Neutral Citation No: [2023] NICh 5	*Ref:*	SIM12189
	ICOS No:	14/087124 22/085734
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	16/06/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

SANTANDER UK PLC

Plaintiff

-and-

[1] THOMAS ANTHONY CARLIN
[2] MAXINE KARON HUGHES

Defendants

---

[1] THOMAS ANTHONY CARLIN
[2] MAXINE KARON HUGHES

Plaintiffs

-and-

[1] A&L GOODBODY NORTHERN IRELAND LLP
[2] TANYA SURGEON
[3] KEITH GIBSON
[4] SANTANDER UK PLC

Defendants

Patrick Good KC with Keith Gibson (instructed by A&L Goodbody Solicitors) for the Plaintiff in 14/087124
David Dunlop KC (instructed by A&L Goodbody) for the Defendants in 22/085734
Mr Carlin, Litigant in Person, in both actions

SIMPSON J

Introduction

[1] Although there are various applications before the court, in some of which Mr Carlin and Ms Hughes are defendants or appellants or plaintiffs, for the sake of

convenience I will refer to them in this judgment as "the defendants" — unless referring specifically to one of them — and I will refer to Santander as "the plaintiff."

[2] These matters have their genesis in 2008 when in order to purchase their present home, the defendants executed an interest-only mortgage with Abbey National Plc. Abbey National advanced the sum of £191,250 on foot of the mortgage, and the defendants granted to Abbey National a first legal charge over the property. The charge was registered at the Land Registry in October 2008. The moneys advanced were used to discharge an existing charge on the property, to pay another matter and to discharge some fees. In January 2010 Abbey National Plc changed its name to Santander UK Plc.

[3] As long ago as October 2011 the defendants first missed the mortgage repayments, and have made no repayments since October 2013. There is some £113,000 outstanding by way of arrears. In April 2012 the plaintiff commenced possession proceedings pursuant to Order 88 seeking an order for possession of the property and the Chancery Master granted an order for possession.

[4] The various matters before me represent the latest in a long rearguard action fought by the defendants, and marshalled mainly by the first defendant, to prevent the plaintiff from repossessing the premises with a view to realising its security.

[5] The defendants won the first skirmish when, in September 2013, Deeny J struck out an order for possession granted by the Master on the basis that the affidavit filed by the plaintiff and grounding the application for possession pursuant to Order 88 of the Rules of the Court of Judicature (Northern Ireland) 1980 failed to disclose that the plaintiff had securitised the debt — see *Santander (UK) Plc v Carlin & Anor* [2013] NICh 14. In August 2014 the plaintiff issued fresh proceedings under Order 88.

[6] The defendants lost the second skirmish when, by order dated 12 January 2016, Gillen LJ dismissed their application, under Order 18 Rule 19, to strike out the plaintiff's second set of possession proceedings and their further application to permit a counterclaim — see GIL9845, delivered 12 January 2016. Mr Carlin's behaviour on the occasion when Gillen LJ gave his judgment led to his being sentenced to imprisonment for three months for contempt of court — see *Re Carlin* [2016] NIQB 17.

[7] The defendants lost the third skirmish when, in November 2019, Huddleston J dismissed the defendants' application to strike out the plaintiff's proceedings for "failure to comply with the discovery process as required by Order 24 rule 19(1) of the Rules of the Court of Judicature (Northern Ireland) Act 1980", and dismissed an application by the defendants to vary an order for discovery which had been made by Master Hardstaff on 21 February 2019. This decision was not the subject of an appeal.

[8] The defendants then lost a battle, the full hearing of the possession proceedings by Huddleston J which took place in December 2019. In the course of that hearing the defendants raised a very large number of issues in their defence of the claim by Santander. On 8 June 2020 Huddleston J handed down his judgment in the matter granting an order for possession of the property. For the best understanding of those proceedings, and the many issues raised, see *Santander UK plc v Carlin & Anor* [2020] NICh 11.

[9] Following the decision of Huddleston J — which was not appealed by the defendants — an application was made by the plaintiff on 8 July 2022 to enforce the order for possession.

[10] The Report of the Master, dated 25 October 2022 and requested by the defendants, chronicles the relevant steps:

- 2 August 2022, Notice of Intention to make an Order for Delivery of possession of land served on the defendants.

- 11 August 2022, Notice of Objection to the making of an Order for Delivery of Possession of land.

- 12 August 2022, Notice of Objection served by Mr Carlin.

- 20 September 2022, in-person hearing before the Master; adjourned.

- 4 October 2022, stay application served (see below); Master dismissed the Objection and made an order for Delivery of Possession, not to be enforced prior to 11 October.

- 11 October 2022, first listed in the High Court.

The present proceedings

[11] There are several applications before the Court.

[12] First, on 3 October 2022 the defendants issued a Writ of Summons (2022/085734) in the Chancery Division against

(i) A&L Goodbody Northern Ireland LLP (Santander's solicitors from April 2018),

(ii) Tanya Surgeon, (a solicitor in that firm),

(iii) Keith Gibson, (junior counsel for Santander instructed by that firm) and

(iv) Santander itself

(together "the Writ defendants").

[13] It is apparent that the endorsement on the Writ refers only to Mr Carlin, and although Ms Hughes is named as a plaintiff, all the relief sought is for Mr Carlin solely.

[14] The proceedings commenced by the Writ subsequently led to the issue, on 15 December 2022 by the Writ defendants, of a summons pursuant to Order 18 Rule 19(1) seeking to strike out the Writ proceedings.

[15] Secondly, the defendants issued, on 4 October 2022, an application described as being for "Stay of enforcement action and set aside of a possession order dated 23 June 2020 and written judgment dated 8 June 2020" (the Huddleston J judgment). Thirdly, on 10 October 2022, the defendants issued an application appealing the dismissal by the Master (on 4 October 2022) of their objection to the order for delivery of land.

[16] Fourthly, by a Notice of Motion, undated but stamped in the Court Office on 19 October 2022 Mr Carlin made an application "that an emergency motion must forthwith be listed for a full case management hearing on the stay application to sort out any key issues before trial and seeking adjournment of trial scheduled for Wednesday 19 October 2022."

