THE HIGH COURT

Record No 2023/993P

[2026] IEHC 515

BETWEEN

LANCE McAULEY

PLAINTIFF

START MORTGAGES DESIGNATED ACTIVITY COMPANY

and

PERMANENT TSB

DEFENDANTS

Judgment of Mr. Justice Cian Ferriter delivered on 24th July 2026

Introduction

1. This is my judgment on the first defendant's application to strike out these proceedings as against the first defendant as an abuse of process. For ease, I will refer to the first defendant as "Start".

Background

2. The plaintiff issued these proceedings by plenary summons on 6 March 2023 against Start as first defendant and Permanent TSB ("PTSB") as second defendant. Start entered an appearance on 25 April 2023 and the plaintiff delivered a statement of claim on 26 June 2023. While I will come to the detail of the claims made in the statement of claim shortly, in summary the plaintiff contends that Start was never the owner of the security over his home and sought various reliefs directed at the proposition that Start was not entitled to possession of his property.

3. Start delivered a defence on 9 January 2024 in which it raised a preliminary objection to the effect that the plaintiff's claim as against it was frivolous, vexatious and bound to fail, and that the proceedings constituted an abuse of process, were *res judicata* and contrary to the rule in *Henderson v. Henderson* (1843) 3 Hare 100 ("*Henderson v. Henderson*").

4. In order to put that plea in context, it is necessary to explain the sequence of events which unfolded in respect of prior proceedings instituted by PTSB against the plaintiff in the Dublin Circuit Court which resulted in a possession order being made on 2 February 2017 in respect of the plaintiff's property in Clonsilla, Dublin 15 comprising folio 120562F of the Register of Freeholders County Dublin (the "property" and "the Folio" respectively).

5. The Circuit Court possession proceedings were instituted by PTSB on 26 June 2014 ("the possession proceedings"). The proceedings were taken on foot of a mortgage loan of 15 July 1997 advanced by PTSB to the plaintiff, and related security, being a mortgage and charge of 31 July 1997 over the property in respect of the loan. The plaintiff fell into arrears in respect of his loan repayments, making his last payment in September 2013 (almost 13 years ago) and PTSB sought to exercise its rights under the mortgage and charge, including its right to possession and issued the possession proceedings as a result. The plaintiff fully contested the possession proceedings. On 2 February 2017, PTSB obtained an order for possession of the plaintiff's property ("the possession order") in the Circuit Court proceedings. The plaintiff did not appeal the possession order granted to PTSB on 2 February 2017.

6. Start says it acquired the loan and security the subject matter of the Circuit Court proceedings on 1 February 2019 and thereafter issued a motion in the Circuit Court proceedings in July 2020 to be substituted as plaintiff for PTSB in those proceedings and seeking leave to execute the possession order obtained by PTSB. The plaintiff opposed the application. On 8 September 2021, His Honour Judge John O'Connor in the Dublin Circuit Court made an order joining Start as co-plaintiff to the Circuit Court proceedings, and adjourned for separate hearing Start's application for leave to execute on foot of the possession order.

7. The plaintiff filed a number of affidavits in opposition to Start's application for leave to execute the possession order, in which he sought to make the case *inter alia* that Start was fraudulently misleading the court when it contended that it had acquired his loan and charge over the property. Start put evidence before the Court of its acquisition of the plaintiff's loan

and security from PTSB and also put evidence before the court of the registration of the charge on the Folio which made clear that the charge was owned by Start.

8. Following a fully contested hearing, by order of 22 February 2022 the Dublin Circuit Court (Judge O'Connor) granted Start leave to execute the order for possession ("the order for leave to execute").

9. The plaintiff made an application to extend time within which to file an appeal against the order for leave to execute, and filed an affidavit in support of that application in which he again made allegations of fraud against Start in relation to its asserted ownership of his loan and security. By order of 3 May 2022 the High Court Deputy Master granted the plaintiff an extension of time within which to file an appeal against the order for leave to execute. The plaintiff then lodged an appeal against that order by notice of appeal dated 12 May 2022. The High Court (Heslin J.) made an order on 28 February 2023 affirming the Circuit Court order. That High Court order records that Mr McCauley in person indicated to the court that he was withdrawing the appeal thereby leading to the Circuit Court order for leave to execute being affirmed by the High Court.

