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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**16/03/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

_____

Between:

RKW ORTHOPAEDICS LIMITED

Plaintiff

-and-

WILLAND DEVELOPMENTS LIMITED

Respondent

_____

Richard Coghlin KC and William Sinton (instructed by Gateley Legal) for the plaintiff
Wayne Atchison KC and Alistair Fletcher (instructed by Worthingtons Solicitors) for the defendant

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SCOFFIELD J

Introduction

[1] These proceedings are an action commenced by writ issued on 12 February 2026 seeking various forms of injunctive relief and damages by reason of the trespass, nuisance and/or slander of title on the part of the defendant or its servants and agents. The underlying dispute relates to a small parcel of land between a property belonging to the plaintiff company (10 Atlantic View) and a property belonging to the defendant company (3 The Haven) both in Portballintrae, County Antrim. Although both properties happen to be owned by limited companies – for reasons which have not been fully explained but which also do not appear to be of particular relevance for present purposes – each is used as a family holiday home. The plaintiff's property is principally used by Mr Roger Wilson, a director of the plaintiff company, and his family. The defendant's property is used as a holiday home by the Graham family, most regularly by Mrs Brenda Graham.

[2] There are two applications before the court: (a) an application on the part of the plaintiff for an interlocutory injunction made by way of notice of motion dated

12 February 2026; and (b) an application on the part of the defendant to remit the proceedings to the county court made by way of summons dated 27 February 2026.

[3] As appears from the above, the application for the injunction was made first. The notice of motion was given a first review date of 5 March. The defendant then issued its remittal application, with the summons also returnable for that same date. On 5 March 2026, both applications were in the court's review list; it was clear that each was to be hotly contested; it was further clear that there was a dispute as to which application, if either, should be heard first and/or determined first; and that resolving the various matters between the parties would take some time. For that reason, I listed both applications on Friday 13 March with an indication that I would hear argument from both parties on all issues. Some further evidence has since been filed by the defendant and detailed skeleton arguments lodged by both parties. I heard submissions on Friday and reserved my decision on both aspects of the dispute over the weekend.

[4] Mr Coghlin KC appeared with Mr Sinton for the plaintiff; and Mr Atchison KC appeared with Mr Fletcher for the defendant. I am grateful to all counsel for the helpful written and oral submissions which have been received. The submissions – particularly those in writing – were comprehensive, to the point almost of being disproportionate to the matters in dispute. That may well be a reflection of the antagonism between the parties, with the proceedings being conducted (to borrow a phrase used by Mr Coghlin) with "daggers drawn". This ruling does not do justice to the detail of the arguments advanced by the parties, nor does it purport to deal with all of the issues argued. Rather, it is designed to provide clarity on the court's view of the way forward and the basic reasons for the conclusions I have reached on the two principal issues.

Factual background

[5] There is a detailed factual history in relation to this dispute and, over recent years, there has been a variety of exchanges between the parties and their solicitors by way of correspondence. I set out only some of the basic facts to set the scene for the competing applications before the court.

[6] SM Devine Homes (NI) Limited ("Devine") is a property development company which developed the ten houses in Portballintrae known as Atlantic View. It previously owned the development site comprised in Folio AN204098. Devine purchased the site in October 2016 from a Mr Norman Menary who first registered the lands in that folio in 2014 and whose class of title was absolute. The plaintiff purchased 10 Atlantic View from Devine, which sold off houses constructed on the site between 2019 and 2023. The plaintiff is now the registered owner of the lands in Portballintrae comprised in Folios AN236775 and Folio AN284191. Both of these folios were created out of Folio AN204098. The first was purchased from Devine in January 2019. The View Management (NI) Limited is the management company set up to manage the common parts of the development and is now the registered

owner, since 2023, of the lands remaining in Folio AN204098, the parent folio. The second folio owned by the Plaintiff – which relates to what has been referred to as a 'sliver' of land – was transferred to it by the management company in April 2024 for consideration of £1.

[7] The defendant company is the owner of 3 The Haven, the garden of which lies to the east of 10 Atlantic Way. It is a company connected to the Graham family with one of the directors being Gareth Graham, the defendant's principal deponent, along with its solicitor. Correspondence on behalf of the defendant has largely been sent, at least until the recent instruction of Worthingtons, by Ms Tracey Schofield, formerly in her capacity as a solicitor in A&L Goodbody instructed by the defendant but, more recently, in an in-house capacity.