[17] I first reviewed this matter on 19 October 2022 when I directed, inter alia, that Ms Hughes be made aware of the proceedings, as she appeared not to have been served with any relevant papers. A previously listed hearing date of 26 October was maintained. I note that eventually contact was made with Ms Hughes and she indicated that she was content for Mr Carlin to represent her interests in all the proceedings. I am therefore satisfied that even though she did not attend any of the hearings, she was content for the various proceedings to go ahead and content that she was properly represented in all of the proceedings before me.

[18] On 26 October 2022 Mr Carlin submitted a medical report from Ms Caroline Goldsmith, Consulting Clinical Psychologist, based in Dublin, in relation to psychological difficulties which he experiences. I do not think it would be fair to Mr Carlin to rehearse in a public judgment all of the contents of the medical report. On that date I permitted Santander to obtain its own desk top medical report. Altogether, four medical reports were exchanged between the parties and submitted to the court; two from each party's sole expert. I make it clear that in ease of Mr Carlin, I have dealt with this case on the basis of the accommodation for his issues as recommended by his expert, Ms Goldsmith, even though Santander's expert called into question some of the matters in her report.

[19] Following receipt of the medical reports, I reviewed this matter again in December, on which date I fixed the case for hearing over two days — 25 and 26 January. Thus, Mr Carlin had from late October to late January to be ready to

deal with this case. I understand from him that he was assisted by his McKenzie friend.

[20] On 9 January 2023 Mr Carlin submitted a certificate from his GP (same date) certifying that he was unfit for work due to stress and back pains and would be unfit for 6 weeks. At my direction the Chancery Office notified him in the following terms on 10 January 2023:

> "The Judge has received your medical certificate and has advised the following.
> Three matters arise.
>
> 1. It will be necessary to pass this information to A&L Goodbody, they need to be kept informed of these developments. Please confirm you have done so.
>
> 2. Although the certificate indicates that due to stress and back pain, you are unfit for work it is not clear what your work is and, therefore, what precisely the court should take from the certificate evidentially.
>
> 3. The certificate does not deal with whether you would be fit to attend court and take part in your own case.
>
> If you intend to rely on medical evidence that you are unable to attend court and/or take part in your own case, such evidence will need to be submitted to the court."

[21] No further medical evidence was submitted. On 24 January, the day before the listing of the two-day hearing, Mr Carlin re-submitted the certificate and made the case that he was "suffering with highly stressful family circumstances and acute ongoing back pain from an unprovoked assault on Boxing night" and asking not to be contacted "until the expiry of the note (20 February 2023)."

[22] I directed that essentially the same email should be sent to him as was sent on 10 January, but indicating that Mr Carlin needed to understand that absent such medical evidence there was a risk that the case would proceed in his absence if he did not attend court, and that just as he has a right to have his case heard, so Santander has a right to have the matter dealt with. A later email informed him that there appeared to be nothing which would prevent him attending by Sightlink.

[23] In the event on 25 January 2023 the matter was further adjourned for hearing on 29 and 30 March, in ease of Mr Carlin. Further directions were given for the submission of skeleton arguments.

[24] As indicated above in this introductory narrative, I had informed Mr Carlin that the certificates which he had submitted were not sufficient to warrant further delay of the hearing but that if he wished he should submit medical evidence to support any contention that he was unfit to attend court or to take part in the case. On 29 March Mr Carlin made an application for the matter to be further adjourned to June. He indicated that he had very recently contacted his medical expert, Ms Goldsmith, for a further report but that Ms Goldsmith was not in a position to see him due to her having, she said, been defamed in the press, as a result of which she had suspended her clinic. A short letter was provided by her to the court during the hearing on 29 March. This however, merely recited what she had been told by Mr Carlin about his position, and it provided no basis for the contention that Mr Carlin could not attend court or take part in the hearing. Mr Carlin submitted that if I agreed to one last adjournment to June, he would not continue his sick line and guaranteed that the matter would go on in June.

[25] He also informed me that he had not been able to speak to his McKenzie friend, who appeared to be making himself uncontactable.

[26] Both Mr Good KC and Mr Dunlop KC submitted that the case should continue on that day.

[27] I refused Mr Carlin's application for a further adjournment. I did so in light of the history of delay in this case and the absence of any compelling medical evidence, which Mr Carlin had had months to provide if it was available. The McKenzie friend had known the date of the hearing for some months, and there was no explanation at all as to why he was apparently now uncontactable. In addition, there was nothing to suggest that if the matter was further adjourned to June, the McKenzie friend would then make himself available. I was not satisfied that if the matters were to be further adjourned, the court would not have faced another application for an adjournment. Accordingly, the various applications were heard by me on 29 and 30 March. As noted above, Mr Carlin represented both defendants.

[28] The applications were heard sequentially and in discrete segments. I rose frequently to allow Mr Carlin to prepare himself, whether to make his application or to reply to submissions made against him. This was done for the specific purpose of accommodating Mr Carlin as Ms Goldsmith had recommended. Following the two days of hearing, I allowed Mr Carlin two weeks to prepare his written closing.

[29] There is a very large volume of papers in this case, including many affidavits and their exhibits, and there are transcripts of various hearings which Mr Carlin relied upon. There are lengthy sets of written submissions. Mr Carlin's final submissions ran to some 81 pages, including exhibits, but like many other of his submissions, were largely repetitive of what had earlier been submitted. In this judgment I do not seek to rehearse substantial portions of the submissions or the affidavits or exhibits, but I have read and taken into account all the papers in the case including all the previous judgments given.

Some background context

[30] Since there is considerable overlap between all the applications, it is necessary to understand something of the background by way of context.

[31] The starting point for Mr Carlin's significant disgruntlement arises from the discovery process in the possession proceedings Santander v Carlin & Hughes and the Order of Master Hardstaff dated 21 February 2019. The events which followed the making of that Order are dealt with in detail in affidavits filed by Mr Carlin in 2019 (one in June; two in November) in support of his application to have Santander's action dismissed for its failure to comply with the requirements of Order 24 Rule 19(1). It is his case that Santander has failed to comply with the Order.

