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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* 08/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

Between:

WILLIAM YOUNG

Plaintiff/Appellant

and

SANTANDER CONSUMER (UK) PLC

Defendant/Respondent

The Plaintiff/Appellant appeared in Person
Mr Gowdy KC with Mr Hermon (instructed by Shoosmiths Solicitors) for the Defendant/Respondent

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<u>COLTON J</u>

Introduction

[1] This is an appeal of the determination of Master Harvey dated 8 October 2024, whereby he dismissed the plaintiff/appellant's (hereinafter "the plaintiff") writ of summons.

Background

[2] This is a most regrettable example of litigation spiralling out of control, beyond all proportion to the issues that are at stake between the parties.

[3] What started out as a dispute about a late payment fee of £35 in respect of a hire purchase agreement between the parties has escalated resulting in multiple ongoing litigation in the County Court, Master's Court, High Court and Court of Appeal, in this jurisdiction and in England and Wales. As a consequence, the plaintiff is subject to a significant monetary judgment. The defendant/respondent (hereinafter "the defendant") has been ensnared in ongoing litigation, doubtlessly incurring significant costs along the way.

[4] That said, the court must deal with the proceedings before it.

Chronology

[5] In order to understand the background to this case it is useful to set out a summary of the chronology of the interaction between the parties.

10 May 2006	Plaintiff adjudged bankrupt by High Court in England & Wales.
28 September 2006	Official Receiver disclaims plaintiff's interest in 39A Carrowdore Road, Greyabbey, Co Down, comprised in Folio DN63784 Co Down ("the Premises").
27 September 2012	Plaintiff enters into a vehicle finance agreement with the defendant.
2 December 2015	The plaintiff asserts that on 30 November 2015, the direct debit in respect of the monthly payments due under the finance agreement were unpaid due to cancellation by his bank in error. He accepted this error and also that a late payment fee would be due. The defendant applied a fee of £35.00 to the account which the plaintiff believed was disproportionate and outside the terms of the agreement which permitted a late fee of £25.00. The plaintiff made representations to the defendant on this issue and in the interim would not reinstate the direct debit payments as this would have allowed the defendant to debit the disputed charge. A further charge of £35.00 was applied to the account on 28 December 2015. Payments were made in January 2016 but due to ongoing issues with online payment facilities it appears that the defendant terminated the account on 9 April 2016 and subsequently issued the civil bill referred to below. The civil bill sought recovery of the vehicle or alternatively the sum of arrears due of £968.25 and a further balance of £5,665.50. The sums claimed were disputed by the appellant and he lodged a notice of intention to defend on 24 September 2016.
5 September 2016	Defendant issues civil bill to recover possession of the vehicle or damages in the alternative.
29 June 2017	A county court hearing was listed on this date. The plaintiff was out of the jurisdiction, and he wrote to the court advising accordingly. He did raise queries about the case but prior to the hearing he paid the sums demanded by the civil bill. The case proceeded in the plaintiff's absence. The court issued a decree, totalling £3,213.84 and any sum due for value added tax in respect of costs.

13 December 2017	The defendant applies to the Enforcement of Judgments Office (EJO) to enforce the decree.
19 June 2018	EJO makes an order charging land "OCL" against the plaintiff's interests in the premises. At that time, notwithstanding his bankruptcy, the plaintiff remained registered as a joint owner of the premises. The plaintiff raised issues about this Order and issued an appeal to the High Court which was dismissed due to lack of jurisdiction. As was the case in relation to the civil bill appeal, there followed protracted hearings involving further costs orders against the plaintiff. Ultimately, the OCL was set aside by the Court of Appeal (see below).
11 January 2019	The High Court heard an appeal from the original County Court order. Temporary High Court Judge McReynolds dismissed the appeal but reduced the costs award from the County Court by 50% to £1,606.92 and also awarded half costs in relation to the appeal. There then followed a sequence of events involving an attempt by the plaintiff to have the matter brought before the Court of Appeal on points of law, involving a clarification/confirmation that the plaintiff was to be condemned in the costs of the county court and 50% of the High Court appeal costs. There followed complaints to the Northern Ireland Court Service and to the Northern Ireland Public Service Ombudsman. The plaintiff asserts that the NIPSO determined that the NICTS had been guilty of maladministration. He hopes to challenge the original County Court order before the Court of Appeal.
28 September 2021	Bankruptcy inhibition and notice of disclosure registered against the premises.
7 June 2023	The Court of Appeal formally sets aside the OCL. Defendant avers that this was conceded. The defendant avers in its grounding affidavit that it conceded the appeal on the basis, that as a historic bankrupt, the plaintiff had no substantial interest in the property over which the order charging land was made. It is averred that the plaintiff had refused an open offer of a consensual resolution before the jurisdiction hearing before McBride J made by letter dated 11 October 2022.

