[approved] **[no redaction needed]**

COURT OF APPEAL

CIVIL

Neutral Citation Number: [2026] IECA 178

[2026 No. 97]

[2018 No. 3592 P]

The President

BETWEEN

ALAN GAFFNEY AND DEREK GAFFNEY

PLAINTIFFS/RESPONDENTS

AND

PHILIP GAFFNEY

DEFENDANT/APPELLANT

AND

TERESA GAFFNEY

DEFENDANT

JUDGMENT of Ms Justice Costello delivered on the 17th day of August, 2026

1. By motion issued on 19th May 2026, the respondents sought an order directing the appellant to lodge security for costs in respect of the costs of opposing the appeal, and an order restraining the appellant from filing any further applications in proceedings having High Court record numbers [2016 No. 1020S], [2017 No. 3234P], [2018 No. 3892P] or [2024 No. 215 CA], or in any appeals of those actions without the prior consent of the President of the High Court or another judge of the High Court nominated by the President. They also sought an order restraining the appellant from issuing any proceedings against the respondents or against Ms Nicole Gaffney without the prior consent of the President of the High Court or another judge of the High Court nominated by the President.

2. The motion issued against the background of very significant litigation involving the members of the Gaffney family.

Background

3. Mr Philip Gaffney, the appellant, was involved in the production of Irish-themed souvenirs, and in 2015, he obtained a lucrative order from the Quality Value Choice Corporation ("QVC") in the USA. He was unable to secure funding for the project from banks in either Ireland or the United States, and so a loan agreement was reached whereby Mr Philip Gaffney's brothers, Alan and Derek Gaffney, advanced a loan of US$372,043.70. Mr Philip Gaffney said that this was not a loan, rather it represented an investment and was thus not repayable by him or his wife, Ms Teresa Gaffney. Further, he alleged that Mr Derek Gaffney was not involved and that the investors were Mr Alan Gaffney and his wife, Ms Nicole Gaffney. Unfortunately for all concerned, in February 2016, QVC cancelled the order.

4. Mr Alan and Mr Derek Gaffney ("the respondents") issued proceedings seeking the recovery of the sums they had advanced by way of loan to Mr Philip Gaffney and his wife, Ms Teresa Gaffney. Those proceedings were [2016 No. 1020S]. In 2017, Mr Philip Gaffney issued proceedings against Alan Gaffney and his wife, Ms Nicole Gaffney, for breach of an alleged agreement, whereby he said they had agreed to invest €400,000 in his business, but failed to do so. Those proceedings were record number [2017 No. 3234P]. Both the 2016 and 2017 proceedings were heard by Barr J in the High Court on 5th, 6th, 7th and 8th April 2022. Mr Philip Gaffney represented himself and there was no appearance on behalf of Ms Teresa Gaffney. Barr J delivered judgment on 29th April 2022 [2022] IEHC 251. In the 2016 proceedings, Barr J held that the money provided by the respondents was a short-term loan to fulfil the QVC order and not a long-term investment. He held that Ms Teresa Gaffney was not a party to the loan agreement. He ordered that Mr Alan Gaffney recover the sum of $272,043.70 against Mr Philip Gaffney and that Mr Derek Gaffney recover $100,000 against Mr Philip Gaffney. The proceedings against Ms Teresa Gaffney were dismissed. He awarded the respondents the costs of two and a half days of the four-day hearing. He struck out the 2017 proceedings in which Mr Philip Gaffney was plaintiff. He did not award the defendants in those proceedings, Mr Alan Gaffney and Ms Nicole Gaffney, their costs.

5. Mr Alan Gaffney and Mr Derek Gaffney appealed the High Court's finding in the 2016 proceedings that Ms Teresa Gaffney was not a party to the loan agreement. Mr Alan Gaffney and Ms Nicole Gaffney appealed the refusal of the High Court to award them the costs of successfully defending the 2017 proceedings. Mr Philip Gaffney also appealed the judgment granted against him in the 2016 proceedings.

6. The appeals in the 2016 and 2017 proceedings came on for hearing in the Court of Appeal on 25th May 2023. There was no appearance by Mr Philip Gaffney in the morning. In his absence, the Court dismissed his appeal in the 2016 proceedings for want of prosecution and awarded the costs of the appeal to the respondents.

7. In the afternoon, Mr Philip Gaffney appeared and the Court refused to reopen its judgment delivered that morning. The Court dealt with the remaining appeals in an *ex tempore* judgment and found that Ms Teresa Gaffney was a party to the loan agreement and varied the order in the 2016 proceedings to include judgment as against Ms Teresa Gaffney. The Court awarded Mr Alan Gaffney and Ms Nicole Gaffney their full costs of defending the 2017 proceedings. The orders of the Court of Appeal in the appeals in the two sets of proceedings were perfected on 6th July 2023.

8. Mr Philip Gaffney applied to the Supreme Court for liberty to appeal these three decisions of the Court of Appeal. By three determinations delivered on 30th April 2024

([2024] IESCDET 52, [2024] IESCDET 50, and [2024] IESCDET 51), the Supreme Court refused Mr Philip Gaffney leave to appeal in respect of the finding that Ms Teresa Gaffney was a party to the loan agreement, the Court of Appeal's dismissal of his appeal and its refusal to reopen his appeal, and the Court of Appeal's decision on the costs in the 2017 proceedings. Mr Philip Gaffney requested the Supreme Court to review the three determinations under PDSC 17. In a ruling delivered on 7th February 2025, the Supreme Court refused the application.

9. Thus, by 30th April 2024 and, at the very latest, by 7th February 2025, the 2016 and 2017 proceedings were finally concluded. No further avenues of appeal were open to Mr Philip Gaffney and no further motions ought to have been brought in respect of the proceedings. The 2016 and 2017 proceedings had concluded. No party was entitled to bring any further motions in those proceedings (save in either minor matters, such as the amendment of an order under the slip rule, or if a significant new matter previously unknown and which could not with reasonable diligence have been ascertained prior to the conclusion of the proceedings came to light which, as a matter of constitutional justice, would require the Court of Appeal to consider its judgments). Save in these circumstances which do not apply in this case, to attempt to do so offends the principle of finality in litigation and is an abuse of process.