[32] Both Ms Surgeon, solicitor in A&L Goodbody, and Mr Gibson, the plaintiff's junior counsel, are heavily criticised in those affidavits and both are accused of unprofessional conduct, including that they "wilfully brought fraud upon the court." Santander and A&L Goodbody are also criticised in Mr Carlin's affidavit submission "that the actions of [Santander] and their legal team is yet further fraud upon the court and also an abuse of position." These criticisms arise from Mr Carlin's belief that Santander's legal team had misled the court by informing the court that the discovery order had been complied with when, he says, they knew that it had not. Notwithstanding this, he says, Ms Surgeon then urged on the court a hearing of the substantive action, despite knowing that some email exchanges had never been received by Mr Carlin, part of "the plaintiff's premeditated and intentional ploy to mislead the court and subvert the rule of law." He says this was done "knowingly and willingly, as a tactic, simply for the plaintiff to frustrate the efforts of the defence to lawfully receive the documents and evidence which the defence are entitled to…" In his final submissions he says that Mr Gibson and Ms Surgeon acted together "in order to achieve a pre-planned common aim, that is to deny me specific discovery that I was otherwise entitled to get, ie the inspection facilities — and further at the least, entitled to a hearing before Master Hardstaff to argue any of the outstanding parked issues."

[33] The "parked issues" were discovery issues which he says the court never dealt with, but which were to be dealt with subsequently, and he contends that "Santander and their legal team acted unfairly and unscrupulously in claiming Specific Discovery was over." He criticises counsel for submitting to the court what he calls an 'unsworn' position paper and asserts that Ms Surgeon and Mr Gibson were protecting their careers by refusing to put Santander's case in any signed document, because they knew it would amount to perjury.

[34] His final submissions before me also refer to answers provided to a series of questions put by him to ChatGPT, criticising counsel, solicitors, and judges, and he prays in aid these answers in support of his case since they have been provided by

artificial intelligence which "does not have personal opinions, beliefs or feelings." Sadly, ChatGPT seemed unable to recognise or correct the misuse by Mr Carlin in one of his questions of the phrase "cast dispersions" rather than "cast aspersions."

[35] He goes on to criticise McBride J for rejecting various subsequent applications made to her in hearings after the Master's order and further to criticise Mr Gibson for informing McBride J that the plaintiff had complied with the order for discovery. He accuses McBride J of, inter alia, apparent bias. He accuses Huddleston J of, inter alia, failing to address certain issues and of demonstrating unfairness and pre-determination.

The set aside application

[36] The application document includes both a set aside and a stay application. I will deal with them separately, and with the set aside application first.

[37] By the application (4 October 2022) the defendants seek that:

> "… any order for possession of my property and lands, and any written judgment given in the Chancery High Court on 8 June 2020, to be immediately set aside forthwith, and for any enforcement action by the Enforcement of Judgment Office of Northern Ireland to be immediately stayed and for such stay order to be issued by the Chancery High Court Judge forthwith exercising its discretion under s. 86(3) Judicature (Northern Ireland) Act 1978 in the interest of justice…"

[38] The application then contains 11 paras alleging, variously (and in brief) — fraud in the conduct of legal proceedings, unlawful conduct of legal proceedings on the grounds of fraud and deceit, unconscionable conduct, abuse of process by way of mis-trial due to pre-determination, inherent bias and denial of due process of law and equity, procedural irregularity and procedural abuses under Order 2(2) of the rules of court, denial of due process and breach of Convention rights.

[39] In support of the application Mr Carlin served three affidavits; 4 October 2022, 10 October 2022 and 18 October 2022. At para 5 of the first affidavit the grounds relied on are identified as:

(i) In the interests of justice: s 86(3) Judicature (Northern Ireland) Act 1978;

(ii) To prevent a serious miscarriage of justice;

(iii) By way of fraud in the conduct of said proceedings by each of the four [Writ] defendants, for which a writ has now been issued;

(iv) Abuse of process at common law and equity;

(v) Procedural irregularity; under Order 2(2) Rules of the Court of Judicature (Northern Ireland) 1980;

(vi) Unconscionable conduct in equity; fraud in the conduct of the proceedings leading to a direct miscarriage of justice which meets the evidential threshold and has a reasonable chance of success on such existing material evidence;

(vii) On the grounds of discrimination, inherent bias, procedural irregularity, unfair trial, denial of due process of law and deceit.

[40] The two principal reliefs sought are (1) that since a Writ against the Writ defendants was served on 3 October, there should be a stay of the enforcement proceedings until the matters raised in the Writ are dealt with; and (2) the court should set aside the judgment of Huddleston J in its entirety.

[41] Mr Carlin's first affidavit (4 October 2022) in support of this application rehearses the broad thrust of the discovery grievances which first featured in the 2019 affidavits. Some of those are repeated in the second affidavit (10 October 2022). In the third affidavit (18 October 2022) he breaks down "the cause of action for this application" as "(i) 25% due to the fraudulent actions, omissions and conduct of Santander's Counsel after the provision of the Discovery affidavit…, (ii) 25% due to the acts, omissions and conduct of [Madam Justice] McBride, (iii) 25% due to the acts, omissions and conduct of [Mr] Justice Ian Huddleston (sic), (iv) 25% due to the overall case management, procedural deficiencies, administrative blocking and financial unfairness." A number of paras are then devoted to each of Ms Surgeon, Mr Gibson, McBride J and Huddleston J.

Legal considerations

[42] The 1999 edition of the White Book (Supreme Court Practice 1999) states the following at para 20/11/8:

> "If a judgment or order has been obtained by fraud a fresh action will lie to impeach the original judgment, but a High Court Judge has no jurisdiction to set aside an order of another High Court Judge on the basis that fresh evidence has been obtained, since only the Court of Appeal has jurisdiction to do so."