[8] The dispute relates to a parcel of lands ("the disputed lands"), which now contains the 'sliver', between the two properties. In short, the plaintiff contends that it owns the property, as evidenced by its registered ownership, and is free to use it. The defendant contends that it owns the disputed lands as part of its unregistered title to its property; that there was an error in registration when, in 2014, Mr Menary first registered the parent folio; that, properly understood, Mr Menary was never entitled to convey or purport to convey the disputed lands to Devine; and/or that it acquired possessory title to the lands over a long period of years.

[9] In due course, there will likely have to be detailed mapping evidence given. The plaintiff's case is that, in or about 2018, there were two fences on the eastern boundary of site 10 Atlantic Way: a new fence, facing into No 10's site ("the inner fence") which was erected by Devine and which included a gate through to the disputed lands; and a much older fence facing into the defendant's property ("the outer fence") which had no such gate. The ground in between the two fences, in the shape of a thin wedge, represents the disputed lands. In short, the plaintiff contends that (with the exception of the sliver which was omitted in error but later conveyed) it was sold the land right out to the outer fence, which represented the boundary of the defendant's property. It explains the existence of the disputed wedge by saying that, when Devine laid out the sites for the Atlantic View development and site 10 in particular, it did not take the boundary of site 10 to the extremity of the lands within its ownership. When the site was sold to the plaintiff, however, it was sold land to the boundary represented by the outer fence.

[10] Since purchasing 10 Atlantic View, it seems that the Wilson family have made use of the disputed lands through the gate in their fence and treated them (in accordance with their understanding) as belonging to the plaintiff.

[11] The underlying dispute between the parties has been illuminated in some of the exchanges between them, or their representatives, over the last number of years. The defendant's case in correspondence has been that it acquired the disputed lands when it acquired its property in 1994. The defendant's title remains unregistered but it has suggested that the lands were incorrectly registered into Mr Menary's

ownership on first registration. It further contended that there were several mapping errors on the folio map at the time of first registration of the parent folio. The defendant wished to have this rectified but has said that Devine did not respond to its request in this regard. In summary, the defendant contends that it has always owned lands extending to a boundary now represented by the plaintiff's inner fence. The plaintiff says the defendant did not and does not own land beyond the outer fence (and that the defendant has provided no, or no satisfactory, explanation for the construction and presence of the outer fence if it did not represent the boundary of the defendant's site). It further relies upon the fact that, in or around 2020, Sean Devine informed Mr Wilson that he had recently had the land surveyed which also confirmed that the plaintiff's shed was not on any lands owned by the defendant.

[12] At the time of the commencement of these proceedings, the plaintiff complained that, notwithstanding a number of assertions made in correspondence on the defendant's behalf, it (the defendant) had at no point provided a copy of the deed which it claimed proved the existence of the alleged mapping error. That deed was provided only lately, exhibited to an affidavit of Mr Graham sworn on 11 March 2026 and served the following day, that is, the day before the recent hearing.

[13] In any event, in Spring 2019, Mr Wilson put up a garden shed on the disputed lands and paved a section of them. His evidence is that it had been explained to him by Devine that the plaintiff owned these lands at the time of purchase. His evidence is also that there was gate in the new fence which led from the plaintiff's property into the disputed lands; and that the plaintiff maintained them and used them since they took possession of 10 Atlantic View.

[14] The plaintiff's then asserts that, in May 2019, someone on behalf of the defendant (believed to be family of Mrs Graham), entered the plaintiff's property, over the driveway and back garden of No 10, without permission, to look into the shed via the gate. It is a feature of this case that both sides appear to have CCTV coverage of the relevant area. Legal correspondence from A&L Goodbody followed in late June, alleging that the construction of the shed and paving was a trespass on the defendant's property. This was responded to by the plaintiff's previous solicitors. At that stage the defendant threatened to bring injunction proceedings requiring the removal of the shed and the paving; but no such proceedings came to pass.