<u>Continuation of the 2016 Proceedings</u>

10. Notwithstanding the orders of the Court of Appeal dated 25th May 2023 and perfected on 6th July 2023, and the determinations of the Supreme Court on 30th April 2024, Mr Philip Gaffney continued to file applications in the 2016 proceedings. He filed what he described as an application seeking to extend the time in which to appeal the decision of the High Court in April 2022 in the 2016 proceedings, on the theory that that this had not been decided by the

Court of Appeal on 25th May 2023. This was entirely misconceived. He had appealed the order, and the order had been heard and determined in his absence on the morning of 25th May 2023. He was not entitled to bring an application purporting to extend the time in which to appeal that decision again. He also brought an order under the slip rule, seeking to amend the perfected order of the Court of Appeal "*to correctly reflect the outcome of the hearing on 25 May 2023".* He wished the order to record that he was not present at the hearing, and that the appeal was struck out for want of prosecution and not dismissed and to clarify that no adjudication on the merits took place. He also sought to appeal an order of the High Court which had been amended, pursuant to the slip rule.

11. The Court of Appeal refused all the reliefs sought on 10th November 2025.

12. Notwithstanding this, Mr Philip Gaffney sought to bring an application under CAPD 14 for the court to review its judgment and orders of 25th May 2023. In the CAPD 14 application, Mr Philip Gaffney expressly sought an order setting aside the perfected orders of 6th July 2023 and the reinstatement of the appeals "*for hearing on their merits*". This application was never formally advanced. On 27th March 2026, Mr Philip Gaffney filed an application seeking an extension of time to seek leave to appeal to the Supreme Court from one of the three orders of the Court of Appeal issued on 10th November 2025 and perfected on 16th December 2025. The Supreme Court has not yet indicated whether it will grant him leave to do so. It is apparent from his persistent attempts to bring applications in these concluded related proceedings that Mr Philip Gaffney has refused to recognise and accept that these proceedings finally concluded in April 2024.

<u>Subsequent Proceedings: (a) Judgment Mortgage proceedings</u>

13. The respondents registered the judgments obtained in their favour as judgment mortgages against the interests of Mr Philip Gaffney and Ms Teresa Gaffney on Folio No.

3976, known as The Forge, Naul, Duleek, County Meath. On 22nd January 2024, they issued a Civil Bill seeking well-charging relief to enforce the judgment mortgages. The Circuit Court declared the judgment mortgages well-charged against Mr Philip Gaffney and Ms Teresa Gaffney's interests in the property.

14. On 1st August 2024, Mr Philip Gaffney and Ms Teresa Gaffney appealed that Circuit Court order. Prior to the hearing of the circuit appeal, Mr Philip Gaffney issued a total of five motions, including an application to *"remove the judgement (sic) mortgage"* registered by the respondents on the folio. They were heard along with the substantive appeal by the High Court (Bradley J) on 8th, 9th and 10th April 2025. After the hearing concluded but before judgment was delivered, Mr Philip Gaffney applied to the High Court in July 2025, requesting that the High Court defer delivering its judgment pending the determination of the motions then listed for hearing before the Court of Appeal in November 2025. Bradley J declined to do so, and he delivered a written judgment on 7th August 2025 ([2025] IEHC 460). Bradley J. refused to vacate the judgment mortgages and he declared that the judgment mortgages stand well-charged against Mr Philip Gaffney and Ms Teresa Gaffney's interests in the property and granted further ancillary reliefs. He ordered that in the event that the judgment debt was not discharged within six months, the Registrar of the County of Meath should effect the sale of the property. He stayed the order for 6 months from the date of perfection. It was not perfected until 19th March 2026.

15. As these proceedings commenced in the Circuit Court, under the provisions of s. 39 of the Courts of Justice Act 1936, no further appeal lies to this Court (see *ACC Loan Management Ltd v. Fagan* [2021] IESC 20). It follows that the judgment mortgage proceedings are at an end[1]. However, Mr Philip Gaffney did not accept that they were at an end. After judgment was delivered but before the order was perfected, he issued a motion to

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[1] Given the passage of time, I am presuming that no appeal directly to the Supreme Court has been authorised.

set aside all orders made in the judgment mortgage proceedings on the grounds that the High Court lacked jurisdiction to entertain or determine the respondents' applications (notwithstanding the fact that he had appealed to the High Court from the order of the Circuit Court). On 4th February 2026 Gearty J refused this application on the grounds that the High Court was *functus officio* in respect of the application. Mr Philip Gaffney filed a further motion on 14th April 2026, seeking to extend the stay placed on the order. This was stuck out by Bradley J on 21st April 2026 on the basis that the stay granted by court had not yet expired.

(b) 2018 Equity proceedings

16. In 2018, Mr Alan Gaffney and Mr Derek Gaffney instituted plenary proceedings seeking a declaration that the loan they advanced to Mr Philip Gaffney and Ms Teresa Gaffney was advanced by way of an equitable mortgage over the property at Naul, Duleek, County Meath. They caused a *lis pendens* to be lodged in respect of these proceedings on 25th April 2018. The proceedings were not pursued as Mr Alan Gaffney and Mr Derek Gaffney sought to recover the judgment debt by means of the judgment mortgages and the well-charging proceedings, rather than through further plenary proceedings in the High Court.