[43] In *Kuwait Airways Corp v Iraqi Airways Co. and another (No 2)* the House of Lords dealt with an issue raised by the plaintiff which petitioned the House for an order that its original ruling should be varied as new evidence suggested that there had been acts of wrongful interference by the defendant and the House's original

order had been based on false and perjured evidence given with the intention of deceiving the court. Giving the judgment of the House, Lord Slynn said (para 24):

> "… there is well established authority that where a final decision has been made by a court a challenge to the decision on the basis that it has been obtained by fraud must be made by a fresh action alleging and proving the fraud. Thus in *Flower v Lloyd* (1877) 6 ChD 297, the Court of Appeal had allowed an appeal and dismissed a claim to restrain the defendants from infringing the plaintiff's patent. The plaintiff applied to have the appeal reheard on the ground that there had been fraudulent concealment of evidence. The Court of Appeal held that this could not be done. The plaintiff's remedy was by original action. The judgment was given partly on the basis that the Court of Appeal's jurisdiction under the Judicature Act 1873 did not include power to set aside its judgment on the basis of fraud, and partly on the basis that the former practice of requiring a fresh action to be brought to set aside a decree on the ground of fraud ought to be followed. In *Cole v Langford* [1898] 2 QB 36 the Divisional Court held that the court had jurisdiction in a subsequent action to set aside a judgment obtained before a judge and jury by fraud. In *Jonesco v Beard* [1930] AC 298 Lord Buckmaster, with whom other members of the House concurred, said, at p 300:
>
> > 'It has long been the settled practice of the court that the proper method of impeaching a completed judgment on the ground of fraud is by action in which, as in any other action based on fraud, the particulars of the fraud must be exactly given and the allegation established by the strict proof such a charge requires.'"

[44] In *de Lasala v de Lasala* [1980] AC 546 the Privy Council was considering an application by a wife to set aside and vary a consent order relating to financial arrangements, and for orders for periodical payments, maintenance, a secured lump sum and other relief. The wife suggested that there was evidence before the original court that she had been induced to agree to the consent order (a) by misrepresentations by the husband as to his financial position at the time and (b) by the bad advice she had received from her then legal advisers as to what her tax position would be. The consent order had been made and a final order of the court at the time the parties settled their differences and the Board stated that the financial arrangements "no longer depend upon the agreement of the parties as the source

from which their legal effect is derived. Their legal effect is derived from the court order."

[45] The judgment of the Board was delivered by Lord Diplock. At 561 C/D he said:

> "Where a party to an action seeks to challenge, on the ground that it was obtained by fraud or mistake, a judgment or order that finally disposes of the issues raised between the parties, the only ways of doing it that are open to him are by appeal from the judgment or order to a higher court or by bringing a fresh action to set it aside."

[46] Accordingly, in my view, the application to me to set aside the orders made by Huddleston J following his judgment of 8 June 2020 is bound to fail as I have no jurisdiction to entertain the application. The set aside application is dismissed.

The Writ defendants' strike out application

[47] I will deal with the application for a stay after dealing with the Writ defendants' strike out application. The Writ defendants apply to strike out the Writ action under the inherent jurisdiction of the court or under the provisions of Order 18 Rule 19(1) (a), (b) and (d) (set out below in para [66])

[48] The Writ is couched in wide terms seeking relief against the Writ defendants, their servants and agents, who have allegedly:

> "… committed fraud by way of unconscionable conduct, deceit, at both law and equity, and abuse of process against the plaintiff in the conduct, management, care and control of legal proceedings leading to serious miscarriage of justice, and in the interest of justice and upholding the rule of law I hereby wish for relief and remedy against the fraud committed against me as a substantive right in equity, to have the written judgment dated 8 June 2020 and possession order issued on 23 June 2020, to be set aside after a trial, from the beginning and further relief and remedy for any direct and consequential loss and to claim damages for both ordinary damages, and exemplary damages, and for my legal costs of bringing this action.
>
> I finally wish for and seek a declaratory judgment after trial of these issues for the fraud by way of the unlawful conduct of said legal proceedings by each of the

defendants one to four from the Honourable Court that due to such unconscionable conduct in equity by way of fraud and deceit of the defendants and of the defendants servants, agents and employees in the conduct, behaviour, control and management of said legal proceedings, that both they and Santander UK plc and their agents be prohibited permanently from ever bringing any future legal proceedings against my family home, lands and estates."

[49] In his detailed written final submissions Mr Carlin repeats all of the matters arising from the discovery process which he has maintained for some years. Towards the end of his submissions he begins his summary in the following way:

> "44. I have provided as much Prima Face evidence of the fraud in this bundle as I am able to do during this 2 week period in the state that I am in currently. I ask that this supplements the facts, testimony and evidence I have already supplied to the court."
>
> 45. The evidence of fraud is undeniable as in a timeline, Keith Gibson in the discovery process before Master Hardstaff in 2018 confirms he will get his client to consider the Inspection Facility and he is aware that I am entitled to one and that the Master will give an order for it to occur should Santander refuse to do it voluntarily which they did refuse. Keith Gibson then lies throughout the rest of 2019 about this inspection issue and the parked issues. He misled the court. He did so in collusion with Tanya Surgeon. They acted in unison towards a common goal in order to cause their client a gain and to cause me and my family a loss.
>
> 46. As Mr Dunlop kindly reminded me during the hearing on 30 March 2023, that in late 2019 Mr Justice Huddleston (sic) actually relitigated (unfairly) the 5 parked issues that Keith Gibson had informed Madam Justice McBride in his position statement on 1 November 2019 at point 6 that there were no further "parked issues." That was a blatant, thought out and intentional lie. That was a fraudulent misrepresentation in order to deceive the court and to deny me specific discovery that I was otherwise entitled to.
>
> 47. This is a criminal matter which I now ask the court to refer to the public prosecutors, The Law Society for

> Northern Ireland and The Bar of Northern Ireland for investigation.
>
> 48. I seek to rely upon the *Takhar v Gracefield Developments* Supreme Court Case that Fraud unravels all. All the courts in Northern Ireland are compelled by that stated case."

[50] It is clear from Mr Carlin's oral submissions and a reading of the final submissions that they amount to a repetition of all that has gone before. In the written submissions, para 7 is a reiteration of his previous complaints about the actions of Mr Gibson BL; para 11 is a reiteration of his previous complaints about the actions of Ms Surgeon. There is nothing in those allegations which is new and nothing which was not before either McBride J or Huddleston J from 2019 onwards. Para 21 repeats allegations arising from the hearings before McBride J, in relation to which the defendants mounted no appeal. Huddleston J is criticised in various places in the final submissions, but I repeat that no appeal was ever brought in relation to any decision he made.