20 June 2023	The plaintiff issued a writ against the defendant in the following terms: "The plaintiff's claim is for: (i) Damages for loss and damage sustained by the plaintiff by reason of the defendant obtaining an order charging land on the lands comprised in Folio No: DN63784 Co Down, when the plaintiff had no land or estate or interest in the said lands. That the defendant, whilst fully aware the plaintiff had no estate or interest in the said lands obtained an Order and repeatedly refused to have the unlawful order quashed for a period in excess of five years. (ii) Interest pursuant to section 3A of the Judicature (Northern Ireland) Act 1978, at such rate and for such period as this court deems fit. (iii) Further and other relief. (iv) Costs."
12 September 2023	Plaintiff issues Part VIII claim form in England & Wales, claiming damages and, inter alia, pleading that the OCL had been made without jurisdiction.
30 November 2023	Court of Appeal order issues quashing the OCL issued by the EJO on 19 June 2018.
9 December 2023	Plaintiff purports to effect service of writ of summons on the defendant.
16 April 2024	Proceedings brought by the plaintiff in England & Wales struck out as totally without merit; Land Registry cancel OCL.
30 April 2024	Plaintiff signs notice of appeal against order striking out proceedings in England & Wales.
7 June 2024	Plaintiff's application for permission to appeal struck out "on the papers."
24 June 2024	Plaintiff seeks oral hearing for permission to appeal.

The application

[6] In the application before the Master, the defendant sought the following relief:

(i) An order pursuant to Order 12 rule 8 of the Rules of the Court of Judicature (Northern Ireland) 1980 declaring that the plaintiff's writ of summons was not duly served upon the defendant.

(ii) Further, and in the alternative, an order pursuant to Order 18 rule 19 of the Rules of the Court of Judicature (Northern Ireland) 1980 striking out the plaintiff's claim on the basis that it discloses no reasonable cause of action, it is scandalous, frivolous or vexatious and it is otherwise an abuse of process of the court.

(iii) Such further and other relief as the court deems appropriate.

(iv) Costs.

[7] The application was heard by the Master culminating in an order dated 4 June 2024. The Master dismissed the application under Order 12 rule 8. He deferred a decision in relation to the order sought pursuant to Order 18 rule 19, directing that the plaintiff serve a statement of claim within a prescribed time limit. His reasons are apparent from para [28] of his ruling as follows:

> "[28] While I consider it may have been a prudent step for the plaintiff to supplement his replying affidavit or written submissions with sufficient material to particularise his claim or even serve a draft statement of claim, I am conscious the plaintiff is a person without a legal representative and, in any event, such material could only be considered in dealing with some aspects of the defendant's application. While I consider the defendant's submissions may have some force, and I pause to observe that in addition to what they argue is an incontestably bad claim, they also assert a litany of issues in relation to the plaintiff's litigation conduct, I have not formed a final view on the merits of their application. While the writ is deficient and lacks a "legal label" identifying the cause of action, the plaintiff has not yet had the opportunity to formally serve a statement of claim and the court should be suitably cautious of deploying a draconian strike-out remedy when the pleadings are at the very least, capable of improvement. Having regard to all the circumstances of the case and the overriding objective, I consider that it

> would not be appropriate or in the interests of justice for the court to determine this application on the basis of the limited material currently available."

[8] In accordance with the order, the plaintiff served a statement of claim on 1 July 2024. Having received the statement of claim and further submissions, the Master made the following order on 8 October 2024:

> "UPON APPLICATION OF SANTANDER CONSUMER (UK) PLC for an order pursuant to Order 18 rule 19(1)(a), (b) and (c) of the Rules of the Court of Judicature (Northern Ireland) 1980,
>
> IT IS ORDERED the plaintiff's action is hereby struck out with costs of the application to the defendant, such costs to be taxed in default of agreement.
>
> AND THE MASTER CERTIFIES FOR COUNSEL."

[9] It is this order which is under appeal.

The legal principles

[10] Order 18 rule 9 provides:

> "(1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –
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> (a) It discloses no reasonable cause of action or defence, as the case may be; or
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> (b) It is scandalous, frivolous or vexatious; or
>
> (c) It may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) It is otherwise an abuse of the process of the court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
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> (2) No evidence shall be admissible on an application under paragraph (1)(a).

> (3) The rule shall, as far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading."