[15] There then appears to have been a period of relative quiet for a number of years, including during the time of the Covid-19 pandemic. However, in March 2024, tensions resurfaced. The defendant removed the outer fence – which the plaintiffs contends was the defendant's longstanding boundary fence between its premises and the disputed lands – without notice. Further correspondence followed between the parties which simply resulted in an impasse. The defendant threatened to remove the plaintiff's shed but did not do so. The plaintiff requested copies of the title documentation referenced in the correspondence on the defendant's behalf; but this was not provided.

[16] Then, in June 2025, the defendant placed tall concrete posts against the inner fence in the disputed lands. This new fence was then completed within a number of weeks, despite protests on behalf of the plaintiff. It had the effect of blocking the plaintiff's access to the disputed grounds through the gate in its fence. On the plaintiff's case, this was a further act of trespass on the land which it owns. Again, legal correspondence followed which did not move the matter forward to any great degree. I note, however, that the plaintiff offered to engage in without prejudice discussions and/or mediation in a bid to resolve the matter in an amicable way. The shed remained on the disputed lands and Mr Wilson accepts that he 'pushed in' four of the planks in the defendant's recently constructed fence in order to allow him to still access the shed which continued to be used for storage.

[17] More recently, in late January 2026, when the Wilson family was on holiday, workmen (believed to be instructed by the defendant) entered the plaintiff's garden and dismantled the garden shed which was on the disputed lands. The shed and its contents were left on the plaintiff's driveway. Again, this was recorded by CCTV and Ring doorbell footage. The plaintiff was aggrieved at the dismantling and removal of the shed but also by the obvious trespass on property which indisputably belongs to it within the curtilage of 10 Atlantic View. The plaintiff's solicitors wrote to the defendant on 29 January 2026 requesting an urgent explanation and seeking undertakings in order to avoid the need for urgent proceedings. A response was received on the same date in trenchant terms, describing the plaintiff's claims as "frivolous and vexatious".

[18] In early February, the defendant undertook further works, removing part of the back of the plaintiff's fence and extending the defendant's fence and boundary into a new area (which the plaintiff believes belongs to the district council). It further presented the plaintiff with an invoice for the costs of removing the shed in the sum of £2,160. These proceedings were issued shortly thereafter.

Broad outline of the parties' positions

[19] The plaintiff contends that it is entitled to an interlocutory injunction and, indeed, that this is a clear case for such an injunction being granted. It is the registered owner of the disputed lands and enjoyed use of them until the defendant effectively annexed them in mid-2024 before wrongfully, and without ever having sought redress from the court, removing the shed which had been there for almost seven years and dumping it on the plaintiff's undisputed property.

[20] As to remittal, the plaintiff contends that the remittal application has been mounted by the defendant simply as a delaying or deflection tactic to avoid meeting its unanswerable case for interlocutory relief. It contends that the High Court plainly has jurisdiction to deal with the proceedings; that the defendant has not properly shown the case to be within the county court's jurisdiction; that it would be unfair to remit the case because it would deprive the plaintiff of the opportunity to

pursue summary judgment; and that any concern about higher costs which might be incurred in the High Court can be dealt with at the end of the proceedings in the exercise of the court's discretion on costs (for example, by awarding costs on the county court scale only). In submissions, Mr Coghlin invited the court to adjourn the remittal summons to be dealt with at a later stage of the proceedings after an application for summary judgment had been investigated and considered; and/or after the case had been pleaded out, when the court would have a clearer view of the holding position and extent of potential damages.

[21] The defendant has focused chiefly on its remittal application. It contends that these proceedings should never have been commenced in the High Court and that there are a variety of reasons, both practical and principled, why the case should proceed in the county court as the correct forum. It further contends that the proper course is for the proceedings simply to be remitted to the county court before any interlocutory or interim relief is granted or before the injunction application is heard and determined. Mr Atchison submitted that it would be highly unusual for summary judgment to be granted in a case such as this and that reliance on this factor by the plaintiff was completely fanciful.

[22] As to the application for an injunction, in addition to the procedural points mentioned above, the defendant contended that the plaintiff had delayed in coming to court to pursue injunctive relief, which was a further factor weighing against the grant of such relief. Its principal submission, however, was simply that the case should be remitted and any question of interlocutory relief could be considered thereafter.