[51] The reference in para 48 of Mr Carlin's submissions is a reference to *Takhar v Gracefield Developments Ltd and others* [2020] AC 450 ("*Takhar*"). Exhibited to his 4 October 2022 affidavit are three pages of the judgment. This leads to his assertion that the decision stated that "fraud unravels all" and his submission that "All the courts in Northern Ireland are compelled by that stated case." Part of the judgment exhibited by Mr Carlin includes observations by Lord Sumption in para 61 that:

> "The cause of action to set aside a judgment in earlier proceedings for fraud is independent of the cause of action asserted in the earlier proceedings. It relates to the conduct of the earlier proceedings, and not to the underlying dispute."

[52] It is important to understand what *Takhar* was about and what it decided. The plaintiff brought proceedings alleging that various properties of which she was the owner had been transferred to the first defendant company as a result of undue influence or other unconscionable conduct on the part of the second and third defendants. Fraud was not an issue at the trial. Her claim was dismissed. Three years later she brought a further claim, seeking to have the judgment set aside on the ground that it had been obtained by fraud, the fraud being based on her signature on a document having been forged. The defendants sought to have the claim struck out as an abuse of the process of the court. The judge refused to strike out the claim, but the Court of Appeal allowed the defendants' appeal, holding that a claim by which a party sought to set aside a previous judgment on the grounds that it had been obtained by fraud would be an abuse of process if the success of the claim depended upon evidence which could, with reasonable diligence, have been produced at the original trial.

[53] The Supreme Court allowed the plaintiff's appeal. As Lord Kerr said (para 21) — "The existence or non-existence of fraud has not been decided in the proceedings before [the judge]. It is a new issue. It does not involve the re-litigation of an identical claim" and (para 32) — "The claimant does not seek to set aside [the judge's] decision on any of the issues decided by him." At para 35 he said:

> "The relief that she seeks now is quite different from that which she had earlier claimed. Previously, she sought to avoid the effect of the agreement because of undue influence and unconscionability on the part of the [second and third defendants]. Now she claims that the agreement on which they rely was, in its written form, a forgery."

[54] The contrast with the present case is immediately obvious.

[55] The factual matters which Mr Carlin relies on in his Writ action in support of his allegations of fraud are neither new nor newly discovered. All were relied on by him in his affidavits filed in 2019; specifically in his 40 para affidavit dated 17 June 2019; his 27 para affidavit, undated but submitted with an accompanying email on 4 November 2019; and his 29 para affidavit (in which the numbering has gone awry) dated 13 November 2019. I have referred above to these as the 2019 affidavits.

[56] All of those affidavits were sworn by Mr Carlin in support of his applications [1] to strike out the plaintiff's proceedings and [2] to vary the [discovery] order of Master Hardstaff dated 21 February 2019. Allegations of fraud and of misleading the court were specifically made in the 17 June 2019 affidavit and the "unresolved parked issues" were relied upon in the same affidavit. Fraud is also specifically asserted in the November affidavit, as is the allegation of misleading the court and lying about the parked issues. The third affidavit (13 November 2019) also specifically alleges fraud and contains the words "I assert that the plaintiff's action in this matter unravels due to fraud."

[57] Further, in a skeleton argument filed on 18 October 2022 Mr Carlin actually accuses Huddleston J of dealing with the 'parked' issues. Para 17 of the skeleton argument states:

> "[Huddleston J] further committed a material fraud upon the court on 13 November 2019 by re litigating the seven parked issues and without examining the evidence and discovery process in relation to those seven parked documents forensically in violation of Master Hardstaff discovery order he simply dismissed them and stated you do not need any of them, which show predetermination

> and fraud upon the court in the conduct of those legal proceedings pre-trial." (sic)

[58] The applications identified in para [56] above, based on the allegations contained in the three 2019 affidavits, were heard by Huddleston J. The order of the Court is dated 26 November 2019 and, where material, recites that Huddleston J ordered that:

(1) The defendants' application to strike out the plaintiff's claim dated 18 June 2019 to be dismissed.

(2) The defendants' application dated the 8 November 2019 to vary the Order of Master Hardstaff on 21 February 2019 do stand dismissed.

[59] If the defendants were disappointed with or took exception to this, the appropriate avenue was to appeal the Order of Huddleston J. The defendants did not do so.

[60] In addition to the above (as Mr Carlin makes clear in his June 2019 affidavit) on 3 June 2019 (well prior to the relevant hearing by Huddleston J) he made three applications before McBride J. At para 26 of his affidavit, he says:

> "At the hearing in front of Madam Justice McBride on 3 June 2019 absolutely none of the serious points and evidence raised by the defence, both orally and in affidavit were either taken seriously or accepted. The defence made numerous oral applications below at a), b) & c) to the court, all of which were refused unfairly by Madam Justice McBride despite evidence being presented to the contrary.
>
> (a) Application under rule 32(12)(2) to have the matter remitted back to Master Hardstaff in order that discovery could be completed.
>
> (b) Application under order 24(19)(1) of the rules of the court of judicature to have the plaintiff's case dismissed for failure to comply with the order of Master Hardstaff dated 21 February 2019.
>
> (c) Application to convert the matter to a writ action.
>
> Issues were also raised orally that the defence's Article 6 ECHR right to a fair trial was being breached by not permitting the defendants to complete the lawful specific discovery process which the plaintiff was compelled in

> law to complete and to which the defence is entitled in law."

[61] Thus, issues which underly the allegations in the Writ action were also refused by McBride J. The defendants brought no appeal from her refusal.

[62] Further, as Huddleston J's judgment makes clear, the discovery issues were again raised (for a third time before a judge of the High Court) in the substantive hearing of the plaintiff's case before him. The following appears at para [13] of the judgment [2020] NICh 11:

> "Mr Ranger and Ms Serin were called because of the nature of the interlocutory proceedings leading up to the hearing. The first Defendant had lodged a very detailed specific discovery application. That had been dealt with before the Master and in the replying affidavits provided by both Mr Ranger and Ms Serin. To deal with those issues upon which the first Defendant was not satisfied it was proffered by the Plaintiff (and the court agreed) that the best way to deal with any continuing issues was to allow the Defendant the opportunity of cross-examining the witnesses in person. This opportunity he availed of during the proceedings."

[63] The reference to "the nature of the interlocutory proceedings leading up to the hearing" is a reference to the discovery proceedings. Once again, therefore, the issues raised by Mr Carlin arising from those interlocutory proceedings which underlie his allegations of fraud were before Huddleston J for the second time. Mr Carlin had the opportunity to deal with all his concerns about the discovery process at the substantive trial of the plaintiff's case. The judgment of Huddleston J was not appealed.

