name of KBC. That application was opposed by the appellant on a number of grounds but, in a judgment delivered by Costello J. on 29th June 2018 ([2018] IEHC 390, the High Court rejected those grounds. KBC was substituted as plaintiff and the Court gave liberty to KBC to proceed with execution of the possession order. It should be noted, for completeness, that, consistent with the position in 2008 (when the matter was before Dunne J.) and 2014 (when the matter was before the Supreme Court) the appellant did not seek to raise any issue in 2018 in relation to the validity of the execution of the mortgage.

33. It should also be noted that, in the course her judgment, Costello J. dealt in detail with the chain of ownership of the loan and the mortgage and she also addressed a series of arguments made by the appellant at that time in opposition to the orders sought by KBC. Nevertheless, as recorded in para. 149 of the judgment of Dignam J. (the subject of this appeal), the appellant, in the course of the hearing of the respondents' applications, purported to raise a new allegation in relation to the chain of title, which was never raised by him in the course of the 2006 possession proceedings or in the course of the hearing before Costello J. in 2018. In fact, as Dignam J. records, it was not even raised in the appellant's affidavits sworn in opposition to the respondents' applications. This new allegation (which is repeated in the appellant's notices of appeal and his submissions to this Court) is that, in June 2008, IIB sold its mortgage loan book to Phoenix Funding 2 Limited (*"Phoenix"*). Dignam J. refused to entertain this allegation on two grounds, namely that there was no evidence before the Court that supported the allegation and that, in any event, the allegation represented an impermissible collateral attack on the 2018 judgment of Costello J. In my view, the judge was plainly correct in reaching that view. This allegation cannot be entertained in circumstances where there is no evidence to suggest that the loan and mortgage the subject of the 2006 possession proceedings were ever transferred to Phoenix. The appellant is not entitled to rely on matters that have not been appropriately addressed on affidavit. Even if he were entitled to do so (which he is not), it is also noteworthy that, in his written submissions, the appellant sought to rely on what he contends is an extract from the 2009/2010 accounts of KBC. In the ordinary way, accounts for those years would have been available for inspection in the Companies Registration Office prior to the hearing of the appellant's appeal to the Supreme Court in 2014. If there was any substance to the allegation, it was therefore a point that the appellant could have sought to ventilate in that appeal. The attempt to raise it now is not only an impermissible collateral attack on the judgment of Costello J. but it is also an impermissible attack on the orders made by the High Court and Supreme Court in the 2006 possession proceedings.

34. Subsequent to the 2018 hearing before Costello J., the interest of KBC in the appellant's loan and mortgage (and other similar arrangements between IIB and unrelated borrowers) was transferred to Beltany Property Finance DAC (*"Beltany"*). That required a further application to the High Court for an order substituting Beltany as plaintiff in place of KBC and for an order under O. 42, r. 24 for leave to issue execution in Beltany's name. That application was granted by the High Court (Reynolds J.) on 14th October 2019.

35. In the meantime, the appellant had appealed the decision of Costello J. to this Court. In turn, he also appealed the order made by Reynolds J. in 2019. Both appeals were heard together in September 2020. Before the hearing of those appeals, a further assignment of interest took place namely an assignment of loans and related security (including the loan to the appellant and the associated mortgage) from Beltany to Pepper. This led to two further applications being made. The first was an application by Pepper to be joined as a co-respondent to the appellant's appeals. This application was moved on 25th September 2020. The second was an application made to the High Court (Twomey J.) on 18th November 2020 for an order that Pepper be substituted as plaintiff in lieu of Beltany and that Pepper be given liberty pursuant to O. 42, r. 24 to execute the order for possession.

36. In two judgments of Whelan J. delivered on 17th February 2021, the Court rejected all of the appellant's grounds of appeal and the decisions of Costello and Reynolds JJ. were upheld. The first of those judgments (*Pepper Finance Corporation (Ireland) DAC v. Beades* [2021] IECA 41) addressed the appeal from the 2018 decision of Costello J. The second (*Pepper Finance Corporation (Ireland) DAC v. Beades* [2021] IECA 40) addressed the decision of Reynolds J. In a third judgment delivered on the same day ([2021]IECA 39), Whelan J. upheld the right of Pepper to be treated as a co-respondent to the appeals. All of the points then raised by the appellant were comprehensively addressed in those judgments and, in each case, the Court rejected his grounds of opposition to the orders giving effect to the chain of assignments commencing with IIB's assignment to KBC and concluding with the assignment from Beltany to Pepper.

<u>Pepper's proceedings against the occupants of the properties</u>

37. Prior to delivery of the judgments by Whelan J. in February 2021, separate proceedings were commenced by Pepper in October 2020 seeking possession of the properties from the persons in occupation of them. Those proceedings bear High Court record numbers 2020/ 6688 p and 2020/6889p. In the first set of proceedings, the defendants are named as *"Persons unknown in occupation of the property known as 21 Little Mary Street Dublin 1"*. In the second set of proceedings, the defendants were named as *"Persons unknown in occupation of the property known as 31 Richmond Avenue Fairview Dublin 3"*. At the same time, Pepper brought applications for interlocutory injunctions in both actions seeking orders requiring the occupants to give up possession of the properties and restraining them from impeding Pepper or its agents in their efforts to secure possession. Those applications came on for hearing before the High Court (Reynolds J.) on 25th November 2020. There was no attendance by any of the occupants but the appellant attended and he sought to be heard. The High Court determined that, in circumstances where the proceedings were not in any way addressed to the appellant, he had no right of audience. On the basis of the evidence presented by Pepper, the High Court made the interlocutory orders sought. The appellant then brought appeals against both orders to this Court. The appellant also appealed the order made by the High Court (Twomey

J.) in these proceedings on 18th November 2020 substituting Pepper as plaintiff in place of Beltany and giving Pepper leave to execute the possession order made by Dunne J.

