

Neutral Citation No: [2024] NIKB 87	Ref: COL12619
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/54023
	Delivered: 23/10/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

ATTORNEY GENERAL FOR NORTHERN IRELAND

Applicant;

and

KIERAN RAFFERTY

Respondent.

Mr Adrian Colmer KC (instructed by the Solicitor to the Attorney General for
Northern Ireland) for the Applicant
The Respondent appeared in person

COLTON J

Introduction

[1] By these proceedings the Attorney General for Northern Ireland (“the applicant”) seeks an order pursuant to section 32 of the Judicature (Northern Ireland) Act 1978 to have Kieran Rafferty (“the respondent”) declared a vexatious litigant and that in consequence:

- (a) No civil proceedings in the name of the respondent shall without leave of the High Court be instituted, instigated, conducted or otherwise initiated or carried on by him in any court;
- (b) Any civil proceedings instituted by the respondent in any court before the making of this order shall not be continued by him without the leave of the High Court;
- (c) No application (or on an application for leave under section 32 of the Judicature (Northern Ireland) Act 1978) shall be made by the respondent in any civil proceedings instituted in any court by any person, without the leave of the High Court.

The legal framework

[2] The statutory framework for such an application is set out in section 32 of the Judicature (Northern Ireland) Act 1978 as follows:

“32 Restriction on institution of vexatious actions

(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court or tribunal, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order –

- (a) that no legal proceedings shall without the leave of the High Court be instituted by him in any court or tribunal;
- (b) that any legal proceedings instituted by him in any court or tribunal before the making of the order shall not be continued by him without such leave;

and such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.”

[3] The legal principles to be applied have been considered by the Court of Appeal in *William John Morrow v Attorney General for Northern Ireland* [2015] NICA 69. The court endorsed the approach of Lord Bingham in the case of *Attorney General v Paul Barker* [2000] 2 FCR 1; which dealt with a civil proceedings order which is the English equivalent of our section 32. Lord Bingham says as follows:

“1. ... before the court can make an order under the section it must be satisfied that the statutory precondition of an order is fulfilled, namely that the person against whom the order is sought has habitually and persistently and without any reasonable ground instituted vexatious civil proceedings or made vexatious applications whether in the High Court or any inferior court and whether against the same person or against different persons.

2. If that condition is not satisfied, the court has no discretion to make a civil proceedings order. If the condition is satisfied the court has the discretion to make such an order, but it is not obliged to do so. Whether, where the condition is satisfied, the court will exercise its discretion to make an order, will depend on the court's assessment of where the balance of justice lies, taking account on the one hand of the citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims. It is clear from section 42(3) that the making of an order operates not as an absolute bar to the bringing of further proceedings but as a filter ...

19. I am satisfied on the facts adduced in evidence before us that Mr Barker has instituted vexatious civil proceedings. "Vexatious" is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.' ...

22. From extensive experience of dealing with applications under section 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to

take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.”

[4] It is important to observe that the statutory jurisdiction restricting access to the courts by so-called “vexatious litigants” has been held to be ECHR compliant and consistent with the Strasbourg jurisprudence. Thus in, *H v United Kingdom* [1995] 45 BR 281 the European Commission of Human Rights held that a requirement for judicial permission to proceed with a claim by a person who had previously abused the right of access to the court was held to be proportionate.

[5] In *Bhamjee v Forsdick & Others* [2004] 1 WLR 88 the Court of Appeal in England and Wales set down guidelines on the range of measures available to the courts to protect against abuse of process by vexatious litigants. In his judgment Lord Phillips MR observed:

“[16] It is now well settled both at common law and under Strasbourg jurisprudence that a court has a power to regulate its affairs in such a way that its processes are not abused ... the right of access to the courts may be subject to limitations in the form of regulation by the state, so long as two conditions are satisfied:

- (i) the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired; and
- (ii) a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”

Factual background

[6] This application is primarily grounded on the affidavit of Mr Gary Gardner sworn in his capacity as Director of GB Asset Management Ltd (“GBAM”), the successor in title to GB Finance Group Ltd and, before it, GB Finance Group plc (“GBFG”).