Further motions in the 2016 proceedings

17. Despite the fact that the 2016 proceedings had concluded by 30th April 2024, Mr Philip Gaffney proceeded to issue a number of motions in the 2016 proceedings. On 22nd July 2025 he sought:

> *"(i) An order vacating the judgment mortgage registered by the Respondents on 11th day of August 2023 against the Applicant's Family Home the property known as The Forge Naul County Meath folio number 3976 on the grounds that the underlying High Court orders (Record Nos. 2016/1020S and 2017/ 3234P) are subject to a stay pending appeal*

(ii) In the alternative an order staying enforcement of the said judgment mortgage pending the outcome of the appeals currently before the Court of Appeal in Record Nos. 2022/162 and 2025/167

(iii) An order directing Tailte Éireann to cancel the registration of the said judgment mortgage upon service of this order

(iv) An Order removing or vacating the Lis Pendens registered by the respondents in relation to my family home the property The Forge Naul County Meath folio number 3976 on the grounds that it was filed contrary to law and procedure in particular due to any claim to an interest in land in the originating Summons and the failure to obtain leave of the Court as required

(v) An Order for costs

(vi) Such further or other relief an (sic) as this honourable Court may deem just"

18. The reliefs sought were misconceived even if the proceedings had not finally concluded in April 2024 (save for relief (iv) which did not arise in the proceedings in which the motion issued). The appeals referred to in reliefs (i) and (ii) were refused by the Court of Appeal on 10th November 2025, as I have explained. There was never any stay on the orders in the 2016 or 2017 proceedings, contrary to the statement in relief (i) of the Notice of Motion. Tailte Éireann was not a party to the proceedings and so no relief against it could be granted. Bradley J had already refused to vacate the judgment mortgages and had declared the sums well-charged on the interests' of Mr Philip Gaffney and Ms Teresa Gaffney in the lands in his judgment of 7th August 2025.

19. On the following day, he filed a motion in the 2016 proceedings, seeking an order staying or suspending the legal costs adjudication proceedings arising from the judgment, and an order restraining the continuation of the adjudication proceedings, which were in fact listed for hearing on 23rd July 2025.

20. On 11th November 2025, he issued a further motion in the 2016 proceedings, seeking the following orders

> *"(i) An Order re listing the Defendant's Motion to Dismiss (filed in 2022 and grounded upon the affidavit of Philip Gaffney) for hearing before the High Court the said motion having never been heard or determined*
>
> *(ii)A Declaration that no valid Certificate of Readiness was ever lodged or signed by the Defendant and that any such certificate appearing on the court file is invalid*
>
> *(iii) A Declaration that no valid trial date was ever listed or notified to either Defendant*
>
> *(iv) A Declaration that the matter proceeded without jurisdiction the Plaintiffs' affidavits having been sworn outside the State without Irish Consular authentication or apostille contrary to Order 40 Rule 19 RSC and the Statutory Declarations Act 1938*
>
> *(v) A Declaration that any purported trial or order made in the absence of proper notice, service, or jurisdiction is void ab initio*
>
> *(vi) A Declaration that all orders and judgments arising from or dependent upon the proceedings in Record No. 2016/1020S including but not limited to any orders made in the High Court the Court of Appeal the Supreme Court, and the Circuit Court enforcement record, are void ab initio, having been founded upon defective proceedings and want of jurisdiction, and that such orders should be set aside ex debitio justitiae."*

21. On 26th November 2025 he issued a motion in the 2018 proceedings, seeking:

> *"1. An Order pursuant to the inherent jurisdiction of the Court and/or Order 19 Rule 28 of the Rules of the Superior Courts and/or the rule in Henderson -v- Henderson*

striking out the entirety of High Court Record No 2018 3592 P as an abuse of proceed (sic)

2. A Declaration that the 2018 proceedings were duplicative of record number 2016 1020 S concerned the same alleged debt and facts and were issued for improper purpose of supporting the registration of Lis Pendens Review

3. A Declaration that the 2018 proceedings were never prosecuted were dormant ab initio and did not constitute pending proceedings for the purposes of s.121 LCLRA 2009

4. An Order expunging the 2018 proceedings from the record as they served no legitimate procedural purpose and were employed solely to facilitate the registration of two Lis Pendens".

22. Notwithstanding the fact that the 2016 proceedings and 2017 proceedings had finally concluded, and that there was no appeal from the decision of Bradley J in the judgment mortgage proceedings, Mr Philip Gaffney proceeded to move these motions before the High Court on 1st December 2025.

23. In her judgment of 26th February 2026 ([2026] IEHC 148), Egan J dismissed all of the reliefs sought by the appellant in the four motions heard in the Common Law List on 1st December 2025. The orders of Egan J were perfected on 19th and 20th March 2026, dismissing all the reliefs sought and awarding the respondents their costs. Mr Philip Gaffney was granted liberty to take up the DAR transcript of the proceedings before Egan J.

The Appeal

24. Undoubtedly, insofar as any of the motions were issued in the 2016, 2017 or the judgment mortgage proceedings, or sought reliefs relating to the conduct of those proceedings or any of the orders made in those proceedings or sought to challenge or avoid any of the orders in any of those proceedings, this is not permissible as those proceedings have all been finally and conclusively determined. It is not permissible to issue motions in concluded proceedings, and it is not permissible to seek to reopen any issues in those proceedings in other proceedings. *A fortiori*, a party may not appeal against the dismissal of a motion brought in any of those previously conclusive determined proceedings. Insofar as there is any purported appeal in the 2016, 2017 or judgment mortgage proceedings filed before the Court of Appeal, it should be struck out *in limine*. There is no jurisdiction in this Court to hear any such appeal.

25. This leaves the 2018 proceedings instituted by Mr Alan Gaffney and Mr Derek Gaffney, but never pursued by them. At para. 53 of her judgment in respect of the motions heard by her, Egan J held that it was no longer necessary to consider the issues raised in the 2018 proceedings, or the issues raised concerning the claim to an equitable mortgage or the validity of the *lis pendens* registered in those proceedings because "*[b]oth parties are in agreement that the 2018 proceedings and the lis pendens should be struck out – albeit for different reasons"*. Accordingly, she struck out the proceedings with no order as to costs, which led to the vacating of the *lis pendens*.