38. The appeal against the order of Twomey J. in these proceedings was addressed in a judgment given by Binchy J. on 14th October 2021 (*Beltany Property Finance DAC v. Beades* [2021] IECA 256). As that judgment makes clear, the appellant raised ten grounds of appeal, all of which were rejected by the Court. In para. 12 of his judgment, Binchy J. also records that, at the hearing of the appeal, the appellant commenced his submissions by seeking to impugn the possession order made by Dunne J. In the same paragraph, Binchy J. ruled that it was not open to the appellant to do so:

> *"It hardly needs to be said that it is not open to the appellant to impugn the order of Dunne J. more than thirteen years after it was granted and more than seven years after his appeal from that order of Dunne J. was dismissed by the Supreme Court."*.

39. The appellant's appeals against the interlocutory injunctions granted by Reynolds J. in the proceedings against the occupiers were addressed in a judgment of Whelan J. (*Pepper Finance Corporation (Ireland) DAC v. Persons Unknown* [2021] IECA 258) which was also delivered on 14th October 2021. It is clear from her judgment that, in addition to the eight grounds of appeal raised by the appellant in his notices of appeal, the appellant also sought, in his written and oral submissions to the Court, to advance a contention that the signature on the mortgage was a forgery. His attempt to do so was rejected by the Court which held that it was not open to him to do so. Whelan J. explained in clear terms why such a contention could not be advanced by him at that point. Her explanation is very much on point for present purposes. At paras. 19 to 21, she said:

> *"19. It is not now open to the appellant to seek to impugn the order for possession by generating novel points and arguments which were not advanced or agitated by him before the Supreme Court in 2014. I am satisfied that here we have a clear 'cause of action estoppel' established. This operates as a form of estoppel which precludes the appellant from challenging the order for possession in any fresh, new or subsequent proceedings.*
>
> *20. As was observed by Wigram V.C. in Henderson v. Henderson at p. 115:-*
>
> > *'The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.'*
>
> *In that sense, the statement of Wigram V.C. in Henderson v. Henderson exemplifies res judicata in its wider sense as an integral part of the law pertaining to abuse of process. Lord Sumption in Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd. [2013] UKSC 46, [2014] A.C. 160 observed at para. 24:-*
>
> > *'…The principle in Henderson v. Henderson has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and*

> *should have been raised before. There was nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in the Yat Tung case [1975] A.C. 581. The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most important of them, Johnson v. Gore-Wood & Co. [2002] 2 A.C. 1, in which the House of Lords considered their effect.'*

As Lord Sumption observed at para. 25:-

> *'…Res judicata and abuse of process are juridically very different. Res judicata is the rule of substantive law, while abuse of process is a concept which informs the exercise of the court's procedural powers. In my view, they are distinct although overlapping legal principles with a common underlying purpose of limiting abusive and duplicative litigation. That purpose makes it necessary to qualify the absolute character of both cause of action estoppel and issue estoppel where the conduct is not abusive.'*

21. None of the allegations now raised by the appellant were advanced before the High Court when the order for possession was made over thirteen years ago, nor did he seek to raise them before the Supreme Court which disposed of the appeal over six and a half years ago. The order for possession and the right to execute it stand vested in the respondent, subject only to an appeal on a net issue which falls to be dealt with by this court and is the subject of a separate judgment herein. In all the circumstances, it is not now open to the appellant to *seek to re-litigate the issue of the order for possession or otherwise to seek to use the within proceedings to launch a collateral attack on the order of the High Court as affirmed by the order of the Supreme Court made in November 2014 by attaching himself to this litigation."*

40. That was a very clear and definitive finding made by this Court in which it was very plainly held it was not open to the appellant to re-litigate the order for possession or to launch a collateral attack on the order for possession made by Dunne J. in 2008 as affirmed by the order of the Supreme Court made in November 2014. It is striking that the plenary summons in the first action was issued on 4th October 2021 just a few days before that judgment was delivered. It is even more striking that, notwithstanding the clear finding made in that judgment, the appellant considered that he was, in some way, entitled to proceed with his challenge to the mortgage in the first action which he largely replicated in the second and third actions commenced by him a few months later on 23rd February 2022.

<u>The issue raised by the appellant in relation to the execution of the mortgage</u>

41. In para. 84 of his judgment, Dignam J. concluded that the 2021 decisions of this Court are determinative of Mr. Beades' challenge to the validity of the mortgage and the possession order. However, in circumstances where (among other things) the appellant had raised additional matters in his affidavits, the judge then went on, in para. 85 and following paragraphs of his judgment, to consider the issue afresh. The judge highlighted that the issue in relation to the execution of the mortgage could have been raised in the 2006 possession proceedings. On that basis, he said that the rule in *Henderson v. Henderson* was engaged. In para. 86, the judge acknowledges that, although the rule was engaged, this does not lead *"automatically or inevitably to a bar on the action."* He added:

> *"The court must adopt a merits-based approach, having regard to all of the circumstances, including any reason why the point(s) was not raised, and including any special circumstances which might mean that the imposition of the rule would be unfair, excessive or disproportionate, though much depends on whether the point that is raised could sensibly and reasonably have been raised in the earlier proceedings"*

42. For that reason, the judge looked at the reasons offered by the appellant as to why the issue of execution had not been raised in the 2006 proceedings. In doing so, he drew attention to the fact that, in his affidavit sworn in response to Mr. Langan's first affidavit in the first proceedings, the only explanation offered by the appellant for his failure to raise an issue in respect of the execution of the mortgage previously, was that he was a lay litigant. But, as the judge observed, he was, in fact, represented by solicitor and counsel throughout the 2006 proceedings.