[7] The application has been prompted as a result of a litany of litigation involving the respondent and GBAM and its predecessors in title.

[8] The starting point was on 18 April 2008 when the respondent entered into a bridging finance agreement with GBFG, borrowing the sum of £275,000. The loan was secured by way of a charge dated 1 May 2008 over lands which comprised the respondent's former house and farm ("the charged lands") of which the respondent was the sole registered owner.

[9] The respondent failed to repay the sums due to GBFG and as a result, GBFG obtained a possession order in respect of the charged lands on 13 May 2009.

[10] Since that date, the respondent and members of his family have brought proceedings, in various fora, to seek to set aside the possession order, to challenge GBAM's right to enforce the security and to generally frustrate the sale of the charged lands.

[11] After the charged lands were sold to a bona fide purchaser, the respondent and members of his family continued to engage in litigation targeted at GBAM and Mr Gardner personally.

[12] The extent of the litigation is immediately apparent from the summary set out below.

ICOS Number	Date	Party/Issue	Outcome
08/126663	13 May 2009	GB Finance Group Ltd Issued Order 88 application against Kieran Rafferty.	Order for possession made with an order for costs.
	2010	Respondent issued a complaint to the Financial Ombudsman Service.	The complaint was rejected by the Financial Ombudsman Service.
	18 October 2010	Application to stay enforcement of possession order issued by Kieran Rafferty.	Application dismissed by Master McCorry.
	26 January 2011	Second application to stay enforcement of possession order issued by Kieran Rafferty.	Application dismissed by Master McCorry.
	9 May 2011	Leave to Appeal of Master McCorry's decision to refuse stay on Enforcement.	Dismissed by Mr Justice Deeny.
23 May 2011		Possession of the lands was delivered up by the Enforcement of Judgments Office.	
	31 January 2012	Kieran Rafferty issued	Application refused by

		proceedings but GBFG was not a party to the application.	Mr Justice Deeny.
12/016322	1 June 2012	Kieran Rafferty issued Writ of Summons challenging the security of the lands.	Proceedings struck out by Mr Justice Deeny with an order for indemnity costs.
	25 April 2013	Appeal brought by Kieran Rafferty to Court of Appeal.	Appeal dismissed with an order for costs.
14/041978	23 April 2014	In response to asserted occupation of the lands, GBAM issued proceedings pursuant to Order 113 of the Rules of the Court of Judicature against Rory Rafferty.	Order for possession made with an order for costs.
	4 November 2014	Appeal brought by Rory Rafferty.	Appeal dismissed, on consent.
14/83753	1 October 2014	GBAM issued proceedings pursuant to Order 53 of the Land Registration Act (Northern Ireland) 1970 seeking a declaration in relation to Rory Rafferty's asserted interest in the lands.	Application for possession by Rory Rafferty dismissed by Mr Justice Deeny with an order for costs.
[Land Registry Application]	16 December 2015	Kieran Rafferty sought to register two inhibitions in relation to the charged lands.	The Registrar struck out the application for registration of the inhibition.
		GBAM sold its interest in the lands on 12 January 2016 for £175,000.	
08/126663 (CO2559768)	12 February 2016	Kieran Rafferty sought to file a further application on 12 February 2016 challenging Order for Possession dated 13 May 2009.	Pinsent Masons made representations to the Chancery Office and received confirmation that the papers were returned to Mr Rafferty and the application would not be listed, given that the Order for Possession had been fully enforced.
18/050883	23 May 2018	Kieran Rafferty issued fresh proceedings against Liam, Adrian & Bridgit Johnston (the purchaser of the subject lands) and Mr Gardner seeking damages arising	Strike out application issued by Mr Gardner to be determined. Mr Rafferty has sought discovery.