26. For reasons which he has never explained, Mr Philip Gaffney has appealed the strikeout of the 2018 proceedings, and the appeal is listed for hearing on 30th November 2026. The difficulty is that the Notice of Appeal filed on 8th April 2026, in respect of the judgment of Egan J, is not confined – or even addressed – to the dismissal of the 2018 proceedings. Insofar as the appeal seeks to challenge any order made (or not made) in the 2016, 2017 or judgment mortgage proceedings, this amounts to an impermissible collateral attack on final orders made in these concluded proceedings. Furthermore, they cannot arise out of the only order which may properly be appealed: the order striking out the 2018 proceedings.

The Motion for Security for Costs and a Litigation Restriction Order

27. The respondents filed a respondent's notice opposing the entire appeal on 12th May 2026. They also filed a Notice of Motion on 19th May 2026, seeking an order directing the appellant to lodge security for costs in respect of the costs of opposing the appeal and fixing the sum of those costs as €40,000 or such sum as may be fixed by the court. They also seek a litigation restriction order (sometimes referred to as an *Isaac Wunder* order) against Mr Philip Gaffney, as I have set out already.

28. Before considering the evidence and arguments on both sides, it is appropriate to consider the legal basis for and the principles applicable to applications for security for costs in respect of appeals.

The principles applicable to the Application for security for costs

29. Order 86, r. 9 of the Rules of the Superior Courts provides that *"under special circumstances"* the court may direct that "*a deposit or other security in the amount fixed by the Court of Appeal be made or given for the costs to be occasioned by any appeal"*. The principles upon which a court will direct an appellant to provide security for the costs of an appeal have been addressed in a number of decisions of this Court and the Supreme Court. In *Gordon v The Irish Racehorse Trainers Association* [2021] IECA 128*,* Murray J, in a judgment delivered on 27th April 2021, summarised the principles which should guide a court in the exercise of that discretion as follows:

> *"(i) It is a pre-requisite to the making of such an order that the respondent establish that in the event that it is successful in its appeal the appellant will not be in a position to discharge the costs of the appeal (Midland Bank Ltd. v. Crossley-Cooke [1969] IR 56, at p. 61).*

(ii) Moreover, the respondent to the appeal must establish that prima facie it has a defence to an appeal (O'Donnell v. Saltan Properties Ltd. at para. 18).

(iii) The court may decline to make such an order if the appeal involves an issue of law of general public importance (Moore & ors. v. Attorney General & ors. (No. 2) [1929] IR 544).

(iv) While poverty or insufficiency of assets on the part of an appellant is a necessary precondition to the making of such an order, it is not in and of itself grounds for directing security (Midland Bank Ltd. v. Crossley-Cooke). The court must in addition find that there are 'special circumstances' that justify the making of such an order.

(v) In gauging whether there are such 'special circumstances' the court is ultimately concerned to ascertain – having regard to the fact that the respondent will not recover the costs of the appeal from the appellant and to the fact that the appellant may, if security is granted, be precluded from proceeding with its appeal - whether there are circumstances which demonstrate a risk of additional or unnecessary injustice in the bringing of the appeal such as to justify the ordering of security (Farrell v. Bank of Ireland [2012] IESC 42 [2013], 2 ILRM 183 at para. 4.34).

(vi) The categories of 'special circumstances' are not closed (O'Donnell v. Saltan Properties Ltd. at para. 18). The case law to date has accepted as falling within this description cases in which the appellant has conducted the proceedings oppressively, where they are resident outside the jurisdiction, where there are no prima facie grounds of appeal, and where the appellant is merely a nominal appellant.

(vii) Even if the court determines that the appellant is impecunious, and that there are special circumstances justifying the grant of security for costs, the court must both in determining whether to grant security and, where it determines to do so, in fixing the amount of that security, seek to make an order which is proportionate to the legitimate interests of all the litigants (Farrell v. Bank of Ireland at para 4.10).”

30. As the parties did not address the applicable principles in any detail, I propose to proceed on the basis that there is agreement that the principles, as set out in *Gordon*, are the principles which I should apply in determining this motion.

Discussion and Decision on the application for security for costs

31. The respondents must first establish that in the event that they are successful on the appeal, that Mr Philip Gaffney (the appellant) will not be in a position to discharge the costs of the appeal. In my judgement, this is established by the grounding affidavit of Mr Alan Gaffney sworn on 14th May 2026. He refers to the multitude of orders for costs which he and Mr Derek Gaffney (and Ms Nicole Gaffney) have been awarded and none of which have been discharged. The adjudicated costs orders relate to the original four-day High Court trial in both the 2016 and 2017 proceedings, the original three appeals to the Court of Appeal, which were before the court for hearing on two days, the three original applications for leave to appeal to the Supreme Court, the judgment mortgage proceedings in the Circuit Court and the High Court and the various motions brought subsequently in the 2016, 2017 and judgment mortgage proceedings and the 2018 proceedings. No payments have been made towards any of the costs orders. No payment has been made in respect of the judgments entered in favour of Mr Alan Gaffney and Mr Derek Gaffney against Mr Philip Gaffney and Ms Teresa Gaffney.

32. In his replying affidavit sworn on 19th June 2026, Mr Philip Gaffney does not address his ability to meet any award of costs in respect of the appeal. He does not address in any substantive way his failure to discharge the costs orders already adjudicated or the judgment sums awarded in favour of the respondents. He is utterly silent as regards his own assets or his other liabilities. He does not say that he would be able to meet an award of costs in the event that he loses the appeal.

33. In his judgment in the judgment mortgage proceedings, Bradley J sets out the burdens registered on the folio. These include a charge for present and future advances stamped over IR£100,000 repayable with interest, registered on 26th July 1999 in favour of Irish Life Home Loans Ltd. The ownership of the charge has been transferred to Pepper Finance Corporation (Ireland) DAC, and it was registered as the owner of that charge on 3rd May 2022. At para. 187 of his judgment, Bradley J records the evidence of Mr Alan Gaffney that, in addition, there was a judgment registered as a burden on Folio 3967 in favour of Pepper Finance Corporation (Ireland) DAC, the current owners of the Irish Life Home Loans Ltd charge. There is no indication as to the amount of that judgment as it does not appear on the copy of the folio, which was exhibited in the proceedings before Bradley J. Presumably this is because that judgment was entered relatively recently. What is clear is that this charge ranks in priority to the judgment mortgages registered by the respondents and that the original secured sum had not been repaid 26 years after the charge was granted to Irish Life Home Loans Ltd. The clear inference is that the borrowers (Mr Philip Gaffney and Ms Teresa Gaffney) have been in default and, given the passage of time and the sale of the debt and security to a third party, that significant arrears of interest have accrued.