[64] In the grounding affidavit in this application, sworn by Mr Sam Corbett, solicitor in A&L Goodbody, the following is stated (para 41.1.3):

> "The basis of Mr Carlin's claim appears to be an allegation that Santander and those instructed by it were guilty of fraud. The basis upon which the allegation of fraud is made is not readily clear from the Writ, but I would refer this Honourable Court to the grounding affidavit of Mr Carlin in the stay proceedings concerning the possession order … In particular, at paras 8 - 20 of that affidavit. In that affidavit Mr Carlin, in effect, repeats allegations and averments previously made by him to the court during his unsuccessful application to strike out Santander's possession proceedings …"

[65] None of this was denied by Mr Carlin and, frankly, I do not see how it could be denied, since Mr Carlin has been steadfastly making precisely the same allegations now since 2019. Having read all the papers and listened to and read all Mr Carlin's submissions I am entirely satisfied that the allegations comprehended by the Writ action are those contained in the 2019 (and later) affidavits, all of which have been before two High Court judges and adjudicated upon and not appealed. There is nothing new.

Legal considerations

[66] Where material, Order 18 Rule 19 provides, under the rubric "Striking out pleadings and indorsements"

> "19. - (1)The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be; or
>
> (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.
>
> (2) No evidence shall be admissible on an application under para (1)(a)."

[67] As noted above, the Writ defendants rely on sub-paras (a), (b) and (d), as well as the inherent jurisdiction of the court.

[68] In *McIlroy-Rose v McKeating* [2021] NICh 17 Humphreys J identified the relevant approach to such an application. He said:

> "[23] Ground (a) must be determined on the face of the pleading without evidence and the cause pleaded must be unarguable or almost uncontestably bad, all the averments in the pleading being assumed to be

true. Gillen J stated in *Rush v PSNI* [2011] NIJB 28 at para [10] as follows:

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

[24] A cause of action is a factual situation the existence of which gives rise to an entitlement on the part of one person to a legal remedy against another. In order to disclose a reasonable cause of action, the pleaded case must set out each element required to constitute a particular cause of action.

[25] Under the inherent jurisdiction and grounds (b)-(d), evidence by affidavit or otherwise is admissible and the Court can explore the facts fully, but should do so with caution. In *Mulgrew v O'Brien* [1953] NI 10 Black LJ made clear that on such an application, the Court will strike out:

> '…if it is manifest that the plaintiff's case cannot possibly succeed or if it is clear that the action is an abuse of the process of the court. In exercising this inherent jurisdiction the court is not confined to what appears on the face of the pleadings. Extrinsic evidence is admissible of the facts which it is contended should induce the court to act.'

[26] In *Three Rivers District Council v Bank of England* No 3 [2001] UKHL 16 (which involved an application to strike out allegations of fraud or dishonesty), the court approved the following principles:

(i) Strike out is only appropriate for plain and obvious cases.

(ii) Judges should not rush to make findings of fact on contested evidence at a summary stage.

(iii) If an application to strike out involves a prolonged and serious argument, the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but, is also satisfied that striking out will remove the necessity for a trial or will substantially reduce the burden of preparing for, or the burden of the trial itself.

(iv) Judges hearing strike out applications should not conduct mini trials involving protracted examination of the documents and facts (although sometimes a detailed analysis is appropriate).

(v) A judge may refuse to hear a strike out application if the application:

(a) is unlikely to succeed; or

(b) will not be decisive or appreciably simplify the eventual trial."

[69] In passing I note that this is not a case in which issues of res judicata or estoppel are relevant. Although I have set out above part of what Lord Sumption said in *Takhar* at para 61, the remainder of the para is instructive in this regard:

> "The cause of action to set aside a judgment in earlier proceedings for fraud is independent of the cause of action asserted in the earlier proceedings. It relates to the conduct of the earlier proceedings, and not to the underlying dispute. There can therefore be no question of cause of action estoppel. Nor can there be any question of issue estoppel, because the basis of the action is that the decision of the issue in the earlier proceedings is vitiated by the fraud and cannot bind the parties: *R v Humphrys* [1977] AC 1, 21 (Viscount Dilhorne). If the claimant establishes his right to have the earlier judgment set aside, it will be of no further legal relevance qua judgment. It follows that res judicata cannot therefore arise in either of its classic forms."

[69] In my view the Writ defendants' application is best dealt with as an application pursuant to the inherent jurisdiction of the court and pursuant to Order 18 Rule 19 (1)(b) and (d) and I deal with the application on those bases.

[70] The inherent jurisdiction of the court was described by Lord Diplock in *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 at 536 in the following terms:

> "(This case) concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances under which abuse of process can arise are very varied …. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances on which the court has a duty (I disavow the word discretion) to exercise this salutary power."

[71] In *Braithwaite & Sons Limited v Anley Maritime Agencies Ltd* [1990] NI 63 Carswell J considered the inherent jurisdiction of the court in a slightly different context, namely the dismissal of actions for want of prosecution. He referred to the fact that rules of court prescribed a number of circumstances in which an action might be dismissed and examined the question whether this should restrict the exercise of the court's discretion to invoke its inherent jurisdiction. At p 70 he said:

> "… I consider on reflection that there may be cases which do not come within the terms of the rule, yet which should not be allowed to proceed. I do not think that the court need tie its hands by declining to resort to its jurisdiction in such cases, if it is satisfied that justice requires it to invoke it. I am reinforced in this conclusion by the willingness of the English courts in the cases which I have cited to use the powers contained in their inherent jurisdiction to stay frivolous and vexatious actions in an area almost but not quite co-terminous with that governed by the Rules of Court."

[72] Lord Sumption, in *Takhar*, said (para 62)

> "… abuse of process is a concept which informs the exercise of the court's procedural powers. These are part

> of the wider jurisdiction of the court to protect its process from wasteful and potentially oppressive duplicative litigation even in cases where the relevant question was not raised or decided on the earlier occasion."

[73] I consider that, for the reasons identified above, this case is wholly different from the circumstances of *Takhar*. In my view, in this case, all of the issues relied upon by Mr Carlin in his Writ action have been before the court on two occasions before Huddleston J and on one occasion before McBride J. The issues have been adjudicated on and no appeal has been mounted to any of the decisions. No new issues, such as was the factual position in *Takhar*, have been identified by Mr Carlin. The action against the Writ defendants is, in my view, an attempt to re-litigate matters which have already been decided.

