

THE HIGH COURT

[2026] IEHC 673

[Record No. 2015/1380 S]

BETWEEN

EVERYDAY FINANCE DAC

PLAINTIFF

AND

MARTIN DORAN AND MARIE DORAN

DEFENDANTS

JUDGMENT of Ms Justice Bolger dated this 9th day of October 2026

1. This is the defendants' application to dismiss the following three sets of proceedings pursuant to Order 122 Rule 11 of the Rules of the Superior Courts for want of prosecution, or pursuant to the inherent jurisdiction of the Court on grounds of inordinate and inexcusable delay:-

- High Court Record No. 2015 / 1380 S Everyday Finance DAC v Martin Doran and Marie Doran (hereinafter the “Judgment Proceedings”);
- High Court Record No. 2017 / 355 SP Everyday Finance DAC v Martin Doran; and,
- High Court Record No. 2017 / 356 SP Everyday Finance DAC v Martin Doran.

The latter two are together referred to as the “Enforcement Proceedings.” For the reasons set out below, I am striking out all three sets of proceedings for delay.

Background

2. I will deal with the proceedings as falling into two separate categories: firstly, the judgment proceedings issued in 2015 and secondly, the enforcement proceedings issued in 2017. In addition, there are other proceedings relating to the subject matter of these proceedings that are not before this Court. Prior to the issuing of the judgment proceedings, the first defendant and his son had issued proceedings along with a number of other plaintiffs in High Court Record No. 2014/7009P, *Martin Doran & Anor v. AIB plc & Anor* (the "*Belfry* proceedings"), which arose from the plaintiffs' claim that AIB and other defendants had mis-sold AIB's Belfry investment product. Those proceedings were settled in July 2021. In addition, some years after all of those proceedings had been issued, the first named defendant issued injunction proceedings in High Court Record No. 2021/847P, *Martin Doran v. Luke Charleton & Anor* (the "*injunction* proceedings"), which arose from the plaintiff purporting to appoint receivers over the farmlands the subject matter of the enforcement proceedings. Injunctive relief was granted against the receiver on 31 May 2022.

3. On 13 July 2015, AIB issued the within judgment proceedings seeking summary judgment against Mr. and Mrs. Doran on foot of what was claimed to be monies due pursuant to one credit agreement of 11 January 2007 and a second agreement of 6 September 2010. The defendants swore a replying affidavit in which they averred, *inter alia*, that the Bank was precluded from claiming the monies relating to the 2007 facility pending the High Court determination of the *Belfry* proceedings.

4. In 2017, AIB issued the enforcement proceedings against Mr. Doran.

5. The summary proceedings came on for hearing before Faherty J on 9 April 2018. The court granted AIB judgment in the amount of €209,696.23 in relation to the 2010 facility. The court remitted the claim in relation to the 2007 facility to plenary hearing, ordered that the special endorsement of claim in the plaintiff's summons be accepted as their statement of claim

and gave liberty to the defendants to deliver a defence within three weeks. The defence was not delivered, although the defendants' solicitor has averred to having instructed counsel to draft it and exhibited a draft in the within application, much of which is taken up with the defendants' counterclaim relating to the *Belfry* proceedings.

6. In June 2019, AIB and Everyday informed the defendants that all rights in the loans and securities, the subject matter of the proceedings, had been transferred to Everyday pursuant to a global transfer. On 21 September 2020, Everyday was substituted as the plaintiff in the enforcement proceedings. In August 2021, the plaintiff commenced the substitution process in the judgment proceedings. The first defendant swore a replying affidavit in July 2022 indicating the defendants' consent to substitution. Thereafter, and for reasons not disclosed to the court, the plaintiff adjourned their substitution application four times until the substitution order was eventually made on 4 December 2023.

7. The monies due by the defendants pursuant to the order of April 2018 were not paid until 13 June 2024.

8. The within motion to dismiss the enforcement proceedings was issued on 29 July 2025. The motion to dismiss the judgment proceedings was issued on 22 September 2025. Shortly afterwards, on 16 October 2025, the plaintiff's solicitor wrote to the defendants' solicitor calling for the defence in the judgment proceedings and threatening a motion in default.

The defendants' case

9. The defendants assert that the plaintiff has allowed cumulative procedural inactivity of more than eight years in the judgment proceedings and almost six years in the enforcement proceedings. They say the plaintiff's application to substitute Everyday for AIB, which they say took some considerable time to be commenced, was simply procedural and should not be taken into account in considering the length of delay and that the application for substitution may have been necessary to repair what the defendants describe as a plaintiff-created

procedural deficiency, but it did not constitute a substantive step by the plaintiff to progress its proceedings. They rely on *Denis Guilfoyle Developments Ltd v Wardrop* [2025] IEHC 144, in which Barr J found the non *inter partes* activity of the plaintiff's solicitor, described as work that is to be done under the surface, was not to be counted in reducing a period of almost five years' inactivity.