10. The plaintiff then instituted these separate High Court proceedings a number of weeks later on 6 March 2023.

11. Start's defence to these High Court proceedings pleads that the Circuit Court proceedings concerned largely the same subject matter as the High Court proceedings and that the High Court proceedings have been issued *male fides* as an improper collateral attack against the Circuit Court proceedings and the possession order of 2 February 2017 and constitute an abuse of process.

12. Start then issued a motion in March 2024, shortly after filing its Defence, in which it seeks to have the plaintiff's claims as against it struck out as being an abuse of process. It is this application which is the subject of this judgment.

The Plaintiff's claims in these proceedings

13. Given the backdrop to these proceedings as set out above, it is important to carefully scrutinise the claims made by the plaintiff in his statement of claim. He pleads, at paragraph 5 of the statement of claim, that on 1 February 2019 PTSB wrote to him to inform him that the

charge over his property was transferred to Start on 1 February 2019 and pleads that this statement was “false and misleading". He then pleads (at paragraphs 6 and 7 of the statement of claim) that "*the truth of the matter is that the charge was sold, by way of a "true sale", to one of the LSF IX Glas companies, under a group of mortgage sales, termed "Project Glas*" and that "*the charges were sold, by way of another "true sale" to one of the European residential loan securitisation companies, all of which are registered in the State*."

14. The statement of claim goes on to plead that the prospectus for the sale of the charge to one of the “European residential loan securitisation companies” provided that PTSB was the original seller of the charge and “*that one of the LSF IX Glas companies was the current seller and the purchaser was one of the European residential loan securitisation companies*" (para 8). Further references are made to the contents of this prospectus including that pursuant to an administration agreement Start was to be appointed as an administrator of the charge and also that Start provided mortgage management services to a series of specified entities. Reference is also made to the prospectus stating that Start "had net assets of €45,101 as of 31 December 2018".

15. The plaintiff then pleads, at paragraph 11 of the statement of claim, that "*it is absolutely clear that Start are nothing more than a mortgage servicer/administrator and had no right to be registered as "owner" of the charge contained on* [the folio]” and “*their said registration as owner of the charge was a fraudulent registration for the purposes of misleading the court into believing they had a right to seek possession of the plaintiff's dwelling*".

16. The statement of claim goes on to state (at paragraph 12) that "*Start merely held legal title to the charge as a "bare trustee" and are also referred to in the said prospectus as the "legal titleholder", and of course as the legal title holder in a bare trust, they are not the owner of the charge.*"

17. On this basis, the plaintiff goes on to plead that Start does not own the charge registered against his dwelling and "are merely servicers/administrators of same and therefore are unlawfully registered as owners thereof". He follows this claim by accusing the defendants of various wrongs including breach of contract, misrepresentation, negligence and/or breach of duty, "intentional and/or unintentional interference with the economic and/or proprietary rights of the plaintiff" and/or trespass and/or slander of his title. He pleads that the defendants have slandered his title to his dwelling and deprived him of the peaceful enjoyment of his dwelling

and that he has suffered loss as a result. He seeks damages including aggravated and exemplary damages. He further pleads (at paragraph 20 of the statement of claim) that "*unless restrained the defendants and/or their servants or agents intend unlawfully to take possession of and/or market for sale and/or sell his dwelling*".

18. The plaintiff then sets out a variety of reliefs sought including a declaration that Start has no entitlement to be registered as owner of the charge against his property as contained in the folio, a declaration that Start is estopped from the relying upon any strict legal entitlement to his dwelling by virtue of the representations and/or conduct of the defendants and a declaration that the first and/or second defendants have no right, entitlement or interest in his dwelling. He further seeks a variety of injunctive relief including an injunction restraining, *inter alia*, Start "*from holding themselves out as having any entitlement to sell, rent, or otherwise claiming any entitlement to possession of the dwelling*" and seeks damages under various headings including for "*slander of title and/or conspiracy to deprive the plaintiff of this dwelling*".

