

THE HIGH COURT

[2019/465 COS]

IN THE MATTER OF KELLY TRUCKS LIMITED (IN VOLUNTARY LIQUIDATION)

BETWEEN

ANNE KELLY

APPLICANT

AND

GERARD MURPHY PURPORTED LIQUIDATOR OF KELLY TRUCKS LIMITED (IN LIQUIDATION)

AND

COSTELLO TRANSPORT LIMITED

RESPONDENTS

(NO. 1 APPLICATION FOR INTERLOCUTORY INJUNCTION)

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 17th day of July, 2020.

1. On the 7th of February 2020 a Petition was filed seeking the winding up of Kelly Trucks Strokestown Limited. The Petition was presented by Mr. Gerard Murphy, the liquidator of Kelly Trucks Limited (in liquidation). In the Petition, the claim was made that Mr. Murphy (in his capacity as liquidator of Kelly Trucks Limited) was owed €172,820.64 on foot of an Order of the High Court (Murphy J.) of the 28th of February 2019. The Petition bears the record number 2020/53 COS.
2. The Petition came before me for hearing on the 24th of February 2020. On that day, I was informed that Ms. Anne Kelly wished to seek interlocutory relief against Mr. Murphy in proceedings bearing the record number 2019/465 COS. The nature of this interlocutory relief will be described shortly, but it included an order that Mr. Murphy be restrained "from progressing (unlawfully/Fraudulently) proceedings bearing record number 2020/53 COS." It was appropriate, therefore, to determine Ms. Kelly's interlocutory application before there could be any question of hearing the Petition. I listed the interlocutory motion for the following day, the 25th of February 2020. The Petition travelled with the motion.
3. Having heard the application for interlocutory relief on the 25th of February, I informed the parties that I would deliver an *ex tempore* judgment on the 27th of February at 2 pm. I did so, while letting the parties know that I would in due course produce a formal written judgment. This is the judgment. Naturally, it is in substance the same as the *ex tempore* judgment of the 27th of February 2020; some infelicities of language have been corrected and proper context is given so that a reader unfamiliar with the facts can understand the arguments and the findings.
4. The reliefs sought by Ms. Kelly in her motion are as follows:-
 - "1. An Injunction / Interlocutory Order restraining the first named Respondent from progressing (unlawfully/Fraudulently) proceedings bearing record number 2020/53COS as a direct consequence of the first named Respondent obtaining previous Orders (2014 / 28COS on 17/02/2014; 13/04/2015 and 19/05/2015 inter

alia) by means of his own Fraud, and Fraud in and on the Court. Said relief is sought in line with O.50 Rules 6 and 12 of the RSC.