43. It should be noted that, in his affidavit sworn on 21st April 2022, the appellant exhibited a report dated 21st January 2021 from an expert document examiner who expressed the view that it was *"strongly probable"* that the appellant did not author the signature that appears on the mortgage. The appellant stated in his own affidavit that the expert's report *"agreed with the opinion that I had formed that I had not signed any of the documents that were used to get the order for possession"*. He also said that his own opinion was the reason that he had retained the expert who had *"confirmed the opinion I had held."* It is therefore clear that the appellant was not in any way dependent on the views of an expert to form an opinion that his signature did not appear on the mortgage. The expert's view simply confirmed his own pre-existing opinion. It follows that appellant was just as capable of forming that opinion in 2006 as he was in 2021.

44. Later in the same affidavit, he said:

> *"I believe that this is new crucial evidence which was not available to the Court when it made the original order for possession in 2008. I believe if that evidence was put before the court, then the order for possession would not have been granted."*

45. It was manifestly incorrect for the appellant to suggest that the evidence about the execution of the mortgage was not available in 2008 when the order for possession was made. In truth, if the mortgage had not been lawfully executed, that was just as apparent from the face of the document in 2006 or 2008 as it was in 2021 or 2022. If anything, in the event that there was any substance in his allegation, the appellant was in a much better position to raise the issue in 2006-2008 when events relating to the drawdown of the loan would have been significantly more proximate in time than they were in 2021-2022. In this context, it is telling that, in the affidavit sworn by him on 25th February 2008 in opposition to the application for possession (i.e. the affidavit which was comprehensively analysed and considered by McKechnie J. in his judgment in the Supreme Court), the appellant expressly stated on oath in para. 5 that: *"The Mortgage was approved* ***and signed*** *for 1.2 million …".* To state an obvious – but important – fact, that is a sworn acknowledgement that the mortgage was signed.

46. In paras. 89 to 93 of the High Court judgment, the judge referred to an affidavit sworn by the appellant after the High Court hearing in which the appellant alleged that documentation provided to him by KBC in 2024 showed that, in the context of an undertaking given by them at the time of drawdown of the loan, his solicitors had been under pressure in the 2003 to 2006 period to provide the mortgage, as executed, to KBC. The implication appears to be that, in some way, his solicitor, without his knowledge, presented an unexecuted version of the mortgage to IIB as a duly executed mortgage.

47. In para. 93 of his judgment, the judge noted that the appellant stressed that this correspondence was not brought to the court's attention in the possession proceedings. But the judge explained in very clear terms why this was not relevant. In the same paragraph, he said:

> *"This could only be relevant to the current applications if it in some way deprived Mr. Beades of the opportunity to raise the points about him not signing the mortgage deed and the solicitor's signature as witness therefore being fraudulent in the Possession Proceedings.* ***It in no way deprived him of the opportunity to do so because whether or not he signed it is a matter within his own knowledge and, even if he did not recall, the mortgage deed was available****."* (emphasis added)

48. The judge also described, in para. 96 of his judgment, that the appellant contended it was not until after Pepper had instituted proceedings against the occupants of the Little Mary Street and Richmond Road properties that he *"found out"* about the *"unsigned"* mortgage through interactions he had with some of the occupants at that time. The judge noted that the appellant claimed that this caused him to check what the appellant himself described as *"My copy* *of the mortgage deed"* and that he then *"realised that the documents did not contain my signature."* The judge correctly noted that the only conclusion that can be drawn from this explanation is that: *"once the documents were considered by Mr. Beades, the point became apparent and therefore there was no reason why it could not have been raised much earlier, i.e. in the Possession Proceedings and should have been raised in those proceedings".* The judge found that the point was, accordingly, one that could have been raised with a minimum degree of diligence in the possession proceedings.

49. The judge was undoubtedly correct in making those findings. As one would expect, the mortgage was openly exhibited by IIB in its application for an order for possession in the 2006 proceedings. It was not concealed in any way. The affidavit exhibiting it was sworn long prior to the hearing before Dunne J. As I have previously noted, the exhibits were plainly considered by the appellant at the time he came to swear his replying affidavit on 25th February 2008 in which he made the case that the loan offer exhibited by IIB was not the same as the loan offer provided to him and which he claimed that he had accepted. This demonstrates that the appellant considered the exhibits to IIB's grounding affidavit. Moreover, as outlined earlier, the appellant expressly referred in this affidavit to the mortgage being *"approved and signed"*.

50. The judge was also correct in his finding in para. 98 of the High Court judgment where he dismissed the appellant's contention that a fraud had been perpetrated on the High Court and the Supreme Court in the possession proceedings as a consequence of the reliance on the allegedly *"unsigned"* mortgage. The judge said:

> *"Mr. Beades does allege fraud. This is one of the explicitly recognised*

special circumstances in the application of cause of action estoppel and the operation of the rule in Henderson v Henderson (see for example Takhar v Gracefield Developments Ltd [2019] UKSC 13). However, the fraud that is alleged by Mr. Beades is fraud on the part of his own solicitor in purporting to have witnessed Mr. Beades signing the mortgage deed. In any event, that alleged fraud, even if the defendants were a party to or aware of it, did not prevent Mr. Beades from being able to raise the signature point in the Possession Proceedings. This is not a case where the alleged fraudulent actions in some way hid or masked the evidence upon which the point might have been made. The mortgage deed was available to Mr. Beades."