19. As can be seen, it is clear that the plaintiff's claim in these proceedings is based on the contention that Start was not the rightful owner of the charge over the property as it merely held legal title to the charge as bare trustee.

20. It will also be noted that the plaintiff's statement of claim makes absolutely no reference to the Circuit Court proceedings or the orders made in those proceedings, including the possession order in favour of PTSB of 2 February 2017 and the order of 22 February 2022 granting Start leave to execute on foot of that possession order, as affirmed by the High Court on 28 February 2023.

The strike out application

21. Start's application is to have these High Court proceedings as against it struck out as an abuse of process. It does so pursuant to order 19 rule 28 Rules of the Superior Courts or alternatively pursuant to the Court's inherent jurisdiction. It says that these proceedings amount to a form of *Henderson v Henderson* abuse of process as the plaintiff cannot now seek to litigate issues relating to Start's entitlement to an order of possession where the Circuit Court proceedings have, to appeal stage, conclusively determined that issue.

22. The plaintiff's answer to the application is, in short, to contend that, while accepting that he raised a variety of similar issues in defence of the application by Start in the Circuit Court for leave to execute on foot of the possession order granted to PTSB, the Circuit Court ultimately could not look behind the conclusivity of the property register as provided for in section 31 of the Registration of Title Act 1964 ("section 31") and that the Court of Appeal judgment in *Tanager v. Kane* [2018] IECA 352 ("*Tanager v Kane")* makes clear that it was not possible to raise issues in the Circuit Court possession proceedings as to the validity of the entry on the register as to the owner of the charge but rather that any such claim could only be brought in plenary proceedings in the High Court. He therefore argues that as the Circuit Court could not validly entertain his case as to Start having fraudulently obtained a registration as to ownership of his charge that he clearly has an arguable case in these High Court proceedings in respect of causes of action which have not yet been determined or adjudicated upon and which he is therefore entitled as a matter of right to pursue to conclusion through these High Court proceedings.

23. Section 31(1) of the Registration of Title Act 1964 ("the 1964 Act") provides:

> *"The register shall be conclusive evidence of the title of the owner to the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon; and such title shall not, in the absence of actual fraud, be in any way affected in consequence of such owner having notice of any deed, document, or matter relating to the land; but nothing in this Act shall interfere with the jurisdiction of any court of competent jurisdiction based on the ground of actual fraud or mistake, and the court may upon such ground make an order directing the register to be rectified in such manner and on such terms as it thinks just."*

24. The plaintiff points to paragraphs 60 to 62 of the judgment of Baker J *Tanager v. Kane* where she stated:

> *"60. The principles of conclusiveness do not prevent rectification in that sense, but such rectification is not engaged in the action for possession…*
>
> *61. The nature of this equitable jurisdiction to rectify was considered by Holmes L.J. in the old Irish Court of Appeal in In re Patrick Leonard's Estate [1912] 1 IR 212, at*

p. 226, where he described the intention of the broadly similar provisions in the 1891 Act as "[…] to preserve the jurisdiction of the Chancery Courts to set aside or reform an instrument upon the grounds that it was entered into by what is known as fraud or mistake in equity." The jurisdiction to rectify is exercisable in an inter partes action grounded on an alleged mistake or fraud, and not in a summary action on affidavit.

62. Tanager argues that, as Mr Kane is a third party to the transfer from BOSI to BOS, he has no standing to challenge the Register, as the challenge would be confined to a challenge of either Tanager or BOS on account of a fraud or mistake in the transaction or instrument on foot of which Tanager became registered, and I agree. The argument could not be raised in the action between Tanager and Mr. Kane."