2. An Injunction / Interlocutory Order restraining the first named Respondent from progressing (unlawfully/Fraudulently) proceedings bearing record number 2020/53COS as to allow and or facilitate the first named Respondent further, where as a matter of law, the first named Respondent cannot and refuses to demonstrate as a matter of fact and or law that he was in fact lawfully appointed "Liquidator" of Kelly Trucks Limited under section 277 of the Companies Acts 1963 – 2012 without Fraud in and or on the Court, and as Fraudulently pleaded in said Petition under High Court Record Number 2020/53COS. Said relief is sought in line with O.50 Rules 6 and 12 of the RSC.
3. An Injunction / Interlocutory Order restraining the first named Respondent from identifying and or acting as "Liquidator of Kelly Trucks Limited (In Liquidation)" or and derivative thereof, until such time as the outcome of the herein proceedings by means of Originating Motion on Notice are known/determined/finalised, so as to prevent further Fraud in / upon the Court, and in line with O.50 Rules 6 and 12 of the RSC.
4. An Injunction / Interlocutory Order restraining the High Court other than the herein Court (hearing this particular matter) from hearing any Motion/Petition brought by the first or second named Respondents until such time as the Fraud(s) complained of in the herein, are remedied, and to prevent further Fraud in and or on the Court in these other matters most notably but not limited to 2020/53COS.
5. An Order from this Court, in the form of an undertaking that the Court will take the herein complaints seriously, and treat same with the seriousness it requires, and apply all of the indisputable facts of the DAR for the specific hearings pertaining to the true facts of the hearing(s) and what was in fact sought and Ordered at said hearing(s), and the actual Motion papers employed (inauthentic/unlawful) at/in said hearing(s), and the actual Reliefs (unlawful) as sought therein at/in said hearing(s), and apply same said facts and truths to what is currently and fraudulently depicted, where the original Order in the herein of 17/02/2014 and 2014/28COS stands unlawfully/Fraudulently altered by subsequent Orders in 2014/28COS on 13/04/2015 and 19/05/2015 where Fraud was in and on the Court at all material times. This undertaking is sought so as to ensure that the integrity of the Court's own Record is preserved and maintained and protected from Fraudulent manipulation, as the facts and evidence also demonstrate that Baker J., (Now a Supreme Court Judge) did cause her own Court to be misled on the 13/04/2015, by making statements which she had to be certain at that material time, were in fact untrue, as what was claimed to be fact by Baker J., was untrue and did NOT happen, as clearly evidenced by the DAR. Wherefore the protection of the Court is sought by the Applicant from and against Same Fraudulent misrepresentation(s) and manipulation, which has clearly and evidently happened in the herein and

associated proceedings (2014/28COS; 2014/333COS; 2014/484COS; 2020/53COS) since 17/02/2014 to date, and to the detriment of the Applicant herein, as the only secured Creditor and Director of Kelly Trucks Limited (In Liquidation). This Order is sought in the interests of Justice and in the Public Interest, as should the Court's own record be capable of such unlawful and fraudulent manipulation, Justice cannot be said/seen to be done, and or guaranteed and the Court and its record(s) is/are brought into disrepute, and those benefitting Fraud and deceit (The respondents herein and their legal representatives) go unpunished and unhindered, which was and is not the intent and or purpose of the law.

6. An Order that the herein Motion and the Originating Motion be heard in tandem where the facts and truth of the herein are ascertained in the most expedient manner possible, so as to prevent further Fraud / Misrepresentation / /Deceit inter alia, and that the herein be given priority over any/all other proceedings related to the herein in the interests of Justice and in the public interest.
7. An Order setting aside the Judgment & Order(s) of Baker J., made on the 13th April 2015 in case (2014/28COS) which was obtained as a consequence of Fraud in the Court on said date of 13/04/2015 and as a consequence of Fraud of the first and second named Respondents, knowingly conducted and perpetrated by their Solicitors and Counsel at all material times leading up to and during the hearing of same application on said date 13/04/2015 and since, causing prejudice and damage to the Applicant.
8. An Order setting aside the Judgment and Order(s) of Baker J., made on the 19th May 2015 in case (2014/28COS) which was obtained as a consequence of Fraud in the Court on said date of 19/05/2015 and as a consequence of Fraud of the first and second named Respondents, knowingly conducted and perpetrated by them and their Solicitors and Counsel at all material times leading up to and during the hearing of same application on said date 19/05/2015 and since, causing prejudice and damage to the Applicant.
9. An Order setting aside the Judgment & Orders(s) of Murphy J., made on the 28th February 2019 in case (2014/333COS) which was obtained as a consequence of Fraud in and on the Court on said date of 28/02/2019 and as a consequence of Fraud of the first and second named Respondents, knowingly conducted and perpetrated by their Solicitors and Counsel at all material times leading up to and during the hearing of same application on said date 28/02/2019 and since, where said case 2014/333COS cannot have been lawfully issued / maintained in the absence of the Fraud perpetrated on / in the Court in 2014/28COS which in turn unlawfully/Fraudulently facilitated the issuing under the colour of law the proceedings under record number 2014/333COS, one unable to exist without the other, these Fraud(s) causing prejudice and damage to the Applicant."
5. The application is grounded on an Affidavit of Ms. Anne Kelly sworn on the 21st of February 2020. No affidavit is relied upon by Mr. Murphy in reply; however, Mr. Healy

(counsel for Mr. Murphy) does rely upon a booklet of judgments, orders and affidavits and in particular the judgment of Murphy J. bearing the neutral citation [2019] IEHC 6.