51. In my view, that conclusion was entirely correct. There is absolutely no evidence to suggest that IIB had any knowledge of any concern in relation to the execution of the mortgage which was, plainly, an inherent element of the loan transaction from the outset. The opening words both of the letter of loan offer of 20th May 2003 on which IIB relied and of the letter of the same date on which the appellant sought to rely are entirely consistent on this issue. Both versions of the letter are headed with the address of the Richmond Avenue and Little Mary Street properties, and the text of both versions begin with the words: *"We are pleased to advise you that IIB ... has approved facilities amounting to €1,200,000.00* ***secured on the above property*** *subject to the attached special and standard conditions."* (emphasis added)

52. There was no concealment or fraud. Crucially, the mortgage deed was exhibited and available for review by the appellant. Equally importantly, the appellant did not raise any issue in relation to execution of the mortgage. Given that there was nothing to prevent him raising that issue, he cannot now complain that the courts were deceived. If he did not sign the mortgage, he is obviously the person who should know that basic fact. He has never provided any explanation as why he did not act on his own knowledge that the mortgage was not executed by him (if that is, in fact, the true position). On the contrary, as previously noted, he swore an affidavit in which he referred to the mortgage as having been signed.

53. It is very clear in this context that the concept of fraud on a court will only arise where there is evidence of deliberate and conscious dishonesty on the part of the party in whose favour the relevant decision was given and that such dishonesty was instrumental in securing that decision. The relevant principle is neatly encapsulated in the following observation of Lord Wilberforce in *The Ampthill Peerage* [1977] A.C, 547, at p. 571 (which was, in turn, expressly approved by Murphy J. in the Supreme Court in *Tassan Din v. Banco Ambrosiano* [1991] 1 I.R. 569, at p. 582):

> *"What is fraud for this purpose? Learned counsel for John Russell without venturing on a definition suggested that some kind of equitable fraud, or lack of frankness, was all that is meant, but I cannot accept so anaemic an ingredient. In relation to judgments, and this case is surely a fortiori or at least analogous, it is clear that only fraud in a strict legal sense will do. There must be conscious and deliberate dishonesty, and the declaration must be obtained by it."*

54. In circumstances where all of the necessary material to make a case about the execution of the mortgage was available to the appellant at the time the order for possession was made (and at the time it was upheld by the Supreme Court) there is absolutely no basis on which the appellant could maintain a case that the order was procured by fraud. If the order for possession ought not to have been made because of the alleged issue with the execution of the order, that occurred because the appellant failed to raise the issue at that time even though he was armed with a copy of the allegedly unsigned mortgage.

55. For all of the reasons outlined above, it is plain that the appellant's case in relation to the validity of the mortgage and the order for possession is an attempt to run a case that could and should have been made in the 2006 possession proceedings and that there are no special circumstances that take it out of the scope of the rule in *Henderson v. Henderson.* To permit the appellant to make that argument at this remove would constitute an impermissible collateral attack on the final and binding decision of the Supreme Court, something that was previously highlighted by this Court in the course of the judgment of Whelan J. quoted in para. 39 above. In light of that very clear finding of Whelan J., it is incomprehensible that the appellant believed himself to be entitled to pursue the case made by him in the three actions the subject of this judgment.

The appellant's argument in relation to the letter of offer

56. In the course of his oral submissions to this Court, the appellant also sought to re-run an argument previously made on his behalf in the possession proceedings. He claimed that IIB was not entitled to rely on the letter of offer exhibited in the affidavit grounding the special summons in those proceedings and that he had agreed to the terms of a different letter of offer which provided for interest only payments over the lifetime of the loan. He went so far as to suggest that, in his judgment in the Supreme Court, McKechnie J. had got the facts wrong. This is not an argument that is open to the appellant. The decision of the Supreme Court is final and conclusive and it binds both the appellant and this Court. At p. 24 of the judgment of McKechnie J., the Supreme Court found that the appellant had "*not averred to any supporting facts which would even raise the possibility of having a defence*" in relation to the letter of offer. The *res judicata* principle applies. The issue has been finally decided against the appellant and there is no basis on which he can seek to relitigate the issue. To seek to do so is an egregious abuse of the court process.

The new case made by the appellant that he acted as a consumer in his dealings with IIB

57. In his written submissions, the appellant contends that he has been self-employed for 49 years in the trade of concrete, screed services and underfloor heating and that this is his *"primary profession"*. He also maintains that the properties in question were a *"Buy-to-Let investment acquired strictly as a Pension and Retirement Plan asset. It was not a trade being operated by the Appellant, but a vehicle for private financial security in old age"*. On that basis, he asserts that he is a consumer within the meaning of Council Directive 93/13/EEC (*"the Unfair Terms Directive"*) and he complains that there has never been an *"own motion"* examination either by the courts in the 2006 possession proceedings or by the High Court in these proceedings as whether the contract between him and IIB (now Pepper) contained unfair terms within the meaning of the Unfair Terms Directive.

58. The Appellant contends that this provides him with a basis to escape the application of the *res judicata* and *Henderson v. Henderson* principles. In support of this argument, the appellant has cited the decision of the Court of

Justice (*"CJEU"*) in Case C-600/19 *Ibercaja Banco* (ECLI:EU:C:2022:394) and a number of related decisions of that court all delivered on 17th May 2022. The judgments in those cases addressed issues with regard to whether national *res judicata* rules could defeat the rights of consumers under Article 6(1) of the Unfair Terms Directive not to be bound by unfair contractual claims in cases where the national courts had made orders adverse to the consumer without carrying out (or without recording that they had carried out) an examination of the contractual terms for unfairness.