		from the loan, repossession and sale.	
	27 October 2021	Threatening correspondence issued by Kieran Rafferty allegedly from 'common law lawyer' Edward Sullivan purporting to act on behalf of the respondent.	
	31 December 2022 and 25 February 2023	Two Data Subject Access Requests made to GBAM.	Refused by GBAM on the grounds that these are vexatious. The Respondent has complained to the Information Commissioner's Office.
	8 December 2023	'Notice of pre-action letter before claim' sent to Director of GBMA Mr Gardner directly.	No response has been issued by Mr Gardner due to concerns that this will invite further correspondence or further litigation.
	16 February 2024	"Statement of Truth and Facts" from the Respondent, sent directly to Mr Gardner.	No response has been issued by Mr Gardner due to concerns that this will invite further correspondence or further litigation.

[13] In his affidavit Mr Gardner has provided further details of the way in which the litigation was conducted. I do not consider it necessary to set any of this detail out. A flavour of the respondent's approach to ongoing litigation can be discerned from the correspondence from a Mr Sullivan purporting to act on behalf of the respondent on 27 October 2021 which included the following:

"... We are all equal in law and uphold the law. Not legal acts and statutes which are fraud all contracts are null and void since 1933. Take heed, take I Edward O'Sullivan common-law lawyer instructions as I am your master and all mentioned are my servants rest assured ... This is in motion to be heard in a common-law court internationally will make all real media by American Military instructions. Rest assured if this order is not obeyed in seven days of receiving be ready without any further notice of being removed from your homes, beds or sleep, work premises and taken to secure locations for trial ... Law Society bankrupt. Belfast Courts bankrupt, every Corporation in the Western world bankrupt ..."

[14] The extant litigation arising from the writ issued on 23 May 2018 against the purchaser of the charged lands (and members of his family) and Mr Gardner in his role as Director of GBAM seeks compensation of £2.5M.

[15] The particulars of claim together with a series of interrogatories prepared by the respondent seek to raise again the issue of the security in respect of the charged lands and alleges that GBAM has been guilty of harassment, intimidation and

criminal behaviour. The more recent pre-action correspondence issued on 8 December 2023 by the respondent alleges that it is "... directed at Gary Gardner for being involved, by being complicit in Acts of treason, Fraud, material misrepresentation and misrepresentation in the theft of my property ..." The letter asks 39 questions and states that, "... failure to respond within 21 will be deemed a dishonour of this pre-action letter for judicial review. MAXIM: fraud vitiates all. There is no statute of limitations on fraud. Equals NO VALID CLAIM."

[16] On receipt of the papers in support of this application the respondent replied on 11 October 2024:

"Notice of holder in due course

Dear Ian:

Find enclosed your present presentment of/offer dated 9 October 2024. Take note that your offer has been accepted for value; I am the holder in due course of the present presentment offer.

As the Secure Party Creditor who has performed a Bankers acceptance on your presentment offer, it has been returned for lack of jurisdiction.

I require you adjust the account(s) within 3 days - 72 hours of receipt of this notice. Send confirmation of such adjustment to secure party at the above address ..."

[17] The letter was accompanied by "notice of fee schedule", claiming that large sums of money, including a claim for £500M are "payable on demand."

[18] Finally Mr Gardner avers to the impact on his health caused by the respondent's litigation in the following terms:

"55. Since the commencement of the relevant litigation, I have had day to day management within the relevant companies and most recently as a named defendant. These issues have been ongoing since 2009 and notwithstanding the Courts of Northern Ireland upholding the security which the Respondent takes issue with, he continues to pursue apparently baseless claims, which appear to have the aim of causing unnecessary work, cost and stress for GBAM and myself personally.

56. The ongoing conduct of the Respondent is causing me considerable personal stress at a time when I am

dealing with treatment for serious health conditions. Each time it seems that the litigation is at an end, the Respondent brings a further challenge to seek to open the same issues.