34. In addition, there is a judgment mortgage registered in respect of a judgment obtained by Premier Credit Union Ltd against Mr Philip Gaffney on 13th September 2007 in the Circuit Court. The amount owing on the said judgment is stated to be €21,187.73. This judgment has not been satisfied and the judgment mortgage ranks in priority to the judgment mortgages registered by the respondents on 10th May 2018 and 28th August 2023. Interest has obviously accrued in respect of the judgments in favour of Mr Alan Gaffney and Mr Derek Gaffney and Premier Credit Union Ltd.

35. No expert valuation evidence as to the value of the property has been adduced by any of the parties.

36. As a result, the position is that Mr Philip Gaffney has failed to provide the court with any information regarding his assets or his liabilities, though it is clear that he has creditors, other than the respondents, who have unsatisfied judgments against him, and possibly Ms Teresa Gaffney. He and Ms Teresa Gaffney are the joint owners of a substantial property. However, that property is subject to considerable burdens and I have no information upon which to assess the value of the equity of redemption. On the other hand, it is apparent that the sums due by way of various costs orders are considerable and the judgments sums together with continuing Courts Act interest suggest that the total debt owed by Mr Philip Gaffney and Ms Teresa Gaffney to the respondents is in excess of €700,000 and may be more.

37. I am entitled to draw inferences from the fact that numerous awards of costs have been made, and that nothing whatsoever has been discharged towards either the judgment debts or the orders for costs and that other judgments remain unsatisfied. This inference is reinforced by the failure to repay the mortgage charged on the property in 1999. In the circumstances, I am satisfied that the moving parties, the respondents, have, on the balance of probabilities, established that the appellant would not be in a position to discharge the costs of the appeal in the event that he loses his appeal.

38. Secondly, the respondents must establish that they have a *prima facie* defence to the appeal. I am absolutely satisfied that the respondents have a *prima facie* defence to the appeal. Egan J found that the reliefs sought by Mr Philip Gaffney amounted to an abuse of process. She held that he sought to relitigate matters which had been finally determined or that his applications amounted to a collateral attack on those judgments and orders. It is no longer open to Mr Philip Gaffney to bring ***any motions of any kind*** in the 2016 proceedings, the 2017 proceedings or the judgment mortgage proceedings. The only proceeding which, under the Constitution, he may appeal, are the 2018 proceedings. These were struck out by consent of the parties, and, while the Notice of Appeal is less than clear, it is not apparent that Mr Philip Gaffney wishes to revive these proceedings which were brought against him and which have been struck out, *inter alia,* on the basis that they are moot. In those circumstances, the respondents have satisfied me that they have a *prima facie* defence to the appeal.

39. The next matter which the respondents must establish is that there are special circumstances that justify the making of the order. The courts have accepted that the absence of any *prima facie* grounds of appeal can amount to special circumstances. For the reasons I have outlined, I am satisfied that there are no *bona fide prima facie* grounds of appeal. The arguments advanced by Mr Philip Gaffney are arguments which he is not permitted to advance. They have been finally and conclusively resolved against him, or they relate to matters antecedent to a plenary hearing, and thus, have been overtaken by the fact of the plenary hearing in April 2022. The only theoretically valid appeal relates to the strikeout of the 2018 proceedings. This was done on the consent of the parties, so it is difficult to envisage how the High Court erred in striking out the proceedings.

40. In truth, Mr Philip Gaffney does not wish to revive those proceedings, but rather, he is attempting to use the constitutional right to appeal an order in the 2018 proceedings as a fresh launchpad for his repeated attacks on the substantive judgment of the High Court in 2022, and latterly, of Bradley J in the judgment mortgage proceedings. For this reason, I am satisfied there are no *prima facie* grounds of appeal and therefore that that the respondents have made out "*special circumstances*" within the meaning of the jurisprudence.

41. In addition, it is accepted that if an appellant conducts proceedings in an oppressive manner, that this, too, can amount to special circumstances. It is not necessary to repeat the litany of applications brought by Mr Philip Gaffney. He has persistently refused to accept the judgments and orders of Barr J and the Court of Appeal in the 2016 and 2017 proceedings. At para. 140, Bradley J recorded that Mr Philip Gaffney had sought to relitigate issues in the separate proceedings which had already been determined by both the High Court and the Court of Appeal in the judgment mortgage proceedings. Egan J, in her judgment under appeal, set out Mr Philip Gaffney's attempts to revisit the 2016 proceedings. She held:

> "*45. Any issues which could possibly have arisen in the context of Mr Gaffney's motion to dismiss the 2016 proceedings (as having no prospect of success) or his arguments concerning (a) the certificate of readiness (b) notification of trial date (c) the court not having jurisdiction and (d) defective affidavits have been subsumed into and determined by the judgments of Barr J and the Court of Appeal in the 2016 proceedings (and, in so far as relevant, the 2017 proceedings) which have been finally and conclusively determined in favour of the plaintiffs.*
>
> *46. I further find that, to the extent that Mr Gaffney now seeks to raise any additional issues or arguments in relation to the loan agreements or the course of the 2016 proceedings, these cannot be pursued either. This is because the rule in Henderson v Henderson (1843) 3 Hare 100, 67 ER 313, essentially requires a litigant to bring all claims against a party within one action.*
>
> . . .
>
> *48. I am satisfied that the issues raised by Mr Gaffney in his present motions are clearly res judicata and cannot be relitigated in these proceedings or indeed at all. To*

use the language of Barr J in Rippington v Loomes [2024] IEHC 716, the present motions are 'the very mischief that the principle of res judicata and the rule in Henderson v Henderson are designed to avoid; namely an abuse of court process'."