25. The plaintiff says that his statement of claim, and the evidence he has put forward on affidavit in reply to the Start's strikeout application, gives rise to an arguable case for rectification of the register on the basis of fraud. He lays emphasis in particular on statements attributed to the CEO of Start in media articles which suggested that Start was a mere servicer of loans as opposed to the owner of those loans, and also points to published accounts for Start which showed that it has virtually no assets, fortifying his view that Start is a mere loan servicer and not a loan owner. He says that this evidence coupled with the prospectus material quoted from in his statement of claim grounds an arguable case that Start is and never was the owner of his charge over his property for that its registration on the property register was procured by fraud. The plaintiff says that he is entitled to pursue these proceedings to conclusion including seeking discovery to establish the true facts and to allow for a full determination of the issues he has raised in the ordinary course.

26. In my view the plaintiff's position as to the consequences of the Court of Appeal decision in *Tanager v Kane* for the proper ventilation of the issues he seeks to raise in these proceedings is based on a fundamentally mistaken reading of that judgment. He is correct to say that *Tanager v Kane* makes clear that an application to rectify the register under section 31 of the 1964 Act could not be entertained in the Circuit Court possession proceedings as the court in those proceedings could not look behind the register. Separate plenary proceedings would need to be issued with the Property Registration Authority ("PRA") as a party in addition to any other affected parties in order to pursue such relief. However, as *Tanager v Kane* makes

clear, it was simply not the case that the plaintiff could sit back and wait for the Circuit Court possession proceedings to conclude to finality before taking action to seek to challenge the registration of the charge over his property in separate proceedings.

27. Baker J. held as follows at paras 79 and 80 of her judgment in *Tanager v Kane*:

> *"79. ....The provisions of ss. 31 and 32 of the 1964 Act permit a court in a suitable case to direct the rectification of the Register on the statutory grounds of fraud or mistake or error originating in the Land Registry. In such proceedings, the persons entitled or claiming to be entitled to the land have every right to be heard, and as I have said above, the proceedings will, in essence, be between those parties. In proceedings under s. 32 of the 1964 Act, the PRA is a necessary party. But the question for this Court is whether the PRA may be joined to the proceedings in which possession is claimed and the answer must be in the negative.*
>
> *80. The court hearing the claim for possession may stay or adjourn the proceedings under its statutory and general inherent jurisdiction, but the court does not, for that purpose, reconstitute the proceedings so that the PRA becomes a party to what is, in essence, a claim on foot of the statutory right of the registered holder of a charge to seek possession, and in those proceedings the court is concerned with ascertaining whether the statutory proofs of registration and default is met, not whether the charge is wrongly entered on the relevant folio."* (emphasis supplied)

28. Baker J also stated at para 87:

> *"87. But I consider that, in addition to the statutory power under s.101(1) of the 2009 Act, as amended, the court hearing the proceedings for possession must be considered to have the inherent jurisdiction, in a suitable case, to adjourn the proceedings or stay the enforcement or implementation of an order for possession, or to postpone the date of delivery of possession, pending the determination of rectification proceedings, if it considered that those proceedings are reasonably likely to offer a defence to the claim for possession."*

29. This position was reiterated by Baker J in her judgment in the Supreme Court in *Bank of Ireland v. Cody* (Supreme Court, 14 April 2021) where she stated at para 51:

"The Register reflects the ownership of land and burdens affecting the interest of the registered owner. The Register may contain errors and provision is made for rectification on the grounds of actual fraud or mistake: s. 31(1); or where an administrative error is made in registration of an instrument: s. 32. Some interests affect without registration: e.g. under s. 72. A challenge to the correctness of the Register is brought by an action for amendment or rectification in which inter alia the Property Registration Authority would be a defendant or notice party, and such proceedings would almost invariably include other defendants or notice parties such as prior registered owners or other persons asserting an interest. If such proceedings are in being then that might amount to a ground to adjourn the action for possession, or indeed to list it to run after the rectification or amendment proceedings have been concluded (see the judgment in Tanager DAC v. Kane at para. 86), but no such proceedings have been commenced or threatened in the present case. Section 31 means that in possession proceedings the proof on foot of which a plaintiff claims an entitlement to possession takes as its conclusive starting point the registration on a folio of a charge of which that plaintiff is shown to be legal owner on account of entry on the register." (emphasis supplied)

