THE HIGH COURT

[2026] IEHC 589

[Record No. H.P. 2024 248]

BETWEEN

GREG KAVANAGH AND GREG KAVANAGH DEV CO LIMITED

PLAINTIFFS

AND

ANNE O'NEILL AND BALLYCRAG DEVELOPMENTS LIMITED (IN RECEIVERSHIP, ACTING THROUGH ITS RECEIVER JOHN HEALY)

DEFENDANTS

JUDGMENT of Ms Justice Bolger dated this 12th day of August 2026

1. This is the application of the receiver of the second defendant company (hereinafter referred to as "the second defendant") for security for costs against the second named corporate plaintiff (hereinafter referred to as "the second plaintiff") and an application to vacate the *lis pendens* registered over Wynnstay House (hereinafter referred to as "the property") following on the issue of these proceedings on 18 January 2024.

Background

2. The background to this case is set out, at least in part, in my judgment in related proceedings between the same parties under record number 2023/1926 HP. The second defendant owns the property. In 2013 and 2014, the first defendant lent approximately €2 million to the company, secured by way of a charge over the property. In 2020 the second plaintiff was restored to the register after an application pursuant to s. 738 of the Companies Act 2014 by the first defendant, which required the company's directors to procure the delivery by the company of all outstanding annual returns in accordance with Part VI of the Companies Act 2014 within the period of three months after the date of perfection of the order. This has not yet been done.

3. In 2022, the first defendant appointed a receiver over the second defendant and issued proceedings against the first plaintiff and the company which were settled by way of a settlement agreement dated 18 January 2023 pursuant to which the first plaintiff was to pay monies to the first defendant in three separate instalments and the property was to be sold to the second plaintiff. Clause 2.14 of the agreement expressly provided that time was of the essence in relation to completion of the sale of the property. That agreement was not complied with and the first plaintiff and the second plaintiff issued proceedings in 2023 seeking specific performance of that agreement. The plaintiffs sought an interlocutory injunction which the parties settled on 27 July 2023 by varying the terms of the settlement agreement. A dispute later arose in relation to a VAT issue within the revised settlement agreement and the within new proceedings were issued by the first and second named plaintiffs seeking, *inter alia*, specific performance of the settlement agreement and a declaration that the total due under the contract for sale appended to the revised settlement agreement is €2 million inclusive of VAT. The plaintiffs registered a *lis pendens* in relation to the property within these proceedings.

Application to lift the *lis pendens*

4. Section 123(b) of the 2009 Land and Conveyancing Law Reform Act provides as follows:

> *"123. Subject to section 124, a court may make an order to vacate a lis pendens on application by-*
>
> *(b) Any person affected by it, on notice o the person on whose application nit was registered –*
>
> *(i) Where the action to which it related has been discontinued or determined, or*
>
> *(ii) Where the court is satisfied that there has been an unreasonable delay in prosecuting the action or the action is not being prosecuted bona fide."*

5. In *Hurley Property ICAV v Charleen Limited* [2018] IEHC 611, Barniville J (as he was then) cited the decision of Haughton J in *Togher Management Company Limited v Coolnaleen Developments Ltd (In Receivership)* [2014] IEHC 596, from which Barniville J concluded in his judgment at para. 80 that:

> *"Having regard to the provisions of s. 123 of the 2009 Act, a particular onus lay on the plaintiffs to progress the proceedings 'without undue delay' and that if the plaintiffs did not exercise 'expedition and vigour' in prosecuting the proceedings and if there was*

'unreasonable delay' in prosecuting them, an order could be made under s. 123 vacating the lis pendens at that stage."

He went on to conclude at paras. 82 to 83 as follows:

"82. It seems to me, correctly construed, the provisions of s.123(b)(ii) of the 2009 Act impose a particular obligation on a person who has commenced proceedings and registered a lis pendens to move with greater expedition than would normally be required or than is required under the Rules of Superior Courts. Such a person would, in my view, be required to act with particular "expedition and vigour" (to adopt the words used by Haughton J. Togher) in the prosecution of the proceedings.