42. Mr Philip Gaffney does not accept these rulings, as is abundantly clear from his affidavit of 19th June 2026. This 24-page affidavit spends a considerable amount of time either criticising the formalities attendant upon the swearing of Mr Alan Gaffney's and Mr Derek Gaffney's affidavits, or in addressing the history of the business dealings between the parties. In what he describes as Part 2 of his affidavit, at paras. 7 and 8, he avers:

> "*I do not dispute that judgments, orders and appeals have occurred in the various proceedings between the parties. However, I dispute the suggestion that the mere existence of those judgments and orders establishes that all issues subsequently raised by me had already been determined.*
>
> *In particular, the affidavit repeatedly asserts that matters were concluded, that subsequent applications constitute attempts to relitigate matters already determined and that the High Court was functus officio. However, neither the affidavit nor the accompanying submissions identify specific orders or judgments determining a number of the procedural and jurisdictional issues now raised in the present appeal."*

Later, he avers:

> *"46 . . . I have consistently raised issues concerning notice, service, foreign affidavits, procedural rulings made during the course of the litigation and the disposition of motions which I maintain were never expressly determined. The Respondents assert that such matters were already decided, yet do not identify where those determinations may be found."*

At para. 53, he denies he has abused his right of access to the courts, stating:

". . . a litigant does not abuse his right of access to the Courts merely because <u>he continues to pursue matters which he genuinely believes remain unresolved</u>."

And at para. 54:

". . . <u>the existence of disputes concerning enforcement, jurisdiction, procedure and appeals</u> does not of itself establish an intention never to comply with lawful court orders." (emphasis added).

43. In light of Mr Philip Gaffney's averments and submissions to this Court, and in light of his conduct of the various proceedings for a decade, I am satisfied that the manner in which he has conducted the litigation as a whole is oppressive in his refusal to accept the finality of orders which are final, or the conclusion of proceedings which have concluded. This also amounts to special circumstances within the meaning of the jurisprudence concerning security for costs of appeals. I am absolutely satisfied that there are circumstances which demonstrate a risk of additional or unnecessary injustice to Mr Alan Gaffney and Mr Derek Gaffney in the bringing of this appeal by Mr Philip Gaffney, which justifies the ordering of security.

44. The court must then assess whether, in all the circumstances, it is proportionate to the legitimate interests of all of the litigants to make an order for security for costs. Mr Philip Gaffney has had exceptional and repeated access to the courts, from the Circuit Court to the Supreme Court, for a period of ten years. He has been essentially unsuccessful in the litigation, and the other parties to the litigation, Mr Alan Gaffney, Mr Derek Gaffney and Ms Nicole Gaffney, have been put to extraordinary expense (never mind distress and stress experienced by the families of Mr Alan Gaffney and Mr Derek Gaffney, as recorded in the judgment of Bradley J). As was observed by Clarke J (as he then was) *in Farrell v Bank of Ireland* [2012] IESC 42, :

"4.4 …*With the right of access to the court, whether of first instance or of appeal, comes an obligation to use best endeavours to conduct the process in accordance with procedural law and in a manner that does not add unnecessarily or inappropriately to the length or costs of the process.*

. . .

4.5 . . . the right of access to the court does not carry with it an entitlement to have all issues decided at a full trial or to conduct the relevant litigation in whatever way the party concerned wishes."

At para. 4.16 he observed:

"*. . . exposing a party to having to incur the costs of litigation in circumstances where there is no reality to that party recovering those costs on foot of a court order in the event of the party concerned being successful amounts to exposing the relevant party to a risk of injustice. It is that risk that needs to be set against the undoubtedly high constitutional value that is attributed both to the right of access to courts of first instance and to the right of appeal from the High Court to this court, or perhaps, in view of the earlier analysis in this judgment, to the right of all litigants to fair process in the conduct of proceedings."*

His observations at para. 6.5 are particularly apposite to the situation presenting in these proceedings. Clarke J held:

"A point can be reached where [procedural failures] amounts to the oppressive conduct of litigation. It is the very sort of factor on which significant weight can be placed in an application such as this. As pointed out earlier past conduct which gives rise to a reasonable inference that it will continue into the future leading to an unnecessary increase in the costs of defending an appeal (in circumstances where, if successfully defended and costs awarded, the increased costs thus incurred will not,

in practice, be recovered) is the very sort of factor which this court must take into account."

While, in *Farrell*, the court was concerned with persistent failures to comply with procedural directions, in this case, the oppression and litigation misconduct takes the form of repeated bringing of motions in respect of matters which have finally concluded, or matters are antecedent to matters which have finally concluded.

45. It is important to note that Mr Philip Gaffney has neither averred nor submitted to the court that if security for costs is ordered, that, in practice, would bring the appeal to an end.

46. In those circumstances, having regard to the interests of all of the parties to the litigation, in my judgement, it is proportionate to order that the appellant provide security for costs for the appeal.

47. Having determined that it is appropriate to order security for costs in the circumstances, I must then determine the quantum of the security to be provided by Mr Philip Gaffney. It must be proportionate in all the circumstances. Mr Alan Gaffney has averred that the costs of previous appeals to the Court of Appeal have been adjudicated at sums approximating to or in excess of €40,000. He therefore seeks security for the pending appeal in the amount of €40,000 on the basis that he and Mr Derek Gaffney are likely to incur similar costs in opposing the pending appeal. Mr Philip Gaffney does not take issue with the quantum sought or suggest that €40,000 is too high a figure. He adduces no evidence from a legal costs accountant as to the reasonable costs which Mr Alan Gaffney and Mr Derek Gaffney will incur in opposing the appeal. In those circumstances, I accept that the respondents are likely to incur reasonable costs in the order of €40,000.

48. Courts have operated a so-called "*one-third rule*" in relation to the quantum of security to be provided by a personal litigant where they are directed to provide security for costs under O. 86, r. 9. It is also clear that the court may depart from that rule and that it is not binding. As Clarke J pointed out in *Farrell,* the court is required to be proportionate in the amount of security ordered.