6. I carefully considered the motion, the affidavit, and the relevant exhibits to the affidavit of Ms. Kelly grounding the application before me. I refuse the application in its entirety. I do so for the following reasons.
7. Firstly, I believe that Ms. Kelly has not made out or met the relevant criteria for the award of an interlocutory injunction. In some instances she has not even attempted to meet the requirements for such an order as set out by O'Donnell J. on behalf of the Supreme Court in *Merck Sharp & Dohme Corporation v. Clonmel Healthcare* [2019] IESC 65, a judgment to which I will return.
8. Secondly, there is a strand of relief sought by Ms. Kelly in which she asks the court to set aside various orders, notably of Baker J., which I will describe as the impugned orders during the course of this judgment. They are final orders which cannot be set aside by me, absent proof of fraud on the part of a relevant actor in obtaining those orders; that fraud must in turn have caused the obtaining of the orders granted. Here the allegations of fraud were canvassed by Ms. Kelly in the hearing before Murphy J. and in a separate hearing before Baker J. during the course of last year. They were canvassed unsuccessfully by her. I understand it she may well be appealing those judgments but it is not for me to second guess their decisions on precisely the same issues which she has now raised before this court. If the issues raised before me were not raised by Ms. Kelly in the hearings before Baker J. and Murphy J. they could and should have been in which case I will apply the rule in *Henderson v. Henderson* (1843) 3 Hare 100 and I will refer to that authority during the course of my ruling.
9. There is another freestanding reason why the current application with regard to the setting aside of the judgment should be refused and it is this. Simply put, the application to set aside those judgments is one that should have been made on notice to the other parties having an interest in the application. In particular, notice should have been given to Costello Transport Ltd., (the company that made the application for the original order of Baker J. in 2014 and also made the application under the slip rule in 2015) and a Mr. Singh who was the liquidator removed by the order of Baker J. in 2014. There is no evidence of any service of the current application on Costello Transport Ltd. There is no indication whatsoever that Mr. Singh has been notified of the application. Procedurally, that renders the current application as one which could not succeed. It is not open to Ms. Kelly to allege that orders have been procured by fraud, or are in other ways fundamentally flawed, without involving the other parties affected by the validity of the same orders.
10. I will also touch briefly on the substance of the allegation of fraud itself and deal with that. However, the essence of my decision is that these are matters already agitated before this court unsuccessfully by Ms. Kelly and that the application is procedurally flawed. I will then look briefly on the allegations of fraud.