83. *The section refers to an unreasonable delay in "prosecuting the action". Therefore, the focus of the examination in the context of any alleged delay is on what has occurred in the prosecution of the "action". The "action" starts when the proceedings are commenced and can only be prosecuted following their commencement. Therefore, in considering whether a delay in the prosecution of the action has been "unreasonable" for the purposes of s123(b)(ii) of the 2009 Act, the court must focus on the period after the commencement of proceedings rather than on any period of time prior to commencement. In my view, the time before commencement of the proceedings and any delays which may have occurred whether in correspondence or otherwise prior to the commencement of the proceedings are not relevant to the court's consideration as to whether there has been an "unreasonable delay in prosecuting the action" for the purposes of s. 123(b)(ii) of the 2009 Act. The court must focus on what the person who has registered the lis pendens does in the prosecution of the action following its commencement. Further, while the question of unreasonableness in the context of a delay in the prosecution of proceedings will always depend on the context and on the particular facts, the policy of the section and the intention of the Oireachtas is clear. There is a particular and special obligation on a person who has issued proceedings and then registered a lis pendens for the purpose of those proceedings to bring those proceedings on expeditiously. That person is not permitted to sit back or to proceed with the action at leisure or to take time which might otherwise be tolerated or excusable in the conduct of the action. Since the expeditious prosecution of the proceedings is essential, a court considering whether to vacate a lis pendens under the first part of s.123(b)(ii) should*

> *not tolerate delays in the prosecution of the action, such as in the service of the proceedings or subsequent pleadings in the proceedings without very good reason. The absence of a good reason for a delay is likely to lead the court to conclude that the delay has been unreasonable for the purposes of the section.*"

Discussion

6. The second defendant maintains that there has been a delay of some 25 months between the issue of the within proceedings and February 2026 when the plaintiffs finally filed a statement of claim. The within application was issued in October 2025. The plaintiffs' acknowledged some delay in delivering their statement of claim but maintain that delay was justified in particular by engagement between the parties.

7. In considering the delay, I have had regard to the following points:

(i) The correspondence between the parties contained repeated requests by the second defendant's solicitors for delivery of the statement of claim. Much of that correspondence was ignored by the plaintiffs;

(ii) The nature of the limited and short period of engagement between the parties that might otherwise justify a pause in progressing the litigation;

(iii) The backdrop of the terms of the original settlement agreement that expressly provided that time was of the essence in progressing the sale of the property;

(iv) The fact that the issue here was the discharge of debts in respect of monies lent some fifteen years ago;

(v) Expenses are being incurred by the second defendant in relation to the deteriorating property including insurance and fines under the derelict property provisions, of which the plaintiffs knew or ought to have known. This serves to heighten the plaintiffs' obligation to progress the proceedings.

8. The delay in progressing the litigation has, for substantial periods of it, not been addressed by the plaintiffs despite detailed correspondence being exchanged between the parties in relation to the VAT issues that had arisen. Some periods of delay were caused or contributed to by the defendants including taking some four months to file their appearance. Nevertheless, responsibility for most of the delay lies with the plaintiffs and was either unexplained or sought to be justified by fairly short periods of engagement that could only have ever merited minor periods of the overall delay. The plaintiffs seek to explain some of the delay by reference to what they refer to as the defendants' litigation strategy including the defendants' application for summary judgment in the

2023 proceedings. I do not find that to be sufficient to render the delay reasonable, having regard to the provision of the sub section and the manner in which it has been interpreted by this Court as set out above.

9. I do not accept the plaintiffs' submission that the discretion the section affords to the court by the use of the word "*may*" should be exercised in their favour, given their delay from when they issued the proceedings to when the plaintiff brought the within motion in October 2025 and the fact that it took them another four months before they finally filed a statement of claim.