[23] A variety of other detailed arguments were made, which I do not intend to set out *in extenso*, relating to, inter alia, various provisions of the Land Registration Act (Northern Ireland) 1970 ("the 1970 Act"); the County Courts (Northern Ireland) Order 1980 ("the County Courts Order"); the Rates (Northern Ireland) Order 1977 ("the Rates Order"); and the County Court Rules (Northern Ireland) 1981 ("the County Court Rules").

Summary of outcome

[24] This is a case in which I consider that *both* parties have engaged in a degree of "litigation tactics", of which each has accused the other. For reasons I set out shortly below, the remittal application will succeed. I do not consider that this case should proceed in the High Court, although one point raised by the plaintiff as to why it *was* initiated in the High Court does have some merit.

[25] For its part, the defendant – over the course of protracted correspondence – failed to set out clearly how it claimed ownership of the disputed lands, other than by little more than bare denial or assertion. It has only done so at the eleventh hour by filing Mr Graham's affidavit and, importantly, exhibiting the deed under which it holds its property, which had been requested by the plaintiff's representatives on

several occasions, from at least 10 May 2024. It did so only at a point where the court had made clear that the plaintiff would not be shut out from seeking some form of interim protection by virtue of the mere making of the remittal application. It seems to me that there is force in the plaintiff's submission that, prior to that, the defendant was trying to evade the substance of the case made against it in the plaintiff's interlocutory injunction application. That application will also be successful, at least on an interim basis, with the remittal of the proceedings to then follow.

The remittal application

[26] In my view, this case is plainly within the jurisdiction of the county court or, at the very least, likely to be so. (Section 31(1) of the Judicature (Northern Ireland) Act 1978 requires only that the remitting court consider the subject matter of the proceedings to be "likely" to be within the county court's jurisdictional limits.) Neither property's capital value exceeds the county court limit of £400,000 (see Article 12(1) of the County Courts Order). The plaintiff's property has a capital value of £180,000; whilst the defendant's property has a capital value of £235,000. The disputed wedge is a very modest piece of land which, depending on the outcome of the dispute, will fall within the curtilage of one or other of the parties' properties, each of which is recorded on the valuation list as having a garden.

[27] In Valentine, *Civil Proceedings: The County Court* (SLS), the author observes at para 2.29 that:

> "The relevant valuation is that of the land in dispute, not the whole of the *demesne* of which it may form part. But the land in question must be taken as an area which is separately valued: the plaintiff cannot put forward only the smaller part thereof which is in dispute; so if the dispute is between owners of two adjoining lands as to which owns a strip of land between them, the county court will accept jurisdiction if certificates show that both properties are not over the appropriate sum."

[28] There was argument about a portion of land or lands which had no capital value of its own which could therefore not neatly be valued for the purposes of Article 12 of the County Courts Order. In such a circumstance, I am satisfied that the general rule is that such a case could be dealt with within the county court since there is no capital value *exceeding* £400,000 for the purpose of Article 12(1)(b)(ii). In an anomalous case where such land may fetch a very high value on the open market (for instance, a large swathe of agricultural land which, pursuant to Article 37(2) of the Rates Order would not be treated as a hereditament and therefore not included in the valuation list) such a case commenced in the county court could properly be removed to the High Court on the basis that, in all the circumstances, the proceedings could be more appropriately heard and determined in the High Court. The present case, however, does not raise any such issue in my judgment.

[29] As to the likely level of damages, I agree with the defendant's position that, should the plaintiff be successful at trial, the costs of moving some fencing, reinstating the ground, and re-erecting a shed are not likely to be high. Further damages are likely to be modest. Both properties are used as holiday homes only and not continuously occupied. I also consider it highly unlikely that aggravated or exemplary damages will be in prospect in this case, on the basis suggested by the plaintiff or at all. Subject to one point, to which I return below (see para [41]), this appears to me to be a relatively low value case which should comfortably be within the jurisdiction of the county court both in terms of property value and monetary jurisdiction.