11. The Notice of Motion is headed (strikingly) "Notice of Motion to Set Aside Judgments/Orders of the Court Obtained by Fraud". The first set of reliefs sought (the interlocutory injunction reliefs) are at paragraphs one, two, three and four, and to some extent five.
12. One is an order sought restraining Mr. Murphy from progressing proceedings bearing the record no. 220/53 COS. That is stated to be the basis of Mr. Murphy obtaining previous orders by means of his own fraud and fraud of and in the court.
13. The second relief sought is an interlocutory injunction restraining Mr. Murphy from progressing the same proceedings as to allow or facilitate Mr. Murphy further where as a matter of law the first respondent, that is Mr. Murphy, cannot refuse to demonstrate that as a matter of fact or of law that he is lawfully appointed liquidator of Kelly Trucks Ltd. under section 277 of the Companies Act 2014.
14. Thirdly, there is an order restraining Mr. Murphy from identifying or acting as the liquidator of Kelly Trucks Ltd. (in liquidation) in any way whatsoever. I pause to point out that is a very broad order and effectively would stop the progress of the current liquidation in its tracks were it to be granted.
15. The fourth order sought is an unusual, I should say a unique one and one that defies common sense, in that it is a request for an interlocutory order restraining the High Court other than a hearing court from hearing any Motions/Petitions brought by the first or second named respondents. An order by the High Court, restraining the High Court, is unknown to me, no authority was opened to me suggesting such an order can be made and as a matter of common sense it cannot and should not be made.
16. The fifth relief requested is an order from this court in the form of an undertaking that the court would take complaints in this motion seriously and treat same with seriousness that this requires and apply all the indisputable facts of the DAR in specific hearing pertaining to the true facts of the hearing and what was in fact sought and ordered at a variety of hearings. Again this is a form of order unknown to me, unknown I think to the law in this jurisdiction and again it is an extraordinary order to the effect that I would give an undertaking either to Ms. Kelly or to myself that I would take the complaints raised by her seriously.
17. These are the injunctions being sought and it is worth noting that they are grounded on an affidavit which sets out no basis for the grant of those injunctions other than the complaint that there has been fraud in the past and that certain impugned orders of this court are void. It is an injunction to prevent, in particular, the prosecution of the petition to wind up Kelly Trucks Strokestown DAC. The petition is based on an order of Murphy J. on 28th February 2019, during the course of which Murphy J. directed Kelly Trucks Strokestown DAC to pay to the company of which Mr. Murphy is liquidator certain sums. That order of Murphy J. was not subject to any stay, to any appeal by the company (Kelly Trucks Strokestown DAC) though it has been subject to a separate and in large measure irrelevant appeal by Ms. Kelly herself. Despite the order, despite the fact that no stay was

placed on the order and despite the fact that the order has not been appealed, not a penny piece of the sums directed by Murphy J. have been paid. The injunction is not sought by Kelly Trucks Strokestown DAC, it is not sought by the directors of the company, it is not sought by the shareholders of the company – it is sought by Ms. Kelly, who as I understand it is the part owner or co-owner of a charge on the assets. She is also the co-landlord or joint landlord of the company in respect of the premises which it occupies. It is striking that Ms. Kelly was unsure (when asked) of the amount owed on foot of the charge to which I have referred. It also appears to be the case that the sums paid in respect of rent are approximately €1,000 per month which is not the largest sum in the world. No case is made and no evidence is given by Ms. Kelly that any harm or damage will be caused to *her* by the appointment of a liquidator. There is no assertion either in argument or more appropriately in evidence to the effect that her position as a charge holder or a joint charge holder would be in any way compromised or adversely affected by the appointment of the liquidator. There is no suggestion that at any point in time her interest as the owner of the land which is leased to the company would be in any way adversely affected by the appointment of the liquidator. There is also no undertaking as to damages offered by Ms. Kelly in respect to any harm that that the liquidator of Kelly Trucks Limited (in liquidation) may suffer as a result of the petition being injunctioned. Those are all important facts when one looks at the principles set out by the Supreme Court in the judgment to which I have referred, *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Ltd.* [2019] IESC 65. That judgment is a judgment of the 31st July 2019.

18. As O'Donnell J. points out (in something of a reformulation of the principles set out in *American Cyanamid Company v. Ethicon Ltd.* [1975] AC 396 and *Campus Oil Ltd. v. Minister for Industry and Energy (No 2)* [1983] IR 82) there are certain steps to be taken by the court in considering whether or not an interlocutory injunction should be granted. On p. 46 of the judgment O'Donnell J. says:-

“(1) First, the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted; [...]”

Now, I have to say that it is not impossible that Ms. Kelly might obtain a permanent injunction at trial, though I would have thought it unlikely that she would do so, particularly given the locus standi that she has with regard to the specific injunction sought in respect of the prosecution of the winding up petition as far as the Strokestown company is concerned but I give her the benefit of the doubt on that first requirement.