59. The appellant also relied upon the judgment of the CJEU in Case C-110/14 *Costea v. SC Volksbank Romania S.A.* (ECLI:EU:C:2015:538) in support of his assertion that he acted as a consumer within the meaning of the Unfair Terms Directive.

60. Remarkably, the case that the appellant was a consumer did not feature in the affidavits filed by the appellant in response to the respondents' applications in the High Court. Nor did it feature in the appellant's written or oral submissions before the High Court judge reserved his judgment on the respondents' applications. Likewise, no such case was ever made in the course of the 2006 possession proceedings. The contention that the appellant acted as a consumer first reared its head in the course of an application which the appellant sought to make, subsequent to the judgment of the High Court by reference to the principles in *Re: Greendale Developments Ltd. (no. 3)* [2000] 2 I.R. 514. This obviously raises a significant issue as to whether the appellant is entitled to ventilate this issue on appeal. However, without deciding the issue as to whether it is open to the appellant to raise the issue on this appeal, I propose to briefly address the question whether the Unfair Terms Directive can be said to have any application to the facts and circumstances of this case. I take that approach for two reasons: first, because it seems to me that the issue can be readily resolved; and, second, because the issue was argued at some length before the Court and it is in the interests of finality that the issue should be resolved.

61. The *Costea* case is very helpful in this context. In that case, Mr Costea practised as a lawyer primarily in the field of commercial law. On 4th April 2008, he concluded a credit agreement with Volksbank. The repayment of that loan was secured by a mortgage registered against a building belonging to Mr Costea's law firm. That credit agreement was signed by Mr Costea, not only in his capacity as borrower but also in his capacity as representative of his law firm, owing to the latter's status of mortgage guarantor. An issue arose as to whether Mr. Costea acted as a consumer in that transaction.

62. The CJEU, in its judgment, explained that the question whether a party to a contract a consumer within the meaning of the Unfair Terms Directive is to be assessed objectively. At paras. 21 to 23, the CJEU said:

> *"21. The concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, is … objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has.*
>
> *22. A national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine, taking into account all the evidence and in particular the terms of that contract, whether the purchaser may be categorised as a consumer within the meaning of that directive*

23. In order to do that, the national court must take into account all the circumstances of the case, particularly the nature of the goods or service covered by the contract in question, capable of showing the purpose for which those goods or that service is being acquired ...”

63. After examining the facts and circumstances relevant to Mr. Costea’s position, the CJEU reached the following conclusion in para. 30:

> *“30 ... Article 2(b) of Directive 93/13 must be interpreted as meaning that a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a ‘consumer’ within the meaning of that provision, where that agreement is not linked to that lawyer’s profession. The fact that the debt arising out of the same contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person’s profession, such as a building belonging to that firm, is not relevant in that regard.”*

64. It is clear that the guidance given by the CJEU in that case was based on an objective assessment of the particular facts and circumstances of the case.

65. This informs the approach to be taken in relation to the appellant’s contention that he acted as a consumer. There are a number of features of the loan transaction in this case and of the wider circumstances pertaining to the appellant which are relevant. In the first place, the loan transaction related to the purchase of tenanted property. On the face of it, that suggests a commercial enterprise. While the appellant has asserted that this was intended to provide him with an income for his retirement, it is clear that the purchase would provide him with an immediate stream of income which, even if considered on its own, would suggest that pension provision could not have been the only purpose in mind.

66. Second, although the description given to the agreement is not determinative, it is notable that, as part of the transaction and as a condition to the provision of the loan, the appellant warranted to IIB that he was acting within his business trade or profession. On the second page of the special conditions attached to the letter of offer (and this appears also in the version of the letter of offer on which the appellant sought to rely in his affidavit sworn on 25th February 2008 in opposition to IIB's application for possession), the appellant provided a warranty in the following terms:

> *"The Borrower warrants to the Lender that in accepting this loan facility,* ***he is acting within his business, trade or profession*** *and is therefore not a 'consumer' within the meaning of Consumer Credit Act 1995 – Section 2"* (emphasis added)

67. Third, it is striking that no case was made in the 2006 possession proceedings (at a time when the appellant was represented by solicitor and counsel) that the transaction was a consumer transaction. On the contrary, on the evidence which he placed before the High Court and the Supreme Court at that time, the appellant framed the transaction with IIB against the backdrop of a wider property business in which he was involved. In this context, the appellant made a very significant averment in para. 9 of his affidavit sworn on 25th February 2008 when he said:

> *"I refer to the difficulties which I experienced in February 2004 when*

ACC/Rabobank mislaid the titled [sic] ***documents to a large property portfolio****. This matter is currently in the Commercial Court and is still ongoing four years later. As a result of the financial difficulties, this created for me, o* [sic] *advised IIB of this matter."* (emphasis added).

68. The reference to a *"large property portfolio"* should be noted. The fact that the appellant had acquired property on a large scale is strongly suggestive of a property business. It is therefore unsurprising that, in his judgment in the Supreme Court, McKechnie J. made a number of references to the commercial nature of the IIB transaction in the context of the wider nature of the appellant's commercial business. Thus, at para. 34, McKechnie J. said: *"The properties in issue were, from Mr. Beades' point of view, a commercial investment"* and, at para. 39, he described the appellant's perspective as:

> *"… a perspective of experience and long standing and of one* ***deeply rooted in commercial investment****, involving, over many years, much interaction with different lending institutions."* (emphasis added).