[30] The plaintiff initially relied upon *McCrory v McCrory* [1931] NI 170 to assert that remittal should not be granted on the application of the defendant unless it had raised a *bona fide* defence on the merits. There is no such requirement in section 31 of the Judicature Act nor under RCJ Order 78. I doubt whether the reasoning in the *McCrory* case now applies, with full force or at all, given the developments in the law which have occurred since. It was a case which concerned section 5 of the Common Law Procedure Amendment Act 1870, rather than the County Courts Order or any prior legislation in similar terms. More importantly, the concern in that case – that remittal should not be granted in a case where there was plainly no merit in the defence and remittal would deprive the plaintiff of a summary procedure to obtain judgment – has since been remedied to a significant degree by the procedure now set out in Order 12A of the County Court Rules, introduced by the County Court (Amendment No 2) Rules (Northern Ireland) 2022 (SR 2022/252).

[31] Generally speaking, the High Court, when considering remittal, will not be concerned with the detail or intricacies of the defendant's case, at least in terms of the value of the case, since the plaintiff's case is taken at its reasonable height (see *Clinton v Chief Constable of the Royal Ulster Constabulary* [1999] NI 215, at 220). Nonetheless, I accept Mr Coghlin's submission that there are cases where the court should properly consider the question of whether, if remittal is ordered, the plaintiff would be unfairly deprived of the procedure for summary judgment under RCJ Order 14. This might well be relevant to the exercise of the court's discretion as to whether remittal should be refused even in cases where the county court would enjoy jurisdiction.

[32] In cases where the Order 12A procedure is available in the county court, there is plainly force in Mr Atchison's submission that a defendant with no defence should not needlessly be subjected to (the risk of) High Court costs when the case could perfectly well have been pursued in the county court. But Mr Coghlin is also right that the procedure for summary judgment in the county court would *not* apply in this case because it is unavailable in a claim pursuant the county court's ejectment, title or equity jurisdiction: see Order 12A, rule 2(2)(b). The plaintiff therefore *would* lose the option of seeking summary judgment on the basis that the defendant has no

defence to the claim or part of the claim under RCJ Order 14 and be condemned to a full trial on the merits in the county court.

[33] But is summary judgment in the High Court really a realistic prospect in the present case? The plaintiff would go no further than to say that this is something which it would wish to *investigate*, with no guarantee that an application for summary judgment would be made, much less successfully so. I make no criticism of the plaintiff for that since it was only on the eve of the hearing that the defendant provided the deed upon which it principally relies. Mr Coghlin's submitted that the deed map provided plainly did not support extent of ownership now claimed by the defendant on the ground. However, in view of the case now made by the defendant, it seems to me highly unlikely that this is a case where the summary judgment procedure is likely to avail the plaintiff. I have reached that view taking into account the following facts, namely that (i) the defendant has already instructed architects to prepare a number of maps to support its case; (ii) it clearly intends to provide further evidence, both as to the factual position on the ground and potentially further expert mapping evidence; (iii) it has (albeit belatedly) raised a claim to possessory title in the alternative; (iv) it has contended in correspondence that a conversation with Mr Devine in 2017 supports its case (and that the inner fence was erected along the agreed boundary); (v) it has instructed both senior and junior counsel; and (iv) there has been protracted correspondence between the parties indicating both clear antagonism between them and a determination on the part of the defendant to persist in its claims, including by way of counterclaim.

[34] The High Court's power to remit an action to the county court remains a discretionary one. It need not do so just because the case falls within the jurisdiction of the county court. That is clear from the text of section 31(1) of the Judicature Act. However, where the test for remittal is met, namely that the case falls within the county court's jurisdiction and the High Court judge is of the opinion that in all the circumstances the proceedings may properly be heard and determined in the county court, there are strong reasons why remittal should ordinarily follow. Costs will ordinarily be much less in the county court. In most if not all divisions, the High Court lists are extremely busy. Cases within the county court jurisdiction should generally not proceed in the High Court, using up time and resources at the expense of cases which cannot be dealt with in the county court, where they can properly be heard and determined in the lower court. That is consistent with the overriding objective contained in RCJ Order 1, rule 1A by which dealing with cases justly expressly includes saving expense, dealing with cases proportionately to the amount involved and the importance of the case, and allocating cases the appropriate share of the court's resources as between them. In *AIB Group (UK) plc v Keenan* [2012] NIQB 16, at para [24], Weatherup J made clear that these aspects of the overriding objective were relevant factors in remittal decisions. Remittal also preserves the full right of appeal to the High Court which the losing party would otherwise enjoy if the proceedings were brought in the county court to begin with.