19. Secondly, the court, in the words of O'Donnell J.:-

“[...] should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. [...]”

I think given the dogged nature of Ms. Kelly and indeed of the petitioner in the application to wind up the Strokestown company, there is little chance of peace breaking out, there is therefore a decent chance that matters would proceed to a trial. Having said that I am also asked in the current motion to decide the issue as to whether or not the impugned order should be set aside so in fact the question of the trial is to some extent telescoped in that regard. However on the question of fair question to be tried, I find that there is no fair question to be tried raised by Ms. Kelly and I will come back to that in due course when I consider the application to set aside the impugned orders.

20. Thirdly, O'Donnell J. says that:-

"(3) If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice; [...]"

I will make this overall observation on the balance of convenience and the balance of justice. As already observed, the order sought by Ms. Kelly will have the effect of preventing Mr. Murphy as liquidator of a company (to which he has been appointed liquidator some considerable time ago) from prosecuting that liquidation. The liquidation would in fact be stopped in its tracks. It is difficult to see how that would be justified except in the most extreme circumstances which do not arise here. Secondly as I pointed out on considering the balance of convenience and the balance of justice, no case has been made that any harm would be caused to Ms. Kelly as a result of the presentation of the petition and the hearing of the petition. Equally if one considers the broader relief sought by her no case is made by her that the continuation in post by Mr. Murphy will in fact cause Ms. Kelly irrevocable harm or any harm at all.

21. That is of particular significance when one considers the fourth principle set down by O'Donnell J. as follows:-

"(4) The most important element in that balance [i.e. the balance of convenience or the balance of justice] is, in most cases, the question of adequacy of damages; [...]"

Ms. Kelly has not even attempted to make out a case that damages would not be an adequate remedy for her in the event an interlocutory order was refused.

22. At five O'Donnell J. says:-

"(5) In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy;"

As I have said such a claim is not made here.

23. At six O'Donnell J. goes on to say:-

"(6) Nevertheless, difficulty in assessing damages may be a factor which can be taken account of and lead to the grant of an interlocutory injunction, particularly where

the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy.”

Again the question of the adequacy of damages is not one agitated by Ms. Kelly in any way, shape or form.

24. At seven O’Donnell J. states:-

“(7) While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial; [...]”

In that context I take into account the failure to offer an undertaking as to damages in the event of harm being caused to the petitioner as a result of being unable to prosecute the petition and in the event that there is a harm caused to Mr. Murphy as a result of his inability to continue to act as liquidator as is sought by Ms. Kelly.

25. At eight the final principle set down by the Supreme Court through O’Donnell J. reads as follows:-

“(8) While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.”

While I think it follows from what I have already said, I believe it would be a gross injustice if a party (with a tenuous connection with the company sought to be wound up) was to succeed in preventing a winding up petition being prosecuted where that petition is based on a debt recognised by a court order made almost a year ago. This is especially so in circumstances where no effort whatsoever has been made to discharge that debt and where on the face of things there appears to be no dispute about the insolvency of the Strokestown company. I would also indicate that under this heading, the question of the delay on the part of Ms. Kelly in seeking this relief, is something that would weigh against her in the event we were even to get to the eighth principle set down by O’Donnell J. in the *MSD* case. For reasons which will be obvious later on I feel that either Ms. Kelly has delayed in making this application or more likely that she has in fact made an application to set aside these orders to unseat Mr. Murphy as liquidator of the original company on a number of occasions during the course of 2019 which in itself precludes me from revisiting those orders for the purpose of the current application.

26. On the basis of analysis of the principles governing the granting of interlocutory relief I find that the application for an interlocutory injunction should fail.