10. The defendants rely on the decision of the Supreme Court in *Kirwan v. Connors & ors* [2025] IESC 21, although they accept that decision did not canvass the weight to be given to procedural steps by a plaintiff, such as the substitution applications at issue here. The plaintiff contends that the substitution applications constituted a step in the proceedings, therefore reducing the period of acknowledged inactivity.

11. In relation to the acknowledged delay in the summary proceedings, the plaintiff lays heavy emphasis on the terms of the order of April 2018, which they say "*directed*" the defendants to deliver their defence within three weeks, thereby leaving the progress of the litigation with them. On that basis, the plaintiff blames the defendants for the delay. The plaintiff also cites the defendants' reliance on the *Belfry* proceedings in their intended defence to the proceedings and the defendants' own delay in advancing the *Belfry* proceedings. In particular, the plaintiff deponent avers the following at para. 33 of their replying affidavit:

"It appears that, any step which might have been taken to reactivate the special summonses would have been met by an argument based on the existence of the Belfry fund and, likely a further argument based on the review process when this was brought to a head, but given the affidavits previously sworn by him or on his behalf, it seems virtually certain that this would have been an immediate obstacle to advancing any proceedings derivative of the existence of the debt."

Consideration of the issues

12. There has been delay in the progress of these proceedings since they were issued in 2015 and 2017, for which both parties seek to blame the other. The defendants argue that the necessary substitution applications do not serve to reduce the period of delay for which the plaintiff is responsible.

(i) The substitution application

13. It was necessary to substitute Everyday for AIB in both proceedings as the subject matter of the proceedings had changed hands. I do not think such a procedural application, particularly where the defendants were consenting to it - albeit raising an issue about their costs in relation to it - should attract much weight in my assessment as to whether the proceedings were being actively prosecuted. That is not to say such an application attracts no weight, but in the circumstances that prevailed here, and in particular the number of adjournments sought by the plaintiff from July 2022 to December 2023 for which no explanation is offered, combined with the delay of over two years in instituting the substitution applications after Everyday had succeeded to AIB's interest in the loans, I do not consider the lengthy period of time it took the plaintiff to secure the substitution orders, including the lengthy period of time it took the plaintiff to instruct their own solicitors to commence that process, to have been reasonable.

(ii) The order of April 2018

14. The plaintiff relies on the terms of the order of Faherty J of April 2018 in attributing blame for the delay to the defendants for failing to deliver their defence. The plaintiff repeatedly in their submissions refers to the order having "*directed*" the defendants to do so. That is not so. The order gave the defendants liberty to deliver their defence, which they did not do. That does not constitute a breach of the order, albeit it may not comply with the Rules of the Superior Courts.

15. Whilst the plaintiff says responsibility for the delay in progressing the proceedings following the 2018 order rests with the defendants for not delivering their defence, the

defendants blame the plaintiff for not filing a statement of claim. That criticism is groundless as the order expressly provided for the endorsement of claim to be accepted as the plaintiff's statement of claim.

16. As of April 2018, the next step to be taken in progressing the proceedings was for the defendants to deliver their defence. However, their failure to do so did not allow the plaintiff to sit back and do nothing, as they did for many years thereafter other than attending to the procedural step of substituting Everyday as the plaintiff. It is almost trite law at this stage to observe that the Supreme Court in *Kirwan* confirmed that a defendant and a plaintiff are not "*co-adventurers in litigation with the same interest in bringing it to conclusion*" (as per O'Donnell CJ at para. 14). As pointed out by Phelan J in her summary of the *Kirwan* principles in *Holmes v. Ireland & Ors* [2026] IEHC 2:-

- "(d) *Defendants are not "co-adventurers in litigation", they are not obliged to prod plaintiffs into action and plaintiffs bear the responsibility for prosecuting their own claim [...];*
- (e) *defendant inactivity is not a bar to dismissal, unless it rises to the level of acquiescence or encouragement, i.e., where a defendant has "actively lulled the plaintiff into a false sense of security" [...];*
- (f) *the Courts must ensure efficiency and certainty, in circumstances where lapse of time is in and of itself harmful to the proper administration of justice [...]; and*
- (g) *the constitutional right of access to the Courts does not guarantee indefinite indulgence and timely litigation is to be encouraged [...];"*

17. The plaintiff could have brought a motion for judgment in default of defence at any time after the defendants failed to deliver their defence within the three weeks that had been afforded to them by Faherty J in April 2018. The plaintiff did finally threaten such a motion by

email dated 16 October 2025, over seven years after the 2018 order and a matter of weeks after the defendants had issued their motions to dismiss the proceedings for delay.