[35] I accept Mr Coghlin's submission that, where a remittal application is mounted purely as a tactical one "to introduce delay and attrition to an otherwise clear case" this might lead the court to refuse the application in the exercise of its discretion. However, in this case, the defendant plainly wishes to advance a defence on the merits, whatever the strength of that defence may be when it is fully examined.

[36] In all of the circumstances, I consider that this is a case which could have been brought in the county court and ought properly to be dealt with there. The county court regularly determines land disputes within its equity jurisdiction, including those where senior counsel are instructed (with several of the reported such cases appearing, oddly enough, to relate to land disputes in or near Portballintrae). As indicated above, I consider that part of the defendant's strategy in making the application, and doing so at this stage, might well have been tactical; but, rather than simply refusing the remittal application, I consider that the proper and fairest course is to grant the application but to allow the plaintiff some interim protection in the meantime.

The injunction application

[37] At the same time, therefore, I propose to grant the plaintiff's application for an interim injunction, at least on a holding basis pending a fuller hearing on the matter, should the defendant wish to have one with the benefit of further evidence or argument. There are two basic reasons for that:

(1) First, the plaintiff is the registered owner of the land. I am satisfied that this is and should be the obvious starting point for consideration of the issue. The register should be considered to be conclusive unless and until authoritatively shown to be wrong and corrected. That is the result of section 11(1) of the 1970 Act. (The defendant could have applied for rectification of the register under section 69 of the Act; but has not. Nor has it even registered a caution or inhibition against the plaintiff's folios. It further seems to me that this is really a title dispute, albeit in relation to a small area of ground, rather than merely a boundary dispute to which the general boundaries rule in section 64(1) would apply.)

(2) Second, I am also satisfied that the defendant has acted in a high-handed and aggressive manner in forcefully removing the shed and plainly trespassing on the plaintiff's property (on an area which is not in dispute) in doing so. A number of these actions have been taken without notice. Notwithstanding previous indications that the defendant may avail of recourse to the courts to resolve issues which had arisen; it has at no point done so. In my view, the plaintiff is perfectly entitled to seek the protection of the court in these circumstances.

[38] The defendant is right that the High Court can remit a case to the county court "at any stage" of the proceedings. That is again made clear by the text of section 31(1) of the Judicature Act. It would have been open to me to remit the case without considering the substance of the plaintiff's application. I have not been persuaded, however, as the defendant initially suggested, that this is the usual course. The circumstance where an application for injunctive relief at the commencement of High Court proceedings is immediately met with a remittal application is likely to be relatively unusual. Although remittal in advance of determining the application for interlocutory injunctive relief appears to have occurred in the case of *Knox v Sweeney* [2020] NICty 1 (see para [9]), this neither indicates that that approach is a "well-trodden path", nor that it is the correct approach in principle. The reported judgment in that case discloses the chronology without any detailed explanation of what happened between issue and remittal; why the interlocutory application was not dealt before remittal; or whether there was any principled reason for this. Each case must be addressed on its own merits.

[39] The plaintiff has plainly raised a serious issue to be tried. As noted above, it has the benefit of being the registered owner of the disputed lands. I am also satisfied that it is appropriate to grant an injunction in this case given that the plaintiff seeks to vindicate its rights arising out of its ownership of real property and to restrain trespass on its land. Whether one approaches this on the basis that, in such a case, the principles set out in *American Cyanamid v Ethicon* [1975] AC 396 do not strictly apply (as did Humphreys J in *Fitzpatrick & Fitzpatrick v Ligoniel Development Limited* [2020] NICh 16, at paras [20]-[22]) or that damages are obviously not an adequate remedy for invasion of real property rights (as did Mr Simpson KC sitting as a Temporary High Court Judge in *Preston v Executor of the Estate of William Preston* [2026] NICh 3, at paras [27]-[29]), the approach is the same. Put another way, a defendant cannot simply pay for the right to trespass pending trial.

[40] I accept the plaintiff's case that, at least for the present, some protection is required given the defendant's pattern of conduct which has lately been characterised by self-help, lack of consultation, failure (until very recently) to provide evidence of asserted title, and refusal to provide any undertakings at all which might allay the plaintiff's concerns.