30. It is accordingly very clear from these authorities that if the plaintiff truly had a valid case for rectification of the register, and wished to agitate the case that no order for possession should have been made by the Circuit Court until that issue was determined, the appropriate course of action was to issue appropriate High Court proceedings at a much earlier stage and then to apply to the Circuit Court for the adjournment or stay of the possession order proceedings and/or application for leave to execute the original possession order pending determination of the rectification proceedings. It is clear from the terms of paragraph 87 of the judgment of Baker J in *Tanager v. Kane* that the Circuit Court would have a jurisdiction to grant such an adjournment if it considered that the parallel proceedings relating to rectification of the register were reasonably likely to offer a defence to the claim for possession.

31. However, the plaintiff here did no such thing. Rather, he let the Circuit Court proceedings play out for a number years after he became aware of Start's application for leave to execute the original possession order, which application was issued in July 2020. He opposed that application *inter alia* on the basis that Start's claim to ownership of his charge

was a fraudulent one. Having unsuccessfully opposed Start's application for leave to execute the possession order in the Circuit Court, he then appealed that Circuit Court order to the High Court having been granted permission for an extension of time to appeal. He waited almost 12 months for the appeal to come on in the High Court and then withdrew it on the day of the appeal hearing. Only at that point when the possession order proceedings and the application for leave to execute were definitively concluded did he take the step of issuing these proceedings. That is the precise course of action which the *dicta* in *Tanager v Kane* and *Bank of Ireland v Cody* make clear should not be embarked upon if a *bone fide* basis for applying to rectify the register exists in the face of possession proceedings.

32. In order to assess whether these High Court proceedings should now in the circumstances be dismissed as an abuse of process, it is necessary to consider the law as to what is referred to as *Henderson v. Henderson* abuse of process which in essence says that later proceedings can be struck out as an abuse of process if a party seeks to raise issues in the later proceedings which that party could and should have raised in the context of, or at the time of, earlier proceedings involving the same parties.

33. Bingham L.J. in *Johnson v. Gore Wood & Co* [2002] 2 AC 1 identified the rule in *Henderson v. Henderson* (1843) 3 Hare 100 as being an aspect of the doctrine of abuse of process. He stated as follows:-

> *"...Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is,*

however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not."

34. That statement has been cited and approved by the Supreme Court in this jurisdiction in the judgments of Hardiman J. in *Carroll v. Ryan* [2003] 1 I.R. 309 and *A.A. v. Medical Council* [2003] 4 I.R. 302.

35. As Murray CJ stated in *Re Vantive Holdings* [2010] 2 IR 118, at para 25: "*Underlying the rule in Henderson v. Henderson (1843) 3 Hare 100 is the policy of the need to protect the due and proper administration of justice from an abuse of process and uphold the principle of finality in legal proceedings*."

36. In *Re Vantive Holdings*, Denham J (as she then was) cited with approval another judicial statement of Bingham M.R., found in in *Barrow v. Bankside Ltd.* [1996] 1 W.L.R. 257 at p. 260, as to this form of abuse of process:-

"The rule in Henderson v. Henderson (1843) 3 Hare 100 is very well known. It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a

defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

37. In my view, that principle is applicable to the circumstances here. While the plaintiff could not technically have raised the register rectification claim in the possession proceedings (although he did, as we have seen, contend that Start had not legitimate claim to ownership of his charge in those proceedings), he could and should on his case have issued separate proceedings to rectify the register before any determination of Start's applications in the Circuit Court proceedings and then applied to have Start's applications in those Circuit Court proceedings adjourned pending the outcome of his separate rectification proceedings. However he did not do that; rather, he sat back and let Start's applications in the Circuit Court proceedings play out to their ultimate conclusion, including on appeal, without ever making an application to the Circuit Court to adjoin or postpone those proceedings pending separate litigation in plenary proceedings of the contention that the registration of the charge by Start was procured by fraud and the register needed to be rectified. It is a clear abuse of process for the plaintiff to seek to advance these proceedings now to try to achieve a legal and practical nullification of the possession order, and the order giving leave to Start to execute on foot of that possession order. The reliefs sought in these High Court proceedings are all directed in substance towards the proposition that Start is not entitled to get possession of the property, notwithstanding that it has the benefit of a possession order and the permission of the Circuit Court as affirmed by the High Court for leave to execute on foot of that possession order. It would offend against the principle of finality of litigation to allow the plaintiff to continue with this litigation in these circumstances. The proceedings are a clear collateral attack on Circuit Court orders which have become final.

38. I arrive at this conclusion quite apart from the fact that these High Court proceedings are not in any event in proper form as rectification proceedings; they do not in fact seek to rectify the register pursuant to s.31 of the 1964 Act and do not involve the PRA as a party.

39. I am fortified in my view that strike out of these proceedings as an abuse of process is the appropriate and just course of action, by the fact that the core claim in these proceedings is in any event fundamentally legally misconceived such that these proceedings even if issued many years ago could never have been *"reasonably likely to offer a defence to the claim for possession"* to use the language of Baker J in *Tanager v Kane* at para 87.

40. I say that because the plaintiff wrongly believes that merely holding legal as opposed to beneficial title to his charge disqualified Start from being the registered owner of his charge. This is simply not correct as a matter of law; legal ownership of a charge is a pre-requisite of registration on the register on ownership of the charge but beneficial ownership is not (and, indeed, a beneficial owner of a charge who is not the legal owner of the charge has no right to be registered on the register; only the legal owner of the charge can register it). There is simply no stateable basis for the plaintiff's fraud claims in these proceedings in the circumstances, in any event. Nor are there any special circumstances that would justify the continuation of these proceedings. The justice of the situation points only in one direction, being strike out of the proceedings. The plaintiff has been in default on his loan for some 13 years and has been residing in the property since then including for over 9 years since the Circuit Court made a possession order in respect of the property, an order he never appealed. It is long past time for the plaintiff to accept the reality that he cannot continue to occupy the property.

Other matters

41. I should note for completeness that the evidence before me shows that Start subsequently transferred its interest in the plaintiff's loan and security to a further entity, Mars Capital Finance Ireland DAC. This entity was granted an order by the Circuit Court on 16 May 2025 to issue execution in the Circuit Court proceedings on foot of the order for possession obtained on 2 February 2017.

42. The plaintiff issued two motions shortly before the plaintiff's strike out motion came before me for hearing. One motion sought a variety of substantive reliefs in relation to the position of Mars Capital Finance Ireland DAC, the entity which over a year ago got the benefit of a Circuit Court order for leave to execute on foot of the February 2017 possession order. This entity is not a party to these High Court proceedings. That motion in any event improperly sought a variety of substantive reliefs. It was not a motion which the court could or should have entertained. I would observe that any attempt by the plaintiff as this remove to seek to impugn the entitlement of Mars Capital Finance Ireland DAC to execute possession on foot of the Circuit Court order permitting same would equally amount to an abuse of process.

43. The other motion sought to object to certain of the contents of the affidavits of Start's solicitor sworn in support of the strike out application, on the basis that the evidence amounted

to hearsay or legal submission. However, it is not necessary for me to rule on that motion as I am satisfied that I have been able to deal with the strike out application on the basis of facts which are a matter of record (in terms of the orders made by the Circuit Court and High Court, and of the proceedings and material before the Circuit Court), and in respect of matters of fact which the plaintiff himself accepted, including the fact that he had sought to raise similar issues to those raised in these proceedings before the Circuit Court in his opposition to Start's application for leave to amend on foot of the possession order in those proceedings.

Conclusion

44. In the circumstances, I will make an order striking out the plaintiff's claims in these proceedings as against the first defendant and place a permanent stay on the further prosecution of these proceedings.