[74] In all the circumstances of this case I consider that to allow the Writ action to continue would be to permit the type of "wasteful and potentially oppressive duplicative litigation" alluded to by Lord Sumption in *Takhar*. Accordingly, I strike out the Writ action against the Writ defendants.

Mr Carlin's application to stay enforcement

[75] As noted above the defendants' set aside application and the stay application were contained in the same summons, and the three supporting affidavits were common to each application. In light of my decisions in relation to [1] the defendants' set aside application and [2] the Writ action defendants' strike out application, I consider that there is no basis for a stay of the enforcement of the order for possession.

[76] Accordingly, I dismiss this application.

Mr Carlin's appeal from the Master

[77] On 4 October 2022 the Master dismissed the defendants' objection to the order for delivery of possession and made an order for delivery of possession. In view of the events she indicated that the order was not to be enforced prior to 11 October.

[78] By Notice of Appeal dated 10 October 2022 the defendants appealed.

[79] The affidavit grounding the appeal makes four points. First, that the Master's refusal to grant Mr Carlin an adjournment of the order for delivery and possession was unlawful, unreasonable and an abuse of process; secondly, that since the Master's order refers to Santander Consumer (UK) plc and since that is not the company which is the creditor, the Master had no jurisdiction to order enforcement; thirdly, that there was no proof that the second defendant had been served with the Notice of Intention; fourthly, that the Enforcement of Judgments Office ("EJO") has no jurisdiction to enforce an order for possession. I will deal with each in turn and in that order.

[80] The Master has a limited jurisdiction to stay enforcement of an order for possession. The Judgment Enforcement Rules (Northern Ireland) 1981 ("the Rules") provide the jurisdiction. Under the rubric "Staying Enforcement" Rule 103 provides:

> "(1) Without prejudice to Article 14 and subject to the provisions of this rule, the Master may grant a stay of enforcement when he is satisfied that —
>
> (a) there are special circumstances which render it inexpedient to enforce the judgment…"

[81] In all the circumstances of this case I consider that there were no special circumstances which would render it inexpedient to enforce the judgment and the Master was perfectly entitled to take that view. On the contrary, in my view in the circumstances of this case, Santander is entitled to realise its security.

[82] As to the mis-naming of the plaintiff my attention has been drawn by Mr Good KC to the Rules, and particularly Rule 4(1) and Rule 67. Rule 4(1) states:

> "Where, in beginning or purporting to begin any proceedings for enforcement under the Order or at any stage in the course of or in connection with any such proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein."

[83] Where relevant Rule 67 provides:

> "Amendment of orders etc.
>
> 67.-(1) Clerical mistakes in orders or other documents or errors arising therein from any accidental slip or omission may at any time be corrected by the Master.
>
> (2) Where a document is corrected under this rule, the Office shall notify any person on whom the document was served or to whom it was sent, of the correction."

[84] Mr Good says that clearly the mis-naming of the plaintiff by someone in the EJO is a clerical mistake and can be corrected. Mr Carlin says that there is no possible way that this is an administrative mistake or slip and that the order refers to

a different legal entity. He says that it is akin to KFC obtaining a possession order and McDonald's trying to enforce it. He would wish to see the application form to see on behalf of what entity the application was made.

[85] I am satisfied that this is likely to be a slip or clerical error on behalf of someone in the EJO and that the relevant rules provide for correction of the error. At most, in my view, this is an irregularity and does not nullify any part of the proceedings. No detriment will be caused to either defendant if the appropriate correction is made. I will give leave to the plaintiff to amend the document to include the plaintiff's correct name.

[86] As to proof of service, I note that the Master was satisfied that the second defendant had been served. In any event, Mr Carlin has informed the court that the second defendant is aware of the present proceedings and he is representing both defendants throughout all of these proceedings. Therefore, the order which I make at the conclusion of these proceedings will supersede any possible failure to serve the second defendant with the Notice of Intention. This aspect of the appeal is, I consider, entirely academic.

[87] As to Mr Carlin's fourth point, namely that the EJO has no jurisdiction to enforce an order for possession, Mr Good guided the court through a number of relevant provisions. Schedule 7 para 5(2) of the Land Registration Act (Northern Ireland) Act 1970 provides that the registered owner of a charge may apply to the court for the possession of the land, the subject of the charge, and the court may order the possession of the land to be delivered to him. Para 5(3) provides that the court shall only exercise the power in 5(2) if the principal sum secured by the charge is due and if the court thinks it proper to exercise the power. Section 4 of the Act provides that "the court" includes the High Court. At the time of the order made by Huddleston J all those aspects were satisfied.

[88] Article 4 of the Judgments Enforcement (Northern Ireland) Order 1981 provides that judgments to which the Order applies include (at 4(b)) "judgments under which a person is entitled to possession of any land." Article 11 provides that the enforcement jurisdiction previously exercised either by the court (pre-1971[1]) or by the Enforcement of Judgments Office (post-1971) continues to be vested in the EJO.

[89] Therefore, the relevant parties are [1] the court, which makes the possession order, and [2] the EJO, which enforces it. There is no merit in Mr Carlin's fourth point.

[90] Accordingly, I dismiss the appeal from the Master.

Mr Carlin's Notice of Motion

---

[1] 15 February 1971 was the commencement date of the Enforcement of Judgments (Northern Ireland) Act 1969

[91] Again, since this matter is unlikely to end in this court, I will deal with the Notice of Motion.

[92] This application for a full case management hearing is grounded on six points articulated in the Notice. These are:

(i) For the recusal of Huddleston J;

(ii) That the court "show cause" why Huddleston J and McBride J did not investigate the legal team's deceit and fraud and to compel [this court] to investigate this deceit and fraud;

(iii) To appeal the Chancery Master's refusal to abridge time for the issue and service of subpoenas and his failure to issue subpoenas against the solicitor and counsel to give oral evidence at the stay hearing;

(iv) To have the Court compel the solicitors to provide "evidence of agency by way of signed power of attorney deed from Santander … as they currently lacked standing and jurisdiction to make any legal representations to the Chancery High Court … and are estopped in fact and law from doing so";

(v) To have the Court strike out the originating summons and action of 2014, with consequential relief;

(vi) To have the Court compel Santander's "legal team" to show cause why Santander's "case by way of originating summons is not res judicata" as a result of the judgment of Deeny J in 2013.