10. I therefore allow the second defendant's application to lift the *lis pendens* over the property.

Indicative view on costs

11. In accordance with s. 169 of the Legal Services Regulation Act 2015 and having regard to the standalone nature of the delay issues such that I do not think these issues will be significantly revisited at trial, I consider the second defendant is entitled to the costs of this application but I also consider it would be appropriate to put a stay on the execution of those costs pending the resolution of the within proceedings.

Application for security for costs

12. The second defendant seeks security for costs from the second plaintiff which is the corporate entity and the only plaintiff against whom such an order pursuant to s. 52 of the Companies Act 2014 could be made. As per the case law and, in particular, *Quinn v PricewaterhouseCoopers* [2021] IESC 15, the second defendant must establish it has a *prima facie* defence, that the plaintiff will not be able to pay its costs if unsuccessful and that there are no special circumstances entitling the court to exercise its discretion not to order security for costs. The second defendant urges the court to make the same order as was made by Twomey J in the decision of *Beakonford Ltd v Stokes & Wilding* [2005] IEHC 22 which pertained to a special purpose vehicle of which the within first plaintiff was a director. However, the circumstances there were different in that there was only a corporate plaintiff, unlike here where the first plaintiff is sued in his personal capacity alongside the second corporate plaintiff. The first plaintiff will remain in the proceedings regardless of the outcome of this application.

13. The second plaintiff was established by the first plaintiff for the purpose of purchasing the property and therefore, if at any stage the first plaintiff does proceed with the purchase, another special purpose vehicle may be established in order to complete the sale. That situation makes this case very different to the authority urged on this Court by the second defendant.

14. The establishment of a *bona fide* defence is a low bar and one that I am satisfied the second defendant has satisfied. It is not clear that the second plaintiff's inability to discharge the costs has been established given the averments made by the first plaintiff, who was funding the second plaintiff, that the first plaintiff can do so. The first plaintiff referred to monies he says are available to him by way of loans and, he says, evidenced by screenshots of bank accounts that he has exhibited.

15. The second plaintiff relies on repeated assertions in its solicitor's correspondence with the second defendant, to the effect that both plaintiffs were in funds in relation to the payments of monies due under the settlement agreement. The second defendant relies heavily on the failure of the second plaintiff to demonstrate any ability to discharge its costs by reference to the company accounts which have still not been filed in breach of the company's obligation to do so. However, the first plaintiff's evidence that he is in funds etc, is not addressed or challenged in the second defendant's affidavit. Counsel for the second plaintiff makes the point that no notice of intention to cross-examine was served. The averment of the first plaintiff as to his ability to fund the costs must stand absent a challenge (as per Ryan J (as he was then) in *Comcast International Holdings Inc v Minister for Public Enterprise* [2014] IEHC 18). It seems to me that this takes the first plaintiff's averments out of the space of being a bare averment that might otherwise support an application for security for costs, as it is an unchallenged averment.

16. If I am wrong in relation to the necessary requirements for an order for security for costs, then I am of the view that special circumstances justifying the refusal of an application for security for costs exist where there is an individual co-plaintiff to a corporate plaintiff. I rely on the decision of Keane J in *Kimpton Vale Ltd v Ferox Ltd* [2013] IEHC 577, the judgment of Charleton J in *Oltech (Systems) Ltd v Olivetti UK Ltd* [2012] 3 IR 396, and the observation of Ryan P in *Comcast International Holdings* to the effect that "*a personal litigant is in a different position to a company*".

17. For those reasons, I refuse the second defendant's application for security for costs.

<u>Indicative view on costs</u>

18. In accordance with s. 169 of the Legal Services Regulation Act 2015, my indicative view on costs is that the second plaintiff is entitled to the costs of this application given that these issues will not be revisited at trial, but I am also of the indicative view that a stay should be put on the execution of those costs pending the resolution of the proceedings.

19. I will put the matter in for mention at 10am on 6 October 2026 for final orders.

Counsel for the plaintiffs: Martin Hayden SC, Ross Aylward BL

Counsel for the second defendant: James Dwyer SC, Michael O'Sullivan BL