57. My fellow director who was involved at the time the loan was taken out, is now sadly deceased and I wish to ensure that I have the opportunity to enjoy my retirement and right to privacy and family life, without the continued threat of repeated litigation from the Respondent in relation to the loan made."

The parties' submissions

[19] I am obliged to Mr Colmer for his clear and helpful written and oral submissions supplementing the clear and comprehensive affidavits of Mr Wimpres of the Office of the Attorney General and Mr Gardner of GBAM.

[20] In short form, he argues that this is a case in which the statutory jurisdiction plainly arises, and further that it is one in which the jurisdiction ought to be exercised, granting the relief sought in the notice of motion.

[21] In reply the respondent read a pre-prepared statement to the court. He was not prepared to provide a copy of the statement to the court or the applicant. Regrettably it contained an incomprehensible, incoherent submission, replete with meaningless pseudo-legal jargon typical of more recent litigation conducted by and on behalf of the respondent. It did not reply to or engage in any way with the issues raised by Mr Colmer on behalf of the Attorney General.

[22] In short, the respondent argued that this was no longer a public law matter, but a private law matter, arising from some form of trust created by the respondent, involving the Secretary of State for Northern Ireland. As a result of this trust, he argued that the court should sit in chambers and that it had no jurisdiction to determine this application.

Conclusion and application of the legal principles

[23] I start from the premise that the respondent has the right to invoke the jurisdiction of the civil courts. The court should ensure anxious scrutiny of an application under section 32, given its potential impact on a citizen's access to the courts. The section 32 power is one sparingly exercised by the applicant. To my knowledge this is only the third such application in this jurisdiction.

[24] That said it is an important power. It exists to guard against egregious abuses of the court's process. It acts as a protection for citizens and organisations exposed

to inconvenience, harassment and/or expense out of all proportion to any gain likely to accrue to a claimant.

[25] Turning to the criteria approved by the courts I am satisfied that as required by section 32, the applicant has habitually and persistently, without any reasonable ground, instituted vexatious proceedings in the High Court. Those proceedings have been brought essentially against the same party GMAB and latterly Mr Gardner personally and those who have purchased the charged lands. With that being so the issue for the court is whether it should exercise its discretion to make the order sought under section 32.

[26] In exercising the discretion I must assess where the balance of justice lies, taking into account on the one hand the citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims and also the need to prevent scarce and valuable judicial resources being extravagantly wasted on barren and misconceived litigation to the detriment of other litigators with real cases to try.

[27] It seems plain to the court that the respondent's conduct displays the classic hallmarks identified by Bingham J in *Barker*.

[28] The respondent has repeatedly sought to challenge a valid order of the court made as long ago as 13 May 2009. There have been repeated applications and appeals, all of which have been dismissed being without any merit.

[29] Regrettably the more recent actions of the respondent suggest that his conduct is deteriorating evidenced by baseless, incoherent and incomprehensible allegations, all of which relate to his dissatisfaction with the order for possession granted on 13 May 2009 and subsequently confirmed by the Court of Appeal.

[30] That being so I am satisfied that the balance lies in favour of making the order sought.

[31] I consider that order under section 32 in this case meets the requirements that it will not deny the essence of the respondent's ability to invoke the civil courts and that the order is clearly proportionate in pursuant of a legitimate aim.

[32] In view of the respondent's attitude to this application and the ongoing extant litigation I consider that the order should be made without limitation of time.

[33] Accordingly I make the following orders under section 32 of the Judicature (Northern Ireland) Act 1978:

- (i) An order that no legal proceedings shall, without the leave of the High Court, be instituted by the respondent in any court or tribunal;

- (ii) An order that any legal proceedings instituted by the respondent in any court or tribunal before the making of this order shall not be continued by him without such leave.
- (iii) An order that such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is a prima facie ground for the proceedings.
- (iv) The orders are made without limitation of time.
- (v) A notice of the making of this order shall be published in the Belfast Gazette.