49. In assessing what is proportionate in the context of this case, I am mindful of the fact that Mr Philip Gaffney's opponents are individuals and that the costs they have borne to date in successfully pursuing/defending the myriad of cases and applications, largely brought by Mr Philip Gaffney, has placed a significant toll on their personal resources. The litigation has continued for ten years and Mr Philip Gaffney does not regard the issues between the parties, and in particular that he owes significant sums to the respondents, as finally concluded. In his most recent motions he has sought orders vacating all earlier judgments and orders. It is clear that the prospect of costs being awarded against him in no way has deterred Mr Philip Gaffney from continuing to seek to reverse the outcome of the trial in April 2022, and likewise, that orders for costs in favour of the respondents have been of no practical benefit to them whatsoever. This is a significant injustice to the respondents in circumstances where Mr Philip Gaffney has not asserted that he could not discharge at least a portion of his indebtedness to the respondents. In those circumstances, I do not believe that the one-third rule meets the justice of the case. I believe that it is proportionate, in the context of his dogged persistence in his abusive conduct of the various proceedings, to require that Mr Philip Gaffney provide security for costs for the hearing of the appeal in the amount of €40,000.

The Principles guiding the making of a Litigation Restriction Order/*Isaac Wunder* Order

50. I must next consider whether it is appropriate to make a litigation restriction order against Mr Philip Gaffney and, if so, in what terms. In *Riordan v Ireland* (No 4) [2001] 3 IR 365, 370, Keane CJ held:

"It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation, or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices, as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation." (emphasis added).

51. The jurisdiction applies to attempts to reopen issues which have already been determined, and it applies to applications, whether they purport to be brought within existing litigation or in separate proceedings. In other words, it is no answer to a claim that the litigant is abusing the processes of the court to assert that this cannot be so because they are being brought within existing proceedings. The abuse lies in the attempt to reopen issues which have already been finally determined.

52. In *Riordan v An Taoiseach (No 5)* [2001] 4 IR 463, Ó Caoimh J held that the matters listed below had been accepted as tending to show that a proceeding is vexatious. The matters were:

"(a) the bringing up on 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 cannot succeed, or if the action would lead to no possible good, or if no reasonable person can 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 cost of unsuccessful proceedings;

(f) where the respondent persistently takes unsuccessful appeals from judicial decisions."(emphasis added).

53. In *Kearney v Bank of Scotland plc* [2020] IECA 92 the Court of Appeal held as follows:

> *"132 Isaac Wunder orders now form part of the panoply of the courts' inherent powers to regulate their own process. In light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:*
>
> *i. Regard can be had by the court to* the history of litigation between the parties or other parties connected with them in relation to common issues.
>
> *ii. Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or then legal representatives or other professionals connected with the other party to the litigation.*
>
> *iii. The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder*

type order restraining the prosecution of litigation or the institution of fresh litigation is made.

iv. Regard may be had to <u>the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants</u> and indeed by past defendants in applications connected with the issues the subject matter of the litigation.

v. The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.

vi. It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.

vii. Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.

viii. Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by article 6. to which the courts have regard in the administration of justice in this jurisdiction *since the coming into operation of the European Convention on Human Rights Act 2003.*

ix. The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.

x. Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.

xi. An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, "vexatious" and this may present a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.

xii. Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it."(emphasis added).

54. The Supreme Court recently considered the jurisdiction of the court to make litigation restriction orders in family law proceedings in *M v M* [2026] IESC 2. The court made observations which were of general application. Dunne J gave the leading judgment of the court. At para. 42, she reaffirmed that:

> "*. . . it is also an important part of litigation that, having had a hearing at first instance, and thereafter an appeal, it is not open to a party to relitigate the same point in fresh proceedings. It will be readily apparent that an attempt to relitigate an issue that has already been decided will involve the use of further court time in relation to the new proceedings, and further, will put the successful party to the trouble of dealing yet again with proceedings raising the same issue. It is unfortunately the case that a small cohort of disappointed or unsuccessful litigants have sought to relitigate points already decided, again and again.*"(emphasis added).

55. At para. 104, Dunne J observed that any interference with the right of access to the courts must be proportionate, but she emphasised that "*the right of access to the courts must be balanced with the right of other parties who are brought to court as defendants not to be the subject of vexatious litigation or litigation that is bound to fail, on a repeated basis*".

56. Dunne J observed that an *Isaac Wunder* order is to be made sparingly. At para. 135, she held that such an order:

> "*. . . will only be made after a number of unmeritorious applications have been made by the party concerned. The making of such an order does not preclude a party from enjoying their right of access to justice, given that the sole effect of such an order is to restrict such party from initiating a new application or proceedings without the leave of the court. As such, if the party concerned is in a position to establish grounds for bringing a further application, or issuing further proceedings, then that will be permitted. It must be borne in mind that an Isaac Wunder order is not made as a matter of routine. It is simply the requirement of a party to obtain leave of the*

Court (usually the President of the Court or a judge nominated by the President) before instituting fresh proceedings or application against a specific defendant. It is not a restriction on the issuing of proceedings in a statable case. If the case is unstateable, for example, because the points raised have already been considered and determined in earlier proceedings, leave will not be granted."

57. Dunne J approved of the principles identified by the Court of Appeal as applicable to the making of *Isaac Wunder* orders in *Kearney,* quoted above (save in relation to point *x* as she held that the District Court and the Circuit Court may make orders of this kind).

58. Dunne J accepted that an *Isaac Wunder* order:

> "*178. . . it is a form of order that is the last resort in cases where parties are the subject of oppressive litigation. It is important to observe that orders such as this are not made every day by courts in this country. The circumstances in which such orders could be made will only arise in limited circumstances. The effect of not making such orders where appropriate is to cause further distress, anxiety, and oppression to parties affected by such litigation. It is also fair to say that cases of the kind in which such orders have to be made frequently involve the excessive use of court time which, as has been emphasised previously, is scarce. Thus, two interests are served by the making of such orders, namely, the interests of the individuals affected by the making of such an order, but also the requirements of the courts to ensure that their time is not unduly spent on hopeless, vexatious, and pointless litigation."*

59. Collins J observed, at para. 2 of his judgment, that "*there is no right to use the courts' process to reopen litigation or to pursue litigation that is plainly groundless and vexatious"*.