[11] The governing principles in relation to strike-out applications under Order 18 have been set out by the Court of Appeal in a judgment by McCloskey LJ in the case of *Holbeach v the Chief Constable of the Police Service of Northern Ireland* [2024] NICA 45 at para [7] in the following way:

> "[7] …The principles by which such applications are determined were rehearsed in the decision of this court *in Magill v Chief Constable of PSNI* [2022] NICA 49, at para [7]:
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> > '[7] In summary, the court (a) must take the plaintiff's case at its zenith and (b) assume that all of the factual allegations pleaded are correct and will be established at trial. As a corollary of these principles, applications under Order 18 rule 12 of the 1980 Rules are determined exclusively on the basis of the plaintiff's statement of claim. It is not appropriate to receive any evidence in this exercise. Based on decisions such as that of this court in *O'Dwyer v Chief Constable of the RUC* [1997] NI 403 the following principles apply:
> >
> > (i) The summary procedure for striking out pleadings is to be invoked in plain and obvious cases only.
> >
> > (ii) The plaintiff's pleaded case must be unarguable or almost incontestably bad.
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> > (iii) In approaching such applications, the court should be cautious in any developing field of law; thus in *Lonrho plc v Tebbit* (1991) 4 All ER 973 at 979H, in an action where an application was made to strike out a claim in negligence on the grounds that raised matters of State policy and where the defendants allegedly owed no duty of care to the plaintiff regarding exercise of their powers, Sir Nicholas Brown-Wilkinson V-C said:

> 'In considering whether or not to decide the difficult question of law, the judge can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in the light of the actual facts of the case. The methodology of English law is to decide cases not by a process of a priori reasoning from general principle but by deciding each case on a case-by-case basis from which, in due course, principles may emerge. Therefore, in a new and developing field of law it is often inappropriate to determine points of law on the assumed and scanty, facts pleaded in the Statement of Claim.'

(iv) Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted.

(v) A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.

(vi) So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out." Thus, in *E (A Minor) v Dorset CC* [1995] 2 AC 633 Sir Thomas Bingham stated at p--:

> 'This means that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if after argument the court can

> properly be persuaded that no matter what (within the bounds of the pleading) the actual facts of the claim it is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached.'

> We would add that a strike out order is a draconian remedy as it drives the plaintiff from the seat of justice, extinguishing his claim in limine."

The statement of claim

[12] The essence of the plaintiff's claim is that he has suffered loss and damage arising from his efforts to remove the OCL because it was registered on a property in which he had no interest. The gravamen of his allegation against the defendant is that it proceeded with an application for an order charging land after 20 March 2018, when it knew the plaintiff had no interest in the lands to which the order would relate.

[13] He asserts that the defendant owed a duty of care to him and that by proceeding to obtain the OCL as per para 11 of the statement of claim:

> "Their actions were negligent, were deceptive and caused the plaintiff distress and financial loss."

[14] In respect of the loss, he claims the following by way of damages:

> "16(i) All damages and costs associated with the attempts to have the Order Charging Land quashed. Quantum to be determined.
>
> (ii) All damages and costs associated with attempts to have the Land Registry entry corrected. Quantum to be determined.
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> (iii) All damages and costs associated with other matters due to the burden of the Land Registry indicating ownership.
>
> (iv) Damages and costs associated with attempts to have the unlawful burden erased from the Land Registry post November 2023.

> (v) For distress and inconvenience caused to the plaintiff by the acts and failures to act of the defendant."

[15] I make allowances for the fact that the plaintiff lacks legal experience. It will be seen that the plaintiff's cause of action is founded in negligence.

[16] The contention that a judgment creditor owes a judgment debtor a duty of care is a novel one. Applying basic principles, it seems to me that it would not be "fair, just and reasonable" to impose a duty of care in such a context.

[17] In this regard, Mr Gowdy refers the court to the potentially analogous tort of malicious prosecution of civil proceedings. The definition of the elements of that tort have been set out in the Supreme Court decision in *Willers v Joyce* [2016] UKSC 43 [2018] AC 779.

[18] The necessary elements were set out in para [53] of the judgment of Lord Toulson in the following way:

> "53. In the early case law Hobart CJ stated the requirements succinctly in the passage from his judgment in *Waterer v Freeman* cited at para 17 above: '
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> > '…if a man sue me in a proper court, yet if his suit be utterly without ground of truth, and that certainly known to himself, I may have an action of the case against him.' Hob 266a 267
>
> This formula was adopted by Blackburn J in 1869 in *Wren v Weild*. It accords with Lord Mance's suggestion (para 139) that he would be readier to accept a concept of malicious prosecution 'which depended on actual appreciation that the original claim was unfounded.' Hobart CJ's statement remains a helpful starting point and, speaking in general terms, it has in my view much to commend it.
>
> 54. It is well established that the requirements of absence of reasonable and probable cause and malice are separate requirements although they may be entwined: see, for example, *Glinski v McIver* [1962] AC 726, 765, ('it is a commonplace that in order to succeed in an action for malicious prosecution the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting', per Lord Devlin). In order to have reasonable and probable cause,