18. I follow the decision of McGrath J in *Gallagher v PW Shaw and Co Ltd* [2018] IEHC 556, where he observed:-

“I do not accept that the defendant’s solicitors were ‘ghosting’ in the background for a period of in excess of thirteen years. They made their position quite clear early on and it seems to me that if the plaintiff was concerned about the attitude being taken by the defendant, this could have been addressed many years previously, by way of motion, application or reconstitution of proceedings”

(iii) The Belfry proceedings

19. The plaintiff seeks to justify their delay in progressing the proceedings because of what they say was the defendants' wish for the court to postpone the judgment proceedings until the *Belfry* proceedings were complete. The *Belfry* proceedings were settled in July 2021, some years before the within motions to dismiss were issued. The defendants had indicated, in a replying affidavit to the summary proceedings, their view that the plaintiff's proceedings should not proceed until they were resolved. The plaintiff seems to seek to elevate the defendants' expression of what should occur in the proceedings, to the status of something akin to a court order.

20. A plaintiff cannot sit back and do little or nothing to progress their proceedings simply because of a defendant's assertion that something else needs to happen before those proceedings can continue. At the very least, a plaintiff would have to communicate with the defendants to, in effect, confirm an agreement that the proceedings should be put on hold pending other matters.

21. As well as apparently relying on the defendants' assertion as to the relevance of the *Belfry* proceedings as an excuse for not progressing the proceedings, the plaintiff also seeks to

rely on its view of what it anticipated the defendants would do (as averred to on affidavit and referred to at para. 10 above). That is speculative and cannot render it reasonable for the plaintiff to have awaited the outcome of the Belfry proceedings, apparently without even communicating, never mind agreeing, such a position with the defendants.

22. In any event, I note that the existence of the Belfry proceedings did not prevent the plaintiff from instituting enforcement remedies including the appointment of receivers. That appointment was successfully challenged by the defendants by way of injunction proceedings, but I do not consider the plaintiff's defending those proceedings constituted a step in progressing the within proceedings that might neutralise any of the delay.

(iv) Payment of monies due arising from the 2018 order

23. The plaintiff points out that the defendants did not pay the judgment amount pursuant to the 2018 order for several years. The judgment amount was due because Faherty J had determined the plaintiff's claim in relation to the 2010 facility to be one to which the defendants had no defence and therefore entered summary judgment but directed the claim in relation to the 2007 facility to go to plenary hearing. That was the end of the judgment claim that the plaintiff had secured and thereafter it was a matter for the plaintiff to enforce the judgment it had secured. The defendants' delay in honouring the judgment, regardless of monies having been deposited in escrow by their solicitor, is not relevant to the within application and does not serve to lessen, forgive, or neutralise the plaintiff's clear delay in progressing their litigation.

(v) Prejudice

24. Given the periods of delay that have occurred and having regard to the principles set out in *Kirwan*, I do not consider the defendants are required to prove specific prejudice. If I am wrong on that, then I have regard to the need for oral evidence at plenary hearing which will be difficult for the defendants given the passage of time and their own advanced age with the inevitable resulting "*failing recollection and witness reluctance*" (as per O'Donnell CJ at para.

26(iii) in *Kirwan*). I have also had regard to the stress and uncertainty that protracted litigation, such as this clearly is, involves for the defendants who have had this litigation hanging over them for some ten years in considering whether the interests of justice favour permitting the proceedings to continue. I do not accept the plaintiff's submission that the prejudice is caused by the defendants' failure to advance their own counterclaim, as I have set out above.

25. I therefore dismiss the judgment proceedings and the enforcement proceedings for delay.

Indicative view as to costs

26. As the defendants have succeeded in their application to dismiss the proceedings, my indicative view on costs is that, in accordance with s. 169 of the Legal Services Regulation Act 2015, they are entitled to the costs of the within application and their costs in all three sets of proceedings to date, to be adjudicated upon in default of agreement.

27. I will put the matter in before me at 10.30 a.m. on 3 November 2026 for final orders, including costs and, if either of the parties wishes to lodge written submissions with the court, this should be done at least 48 hours in advance of the matter coming back before me.

Counsel for the plaintiff: Dermott Cahill SC, Paul Fogarty BL

Counsel for the defendants: Louis McEntagart SC, Ciarán Lawlor BL