60. Murray J observed that a court may make an *Isaac Wunder* order in the course of or at the conclusion of an action restraining one of the parties – usually the claimant – from pursuing an action against another party, save with the consent of a judge (usually the President of the court in question). At para. 2, he emphasised "*[t]hat order may be made at the request of one of the parties, but it may also be made by the court sua sponte*". He also said that the court may make orders restricting a named person from pursuing proceedings in any court and/or from pursuing any proceedings against any person and/or from pursuing such proceedings of a particular kind.

61. Hogan J also agreed that the making of an *Isaac Wunder* order served constitutional purposes "*by ensuring that an abusive litigant cannot harass or oppress his opponent by repeated, fruitless litigation.*"

Decision on the Application for a Litigation Restriction Order

62. In my judgement, there are ample grounds for the making of an *Isaac Wunder* order, or a litigation restriction order, restraining Mr Philip Gaffney from issuing further applications or commencing fresh proceedings against the respondents, or either of them. I have reached this conclusion for the following reasons:

(i) The history of the litigation since 2016 bears out the need for the making of this order. The 2016, 2017 and judgement mortgage proceedings have all concluded, yet Mr Philip Gaffney persisted in issuing a variety of motions in proceedings which had finally and conclusively been determined against him. He has sought to relitigate issues which have already been conclusively determined by courts of competent jurisdiction, or to agitate issues antecedent to those orders with a view to avoiding the orders. There have been at least 24 substantive orders made in these proceedings to date. It is an abuse of process to seek to relitigate issues which have been finally determined.

(ii) There are good reasons to believe that that Mr Philip Gaffney will bring further applications in the 2018 proceedings or other proceedings (whether the 2016, 2017 or judgment mortgage proceedings, or proceedings which he indicated he has brought, seeking to vacate the registration of the judgment mortgages on the folio). In his affidavit opposing this motion, he indicated that he intends to issue further motions and applications to resolve *"issues"* which he says still require to be resolved in the context of the conduct of the proceedings to date and with a view to vacating all the previous orders.

(iii) There are many orders for costs issued by multiple courts, none of which have been discharged.

(iv) Mr Philip Gaffney brought pointless applications to the Court of Appeal and the Supreme Court after the conclusion of the appeals in favour of the respondents: an application allegedly seeking to extend time in which to appeal the order of Barr J in circumstances where the Court of Appeal had dismissed the appeal, an application purportedly under the slip rule to amend the perfected order of the Court of Appeal on the basis that it did not reflect the decision of the Court of Appeal (which application was refused), and an appeal against the amendment of the order of the High Court under the slip rule. He has also brought an unsuccessful application under SCPD 17 to review the determinations of the Supreme Court. He has then asked the High Court to set aside orders of the Court of Appeal and the Supreme Court, manifestly something no reasonable person could have believed had any realistic prospect of success.

(v) His defence to the 2016 proceedings and his claim in the 2017 proceedings has been heard and determined following a plenary hearing lasting four days. His appeals against the judgment of the High Court have been determined by the

Court of Appeal. His circuit appeal in the judgment mortgage proceedings was heard over three days. He has had many days in the High Court and the Court of Appeal dealing with the various applications and motions I have set out in this judgment. It follows that his constitutional rights of access to the courts have been afforded him in full. His continuation of his campaign of lawfare is not only oppressive of the respondents, it also manifestly involves the use of scarce court resources on utterly unmeritorious applications to the detriment of other court users.

(vi) I infer that the many attempts by Mr Philip Gaffney to overturn the outcome of the 2016 and 2017 proceedings have been brought with a view to harassing and oppressing the respondents and not with a view to asserting any outstanding legitimate rights of Mr Philip Gaffney.

(vii) This judgment should not be treated as exhaustively recording all of the orders and applications in the litigation. Since the filing of this appeal, Mr Philip Gaffney has brought a further motion to the Court of Appeal seeking to extend the time to appeal one of the orders of Egan J perfected on 19th March 2026 which he apparently omitted to appeal. This application is listed to be heard on 30th November 2026 alongside the appeal against her order striking out the 2018 proceedings.

63. It is abundantly clear that if he is not restrained by an appropriate order of the court, the conduct will continue. It follows that a strikeout of the 2018 proceedings (being the only proceedings properly extant before the Court of Appeal and which have not finally concluded) will not suffice in the context of Mr Philip Gaffney's conduct of the litigation to date. I place particular emphasis on his failure to reject Mr Alan Gaffney's expressed fear that he will delay and continue to obstruct the sale of the property, notwithstanding the order for sale made ancillary to the well-charging order of the High Court. His response was disingenuous to say the least. I am satisfied that no other order would suffice to properly protect the interests of all parties and to avoid further unmeritorious use of court time. The order will protect Mr Alan Gaffney and Mr Derek Gaffney against further harassment and unnecessary incurring of legal costs, which to date, they have been unable to recover. It will also preserve Mr Philip Gaffney's entitlement to bring any legitimate stateable claims which he may have in the future, once he obtains the leave of the President of the High Court or any judge nominated by the President. It will avoid the unmeritorious use of scarce court resources to consider and determine a bewildering variety of applications which have but one impermissible aim: the overturning of all that has gone before.

64. I will list the matter for hearing in order to afford Mr Philip Gaffney an opportunity to give an appropriate undertaking *in lieu* of an order of this Court. If he gives the undertaking, I will refrain from making any order. If not, an order will issue

65. The matter will be relisted at a date to be notified to the parties to finalise the terms of the orders in respect of the provision of security for the costs of the appeal, an undertaking from Mr Philip Gaffney in relation to future applications to court (if offered), the making of a litigation restriction order if no appropriate undertaking is forthcoming and the costs of the motion.