69. Fourth, a consideration of the judgments section of the Courts Service website provides powerful corroboration of McKechnie J.'s description of the appellant's property investment business. For example, in *Bank of Scotland v. Beades* [2012] IEHC 328, Kelly J. (as he then was) described a banking facility of €7,750,000, the subject of a facility letter addressed to the appellant dated 25th July 2007, which was stated to be repayable from the proceeds of 48 apartments to be constructed by the appellant at Richmond Avenue in Fairview. In addition, in *Everyday Finance DAC v. Beades* [2021] IECA 48 (on appeal from a decision of O'Connor J. in the High Court, neutral citation [2019] IEHC 359), Whelan J. referred to an order for possession of three properties owned by the appellant on Fairview Avenue. The decision of McDermott J. in *Taite v. Beades* [2013] IEHC 440 is also relevant. That concerned an application by receivers for interlocutory relief. What is relevant for present purposes is that it related to a significant number of residential properties owned by the appellant, four in Clancy Court, Finglas, Dublin 11, two on Clancy Road, Finglas, and one on McKee Road, Finglas. The sheer scale of the appellant's property holdings is a very strong objective factor that the acquisition of property by the appellant (including the subject properties) was done for commercial (i.e. business) purposes.

70. It is also relevant that the appellant's extensive property investments were the subject of a substantial number of financial arrangements with a range of different lenders. The arrangement with IIB was not an isolated transaction. The appellant was borrowing extensively to fund what was, by any normal measure, a substantial property holding business. This has all the indicia of a business. I respectfully suggest that McKechnie J. was absolutely correct to describe this activity as commercial in nature. It could not plausibly be suggested that the appellant acquired such a large portfolio of property with the assistance of finance from such a wide range of lenders for non-business purposes. There is also the objective evidence which emerges from the facts recounted in the judgment of Kelly J. in *Bank of Scotland v. Beades,* that the appellant had plans to construct at least one large apartment development.

71. Against the backdrop of all of the objective factors outlined above, the appellant's description of his business as set out on his written submissions is manifestly incomplete. In this context, there is nothing to prevent a person from having more than one business. If it is the case that the appellant operated a business in concrete, that did not exclude the running of other businesses by him.

72. In these circumstances, there is, plainly, no objective basis for the appellant's belated and wholly unsubstantiated claim that he acted as a consumer in taking out the IIB loan. That claim is patently without foundation. One can readily see why, against the backdrop described by the appellant in his own affidavit sworn in February 2008, no attempt was made by his legal advisers in the 2006 possession proceedings to advance what would have been an unstateable claim that he had acted as a consumer in drawing down the IIB loan. Not only would that have been contrary to his express warranty to IIB and the evidence which he, himself, placed before the court but it would also, on the basis of the objective facts, have been entirely misleading.

73. In his written submissions, the appellant also sought to argue that, in some way, the respondents were estopped from *"now claiming that the Appellant is not a consumer".* This contention was advanced on the basis of an assertion that the IIB loan had been classified as a consumer loan in reports submitted to the Central Bank. Even if the loan had been characterised in that way, that would not give rise to an estoppel in the appellant's favour. For an estoppel to arise in his favour, he would, at minimum, have to establish that such reports gave rise to a representation on which he relied and was entitled to rely. The problem for the appellant is that he manifestly did not rely on that characterisation, and he has not explained how it might be said that he was entitled to rely on such reports. Crucially, he made no such case in the 2006 possession proceedings and did not raise it, in advance of the High Court hearing, in his affidavits sworn in response to the applications to strike out these proceedings. The failure to raise the issue demonstrates very starkly that he could not conceivably make a case that he had relied on the alleged characterisation of the loan as a consumer loan. There is, consequently, no basis for any estoppel.

74. It follows that it is unnecessary to go any further and consider the issue raised by the appellant on the basis of the *Ibercaja Banco* decision of the CJEU. In circumstances where it is very clear that the appellant was involved in a property business, his contention that he acted as a consumer is unstateable and, accordingly, he does not get off the starting block with his argument based on that decision. His argument on estoppel is equally unstateable.

The appeal must be dismissed in relation to the decision of the High Court to strike out his claims in all three proceedings

75. In circumstances where there is no basis for disapplying the *res judicata* and *Henderson v. Henderson* principles, there is, in turn, no basis for the appellant's appeal from the orders striking out each of these three actions. Each of the actions is an abuse of the process of the courts.

76. In this context, I do not believe that it is necessary to separately address the matters discussed in paras. 102 to 170 of the High Court judgment. They were not the subject of any argument at the appeal hearing. Moreover, in those paragraphs, the High Court judge carefully examined the other aspects of the appellant' claims and he also considered whether the claims could be saved by an appropriate amendment. The appellant has not advanced any sufficient argument to demonstrate that the judge was wrong in any respect in the way that he addressed those matters in those paragraphs of the High Court judgment. I am satisfied that the judge was entirely correct in the approach which he took.

77. The appellant's appeals against the orders striking out these proceedings will accordingly be dismissed.

<u>The appeal against the litigation restriction order.</u>

78. In the High Court, Pepper sought a litigation restriction order (commonly known as an Isaac Wunder order) against the appellant prohibiting him from issuing any further proceedings without leave of the court against Pepper, the firm of Deloitte (in which the receivers appointed by Pepper are parties) any of the partners or employees of Deloitte; the firm of Maples and Calder (Ireland) ("Maples") (the solicitors acting for Pepper and the receivers), any of the partners or employees of Maples; and/or any member of the Bar of Ireland who has acted against the appellant.