> the defendant does not have to believe that the proceedings will succeed. It is enough that, on the material on which he acted, there was a proper case to lay before the court: *Glinski v McIver*, per Lord Denning at 758-759. (Compare and contrast a suit which is "utterly without ground of truth", per Hobart CJ.)
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> 55. Malice is an additional requirement. In the early cases, such as *Savile v Roberts*, the courts used the expression 'falso et malitiose.' In the 19th century 'malitiose' was replaced by the word 'malicious', which came to be used frequently both in statutes and in common law cases. In *Bromage v Prosser* (1825) 4 B & C 247, 255, Bayley J said that:
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>> 'Malice, in common acceptation, means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse.'
>
> ...The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process…
>
> 56. The combination of requirements that the claimant must prove not only the absence of reasonable and probable cause, but also that the defendant did not have a bona fide reason to bring the proceedings, means that the claimant has a heavy burden to discharge."

[19] Thus, to proceed in an action for malicious prosecution of civil proceedings, the defendant, firstly, must have been successful in the initial civil proceedings. Secondly, the plaintiff in the initial proceedings must have issued those proceedings without reasonable cause. Thirdly, the proceedings must have been brought maliciously, ie in circumstances where the party bringing the proceedings knows the claims being made in the proceedings are false or brings the proceedings with an intent to cause harm to the defendant in the initial proceedings, rather than to further their own interests.

[20] This case law provides a useful guide as to how to approach the allegations made by the plaintiff in this case.

[21] Fundamentally, it cannot be established that the enforcement proceedings seeking an OCL were issued without reasonable cause in circumstances where the plaintiff was registered as a joint owner of the property. Importantly, it will be seen that the entire procedure governing the OCL and setting it aside is subject to a

statutory procedure which ultimately was exercised by the plaintiff (even though he wrongly initially brought the matter to the High Court which resulted in various costs orders being made against him).

[22] Returning to the elements of a malicious prosecution in civil proceedings there is plainly an absence of the necessary malice in this case.

[23] Linked to the issue of the cause of action in negligence is the question of damages. The question arises as to how the plaintiff could suffer loss and damage in respect of property in which he says he has no interest. In those circumstances, what foreseeable loss could he suffer?

[24] A particular feature of the damages pleaded is the failure to quantify any losses.

[25] Any damages in costs associated with attempts to have the OCL quashed had been dealt with in the legal proceedings which arose on the challenge to the OCL. Any claim to recover such costs would amount to a collateral challenge to the orders made in the various appeals.

[26] In relation to any attempt to have the Land Registry entry corrected, there is no chain of causation between the OCL and any such costs. The issue that required correction was the plaintiff's registration as owner of the land, not the OCL. It is clear from a copy of the relevant folio for the premises that the plaintiff's bankruptcy and disclaimer of his interest "and so the destruction of his interest" were registered before the OCL was cancelled. The Land Registry did not refuse to give effect to the registration sought by the plaintiff because of the OCL.

[27] There is simply no quantification of any of the losses claimed.

[28] As for the general claim for damages for distress and inconvenience, it seems to the court that the pleadings do not point to anything over and above that inherent in the litigation in which he has been engaged and in which the issues he has raised had been addressed and determined.

[29] Mr Gowdy concedes that, generously construed, the statement of claim may also include a cause of action based on the tort of deceit.

[30] However, such a claim must fail. To succeed, the plaintiff would need to identify (a) the representations made by the defendant on which he relies as false representations, (b) identify why those allegations are false, and (c) identify the facts and circumstances on which he relies in support of his allegation that the defendant made those representations knowing they were false or reckless as to their truth.

[31] The statement of claim fails to identify any such facts with the necessary level of particularity.

[32] The court understands that the plaintiff is driven by a general grievance arising from the prolonged litigation with the defendant and the decisions of the various courts in the course of the said litigation.

[33] That said, properly analysed, the statement of claim in which he seeks damages arising from the initial registration of the OCL against property in which he had no economic interest and his subsequent attempts to remove the OCL does not disclose any sustainable legal cause of action against the defendant. It is simply unarguable. Importantly, any issue relating to the costs of his efforts in this regard have been dealt with by the courts in their various costs orders.

[34] For these reasons, the court dismisses the plaintiff's appeal and affirms the order of the Master on the grounds that the statement of claim discloses no reasonable cause of action.

[35] The defendant also sought an order based on Order 18 rule 9(b) and (d). The court received a significant amount of affidavit evidence relating to these grounds.

[36] In short, it is asserted that the plaintiff as a discharged bankrupt and personal litigant has engaged in a campaign of bringing repeated unmeritorious appeals and applications with the intention of causing the defendant to incur costs with a view to deterring it from enforcing the original decree which has given rise to such litigation.

[37] In light of the court's findings in relation to Order 18 rule 9(a), it is not necessary to determine this issue.