[93] In his supporting affidavit Mr Carlin sought the case management hearing "to solve and ventilate all the outstanding housekeeping issues" as identified by him. Again, I will deal with each matter in order.

[94] Huddleston J has not dealt with this case since I was first seised of it in October 2022. There is no basis for (i) above.

[95] I know of no legal basis for (ii) above and none was proffered. The wording of the application seems to suggest that I should investigate the actions of those judges. This, as it seems to me, is just another way of seeking to have one High Court judge investigate the unappealed decision of another. I reiterate the matters set out above between paras [36] and [46]. I reject any such application.

[96] If there was any basis for the suggested challenge to the actions of the Chancery Master in para (iii) of the Notice of Motion, the time to make the point was on an appeal from the Master, which was not done, or at the very latest during the defendants' stay application before Huddleston J and if that was unsuccessful, then

to appeal that decision. None of these courses of action was taken. There is no appropriate basis for me now to deal with this matter.

[97] The application at (iv) is to "compel the plaintiff Santander UK plc purported (sic) legal agent Tanya Surgeon to provide evidence of agency lodged in the Chancery High Court record by way of signed power of attorney deed between Santander UK plc and Tanya Surgeon of A&L Goodbody from the year 2018, that must comply with both section 47 of the Companies Act 2006 and section 1 and section 10 of the Power of Attorney (Northern Ireland) Act 1971." This is another of the nonsense points that tend to be raised in cases involving litigants in person. There is no requirement for a solicitor instructed by a financial institution to do any such thing. It is hardly surprising that Valentine says (Civil Proceedings: The Supreme Court) at para 3.48 – "A solicitor who appears for a party in legal proceedings is assumed to act with his authority unless the contrary is shown … there is no rule that the authority must be in writing." I reject this application.

[98] Sub-para (v) is just another way of attempting to attack the judgment of Huddleston J and I reject any such application – see paras [36] to [46] above.

[99] As to sub-para (vi), as Deeny J identified in his judgment at [2013] NICh 14 the order for possession was struck out because the plaintiff had misrepresented the position to the court, by stating that the mortgage had not been assigned (para 4). This was the only issue decided by Deeny J. There was no impediment to the plaintiff issuing fresh possession proceedings, as it has done, and no question of res judicata arises.

[100] Further, in the judgment of Gillen LJ (GIL9845; delivered 12 January 2016), at para [3] the following is recorded:

> "It is contended further [by Mr Carlin] that the application by [Santander] is an abuse of the process of the court in that this matter was struck out previously for 'untruths [in] sworn affidavits' …"

This is clearly a reference to the decision by Deeny J. Accordingly, the matter was raised before Gillen J, rejected by him, and no appeal was brought arising from his decision.

[101] I reject the application at para (vi) of the Notice of Motion.

[102] Accordingly, the Notice of Motion is dismissed.

Further matter

[103] I need to tidy up one further matter which potentially remains outstanding, at least in Mr Carlin's view. Mr Carlin also raised in his affidavits the fact that he had a

Bankers Book of Evidence Act application ie an application under sections 4, 7 and 9(2) of the Bankers' Book Evidence Act 1879. He claims that this has never been dealt with. However, in the June 2020 judgment ([2020] NICh 11), at para 31, Huddleston J said:

> "The records we saw, therefore, focused solely on the accounting transactions that were relevant to the Defendants' mortgage account. Notwithstanding that, the first Defendant sought to bring forth a Banker's Book of Evidence Act Application under sections 4, 7 and 9(2) of the Banker's Book of Evidence Act 1879. This was raised both before and after the trial but the court rejected the application at both stages on the grounds that it was entirely satisfied that the accounting entries which were supplied by the Plaintiff (as bolstered by the evidence of Ms Serin and Mr Thomas Ranger) more than adequately satisfied the court that the funds in question were drawn by Abbey National from its reserves and were transmitted to the client account of Boal Anderson in the manner suggested above. Contrary to the submissions made by the Defendants the court did not see the need to have discovery of Abbey National's "entire mortgage book" to establish the operation of this individual account."

[104] It is clear, therefore, that Mr Carlin's application under the 1879 Act was before, and was dismissed by, Huddleston J. I repeat that no appeal was mounted in relation to the June 2020 judgment.

Conclusion

[105] Standing back and looking at these applications in the round, including the issue of the Writ proceedings, I am satisfied that they are just another attempt by the defendants, particularly Mr Carlin, to postpone the day of reckoning. As I recorded above, no moneys have been paid on foot of the mortgage since 2013, now almost 10 years ago. The plaintiff is entitled to realise its security.

[106] In the circumstances I:

(i) dismiss the defendants' application to set aside the judgment/order of Huddleston J dated 8 June 2020 and 20 June 2019;

(ii) grant the application of the Writ defendants, strike out the Writ action pursuant to the inherent jurisdiction of the court and Order 18 Rule 19(1) sub-paras (b) and (d), and enter judgment for the Writ defendants;

(iii) refuse the defendants' application for a stay of enforcement;

(iv) dismiss the defendants' appeal from the Master;

(v) dismiss all the applications contained in Mr Carlin's Notice of Motion.

[107] The defendants have comprehensively lost all of these applications. I award costs against them in respect of each of the applications and the appeal.

Postscript

[108] In my view it would be inappropriate to leave this judgment without dealing with one further matter. As occurs in many cases pleaded and argued by litigants in person, serious allegations are made, apparently with impunity, against professional people. In the present case such allegations have been levelled now for some four years against Ms Surgeon and Mr Gibson and include imputations of criminal behaviour and serious professional misconduct. They have been made before two previous High Court judges without success and were reiterated before me.

[109] In light of the significant potential for reputational damage to be done to those persons by the repeated airing of such allegations in a public court I consider that it is necessary for me to make clear in a public judgment that in my consideration of all the papers in this case and the submissions made to me, I have found no evidence whatsoever of any of the serious allegations made against either Ms Surgeon or Mr Gibson. They are entitled to this vindication.