79. In paras. 174 to 176 of his judgment, the High Court judge cited the decisions of this Court in *Fitzsimons v. Bank of Scotland* [2019] IECA 336 and of Butler J. in *Scanlan v. Gilligan* [2021] IEHC 825. He quoted what Noonan J. in *Fitzsimons v. Bank of Scotland* said at paras. 24 and 25 as follows:

> *"24. With the increase in recent years in the amount of litigation pursed in our courts by litigants in person, the making of restraining orders has perhaps become more common. However, by no measure can the making of such orders be regarded as in any sense routine. They are, of course, a serious restriction on the constitutional right of access to the court and, as the authorities make clear, should only be made sparingly and in relatively rare circumstances. Where the circumstances warrant however, the court has the inherent jurisdiction to make such orders and indeed a duty to do so to protect parties from*

habitual and costly vexatious litigation. The making of an Isaac Wunder order is not an abrogation of the constitutional right of access to the court, but rather a proportionate filtering mechanism to protect the opposing party from the injustice of having to incur what are often very significant and unrecoverable costs, in meeting oppressive and abusive claims. The right of access to the court is not absolute …

25. Quite apart from the interest of the oppressed party, the court must also have regard to protecting its own processes from abuse, which result in scarce court resources being wasted to the detriment of other parties with genuine claims. All the cases recognise that a primary indicator of the necessity for a restraining order is the habitual or persistent institution of frivolous and vexatious proceedings against parties to earlier proceedings …"

80. That passage encapsulates the rationale underpinning litigation restriction orders and the important public purpose that they serve in appropriate cases. It also emphases that orders of this kind are not made on a routine basis. The High Court judge then noted the observations of Butler J. in para. 69 of her judgment in *Scanlan v. Gilligan* to the effect that an order of this kind does not necessarily prevent a litigant from litigating. It ensures that any future litigation at the suit of such litigant will be subject to consideration by the High Court as to whether it has some objective merit. In that way, the High Court operates as a safeguard or filter to ensure that a litigant does not unleash further unmeritorious litigation, but it also protects the litigant where the proposed proceedings do not fall into that category.

81. The judge also considered a number of other well-known authorities and concluded that the circumstances of these cases warranted the making of an order albeit on somewhat different terms to that sought. He did so for the following reasons:

(a) First, he referred to his finding that these proceedings are an abuse of process and bound to fail.

(b) Second, he said that the manner in which the appellant has raised points in these proceedings suggests that he will continue to challenge the possession order and to litigate issues concerning the properties. He said that this conclusion was reinforced by the fact that the appellant had sought to raise issues which could have been raised prior to the making of the possession order by Dunne J. or in the course of the Supreme Court appeal and that the appellant had also sought to re-litigate points which had previously been decided;.

(c) Third, he referred to an application brought by the appellant seeking to cross-examine the deponents of the affidavits sworn on behalf of the respondents which the judge regarded as groundless.

(d) Fourth, the judge acknowledged that the appellant did not instigate all of the litigation, but he said that the appellant had pursued multiple appeals all of which were unsuccessful and he had also actively intervened in other litigation to which he was not a party and that this had continued even after this Court had decided that he was a trespasser with no interest in the properties;

(e) The judge also had regard to the fact that the appellant has not denied receipt of the loan from IIB and that he has not repaid it.

82. However, the judge stressed that any order must be proportionate and that it should only extend as far as is strictly necessary. On that basis, he limited the order to litigation against Pepper, Deloitte and any partners or employees of Deloitte. He did not make the order in respect of Maples, its employees or members of the Bar.

83. In my view, the High Court judge was clearly entitled to make a litigation restriction order in the circumstances of this case. Notwithstanding the order for possession in this case in 2008 and notwithstanding the unsuccessful outcome in 2014 of the appellant's appeal to the Supreme Court, the appellant has persistently and repeatedly continued, in the teeth of the final and conclusive decision against him, to assert claims in relation to the properties. This is so notwithstanding that the effect of the decisions made in the 2006 possession proceedings was to render him a trespasser in those properties. Once the stay on the order for possession expired, the appellant was under a clear and binding obligation to give up possession of the properties. That obligation arises under the terms of the final and conclusive orders made against him and that obligation is reinforced by the terms of O. 42, r. 1 of the Rules of the Superior Courts.

84. As Whelan J. observed in para. 50 of her judgment in *KBC Bank plc v. Beades* [2021] IECA 41, at para. 59:

> *"... The appellant, as a mortgagor who has resisted the mortgagee's valid demand for possession in the manner in which he has done, automatically becomes a trespasser as is well established in law having regard to authorities such as Birch v. Wright (1786) 1 Term Rep. 378 at p. 383 and Jolly v. Arbuthnot (1859) 4 De G. & J. 224 at p. 236."*

85. Notwithstanding the fact that the appellant has lost all rights to the subject properties as a consequence of the final and conclusive orders made in the 2006 possession proceedings, the appellant intermeddled in the proceedings brought by Pepper against the occupiers and, even though he was not a party to those proceedings, he pursued an appeal to this Court in which he continued to maintain claims in relation to the properties notwithstanding his status as a mere trespasser. Furthermore, these three sets of proceedings have been pursued by the appellant notwithstanding the very clear finding of this Court in *KBC Bank v. Beades* quoted above. Once that judgment was given, no reasonable person could possibly have thought that these proceedings could be either instituted or continued. Not only has the appellant chosen to pursue the proceedings but he has chosen to pursue appeals to this Court in which he has continued to seek to make arguments in relation to the properties which, in light of the orders made in the 2006 possession proceedings, he had no standing to pursue.