[41] In addition, I accept the plaintiff's argument that, if it is successful at trial and there is continued trespass in the meantime – and potentially further works on the disputed lands – the risk increases of the county court limit being exceeded at the conclusion of the case. On this additional basis, the plaintiff submitted that I could not be satisfied that the county court's jurisdiction would not be exceeded. I consider significant further works on the disputed lands unlikely; but agree with that the risk is plainly lessened if there is some form of injunctive relief restraining further development. (Albeit the county court is not bound by its usual jurisdictional limits in a remitted action – see section 31(4) of the Judicature Act – it is also in both parties' interests to keep the quantum of the case down). A measure of interim relief is also likely to cater for the plaintiff's concern that continuing trespass

or additional works before trial may push the quantum of the case above the county court limit. The grant of an interim injunction may also assist with the plaintiff's concern about the defendant seeking to stall or delay the proceedings now that it has, in effect, annexed the disputed lands.

Conclusion

[42] For the reasons given above, I propose to grant an interim injunction on a holding basis and thereafter remit the case to the county court with a direction that a further and fuller hearing on the application for an interlocutory injunction should follow *if* the defendant wishes to file further evidence in opposition to the application (as it has reserved the right to do) or to make further submissions. (The defendant would always have the right to apply to vary or discharge such an injunction but the relief I am granting is to be treated as a holding injunction, pending a full hearing, such as is frequently granted on an initial application for an injunction, with a return date for a more substantive and considered hearing when the respondent has had an opportunity to respond.) If the parties can agree a position between themselves as to the position pending trial, whether reflected in this initial order or not, so much the better.

[43] The holding injunction will restrain the defendant (and its employees, officers, directors, servants, agents and licensees) from entering 10 Atlantic View and/or from entering, using or carrying out works upon the disputed lands, without the consent of the plaintiff. I hope this can be described with sufficient clarity in the body of the order, without the need for the disputed area to be pegged out and/or cordoned off, although that may be something which the parties may wish to consider.

[44] I do not propose to require the removal of the defendant's newly erected fence. It seems to me that that would simply be to increase costs if the plaintiff ultimately fails in its claim. I will also record in the Order the plaintiff's undertaking that, likewise, no one on its behalf will enter or use the disputed lands (without agreement from the defendant) pending trial or further order. This undertaking was offered in the course of submissions during the hearing and represents a material departure from the order sought in the plaintiff's notice of motion, which included a provision to restrain the defendant from interfering with the plaintiff's use and enjoyment of the lands by it and its servants and agents (i.e. envisaging the Wilson family being able to use the disputed lands pending trial). If the plaintiff does wish to contend for such a position pending trial that will be a matter which should be argued before the county court.

[45] For the avoidance of doubt, the injunction order which will follow is subject to variation, discharge and/or enforcement by the county court judge, once the case is remitted. As I have already mentioned, a further return date should be provided if the defendant seeks one; or if the plaintiff wishes to press for additional interlocutory relief.

[46] The proceedings will be remitted to the county court judge sitting at Antrim.

Costs

[47] I do not consider that I need to hear the parties on the question of costs.

[48] The defendant has been successful in its application for remittal. Ordinarily, costs would follow the event. However, I do accept that the plaintiff's point about wishing to pursue the option of summary judgment may have had some force at the time when these proceedings were issued in the High Court, at which point the defendant had failed (for some years) to provide the requested deed on which its primary case rests. I consider the most appropriate order is that the costs of the remittal application should be the defendant's costs in the cause (i.e. the defendant will recover its costs of the remittal application from the plaintiff if it successfully defends the proceedings but, even if the plaintiff is successful, the defendant should not be liable for the plaintiff's costs of the remittal application). If the defendant is entitled to recover its costs of the remittal application from the plaintiff in due course, such costs should be limited to one counsel only; and are to be taxed in default of agreement. (The limitation to one counsel is because there was no need for senior counsel to move the application in my view, particularly in circumstances where the defendant's central point was that the case should never have been issued in the High Court.)

[49] The plaintiff's costs of the interlocutory application to date should be the plaintiff's costs in the cause, again limited to one counsel only and to be taxed in default of agreement.

[50] Any remaining costs not included within the foregoing orders are reserved to the trial judge.