86. The appellant's conduct in continuing the first proceedings notwithstanding the judgment of Whelan J. and in instituting and pursuing the second and third proceedings has all the indicia of an abusive and vexatious litigation. In para. 67 of her judgment in *Scanlan v. Gilligan,* Butler J. referred in a similar context to the factors that have been identified in a number of authorities that tend to show that litigation is vexatious. In that paragraph, she said:

> *"These were originally identified in a Canadian case, Dykun v. Odishaw (Unreported, Alberta Court of Queen's Bench, 3rd August, 2000); considered by the High Court (Ó Caoimh J.) in Riordan v. An Taoiseach [2001] 4 IR 463 and approved of by the Supreme Court in*

Ewing v. Ireland [2013] IESC 44. These are:-

> *'(a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*
>
> *(b) where it is obvious that an action that cannot succeed, or if the action would lead to no possible good, or if no reasonable person could reasonably expect to obtain relief;*
>
> *(c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*
>
> *d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;*
>
> *(e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;*
>
> *(f) where the respondent persistently takes unsuccessful appeals from judicial decisions.'*

87. As the High Court judge observed in para. 177 of his judgment in this case, the above indicia are no more than a non-exhaustive checklist of factors which may or may not be relevant in any individual case. Notably, each of paras. (a), (b), (d) and (f) are all present in this case. In addition to the pursuit of these three proceedings in the teeth of the final and conclusive judgments of the High Court and Supreme Court in the 2006 possession proceedings and in the teeth of the very clear finding of Whelan J. quoted above, the appellant has pursued a succession of unsuccessful appeals to this Court. In my view, this is a very clear case where a litigation restriction order is warranted. The order did not go beyond what was proportionate in the circumstances. It is limited to Pepper, Deloitte and any partners or employees of Deloitte. Given that Pepper is now the party entitled to possession of the properties which have been the subject of so much litigation and given that the receivers are partners in Deloitte, the parties in whose favour the order was made all have a clear interest in court protection from further unwarranted litigation at the suit of the appellant in respect of these properties. It follows that the appellants appeal from the litigation restriction order made by the High Court judge will be dismissed.

The order refusing to re-examine the judgment of the High Court

88. In the appellant's notices of appeal, he has appealed the entire of the orders made by the High Court on 28th July 2025. Those orders included orders refusing to give liberty to the appellant to bring a motion to re-examine the judgment on *Greendale* principles. As the appellant has advanced no argument challenging that element of the High Court's orders, it is unnecessary to address the issue in this judgment. For all of the reasons previously discussed, it is clear that the appellant has no basis to pursue these proceedings.

The recusal application

89. There is one further aspect of the appeal that should be noted. Prior to the hearing of this appeal, the appellant brought a motion before Costello P. in the Friday motion list seeking an order that she should recuse herself from the hearing of this appeal. That motion was heard by Costello P. on Friday 13th March 2026. The motion was advanced on the grounds of objective bias; the issue identified was that a reasonable observer would be concerned that, through her involvement in the applications in 2015 and 2018, Costello P.'s ability to hear this appeal would be tainted by prejudgment against the appellant. That application was refused by Costello P.

90. The recusal application was renewed by the appellant on Friday 20th March 2026 in the course of an application by the appellant to adjourn the hearing of this appeal pending the determination of an application which the appellant proposed to bring to the Supreme Court for leave to appeal the decision of 13th March 2026 refusing the recusal application. That application was also refused by Costello P. as was the application for an adjournment.

91. Later, at the opening of the hearing of this appeal on Monday 23rd March 2026, the appellant renewed his application that Costello P. should recuse herself and he also raised for the first time an argument that the recusal application should not have been heard and determined by a judge sitting alone and that it required a panel of three judges. The latter issue was not raised by him either at the initial hearing of his recusal application on 13th March 2026. Nor was it raised on 20th March 2026.

92. Although the recusal issue had been determined by Costello P. on 13th March 2026, the Court heard submissions from the appellant at the outset of the hearing as to whether Costello P. should recuse herself. Having heard from all sides, the Court rose to consider the position following which a unanimous decision was given by the Court refusing the application. In giving the decision of the Court, Costello P. referred to the decisions which she had relied upon in her ruling of 13th March 2026, namely *Kelly v. University College Dublin* [2025] IESC 6 and *Smith v. Cisco Systems Internetworking (Ireland) Ltd.*

[2023] IECA 186 from which it is clear that the prior participation of a judge in proceedings involving a litigant does not give rise to a reasonable apprehension of bias on the judge's part in dealing with a subsequent hearing involving the same litigant. It is well settled that the objective reasonable observer would not entertain a reasonable apprehension of bias by reason of the fact that a judge had previously rejected a different case made by a particular litigant or by reason of the fact that a judge had previously dealt with related applications involving that litigant. Thus, for example, it is relatively commonplace for a judge who has heard a number of interlocutory applications in an action to also preside over the trial of that action. In the absence of something more, the fact that the judge has inevitably decided such interlocutory applications against one or other party is not a ground for recusal of the judge. There was, accordingly, no basis for the Court to conclude that Costello P. should not participate in the hearing of this appeal. The hearing of the appeal therefore proceeded on 23rd March 2026.

The orders to be made

93. For all of the reasons outlined above, all of the appellant's appeals stand dismissed and the orders made by the High Court are affirmed.

94. In so far as costs are concerned, as the respondents have been entirely successful in resisting these appeals, the *prima facie* position under s. 169 of the Legal Services Regulation Act 2015 is that they should be entitled to orders for costs against the appellant, such costs to be adjudicated in default of agreement. However, if the appellant wishes to canvass for a different order for costs, he is at liberty to file and serve a short written submission of no more than 1,500 words within 21 days from the date of electronic delivery of this judgment and, in the event that he does so, each of the respondents are at liberty to deliver replying submissions (subject to the same word limit) within 21 days from the date of service of the appellant's submissions. The Court will then notify the parties electronically of its decision on the costs of the appeals.

95. Costello P. and Pilkington J. agree with this judgment.