27. I want to turn to the separate strand of relief sought and complaint made in the Notice of Motion which is the request that the court would set aside the impugned orders. They

begin at paragraph six of the Notice of Motion. Paragraph six requires that the Motion and the Originating Motion be heard in tandem for the facts and truth therein be ascertained in the most expedient manner possible so as to prevent further fraud, misrepresentation or deceit. I am not entirely clear as to what that order means given that Ms. Kelly did not urge me to make an order in those terms during the course of her oral submission. However as I understand it, it is a request that all matters be dealt with together and all matters in this motion are being dealt with together. If there is an uncertainty on my part as to what is exactly intended at paragraph six of the Motion it is not my fault. It is the fault, with respect, of Ms. Kelly who should have explained to me both what is intended by this section of the motion and how it is justified and why it should be ordered.

28. At paragraph seven, Ms. Kelly seeks an order setting aside a judgment and orders made by Baker J. on the 13th April 2015 which were obtained as a consequence of fraud in the court, as a consequence of the fraud of the first and second respondents, that is Mr. Murphy and Costello Transport Ltd, knowingly conducted and perpetrated by their solicitors and counsel at all material times leading up to that hearing of the 13th of April 2015.
29. She seeks at eight an order setting aside the order made on the 19th May 2015 by Baker J. on the same basis and at nine an order setting aside a judgment and order of Murphy J. made the 28th February 2019. But as I understand it that is essentially because that case 2014/333 COS (in the words of the Motion) cannot have lawfully been issued/maintained in the absence of the fraud perpetrated on/in the court in 2014/28 COS. It seems to me that the basis of the order sought at paragraph nine of the Notice of Motion is basically the same as the basis as the orders sought in the immediately preceding paragraphs which deal with the allegation by Ms. Kelly that there was a fraud which vitiates the impugned orders as I have described them. They are the orders of the 17th February 2014, the 13th April 2015, and the 19th May 2015. I will turn now to my consideration of those reliefs.
30. So that this section of my judgment can be followed by those unfamiliar with the rather involved background facts, I will now set out details of these three impugned orders.
31. By her order of the 17th of February 2014, Baker J. removed Mr. Nehaal Singh as liquidator of Kelly Trucks Limited and replaced him with Mr. Murphy. The original order recording this decision of Baker J. recited section 228 of the Companies Acts 1963 – 2006; the relevant section was section 277. The original order also stated that it had been made by the Master.
32. An application was made by Costello Transport Limited (the company which had initially sought the order made on the 17th of February 2014) to correct the errors which I have just described. This application led to an order of the 13th of April 2015, by which Baker J. corrected these mistakes in her original order. In doing so, Baker J. stated, in respect of the section referred to in the original order:-

"I intended to make an order under s. 277 of the Act. That was the order which was sought. That is the order in respect of which I heard arguments and that is the order I made."

33. The order of the 19th of May 2015 corrected the order of the 13th of April 2015, by changing two names so that they were correctly spelt, and by directing Ms. Kelly to pay to Costello Transport Limited the costs of the application resulting in the order of the 13th of April 2015.
34. The order removing Mr. Singh and appointing Mr. Murphy was appealed by Mr. Singh. That was dismissed by the Court of Appeal in a ruling of the 19th October 2015. It is worth reflecting on the reasons given by the Court of Appeal for the dismissal of the appeal taken by Mr. Singh. That appears in summary at paragraph nine of that judgment where Kelly J. says:-

"The issue which arose for determination today in this motion was whether it is an entitlement to continue to prosecute this appeal in circumstances where Mr. Singh has failed to come before the court on no fewer than three different occasions and where Ms. Kelly purported to act on his behalf and to prosecute the appeal on his behalf."

Kelly J. notes that there are two aspects of that issue at paragraph ten. The first was the ability of Ms. Kelly to represent Mr. Singh. The second was the assertion made by Ms. Kelly and recited a paragraph thirteen of the judgment of Kelly J. that Ms. Kelly is the beneficiary of an assignment under common law. That document was then considered by the court. Both of those arguments by Ms. Kelly were unsuccessful. At paragraph fifteen of his judgment Kelly J. finds that there was no entitlement on the part of Ms. Kelly to appear for or to prosecute the appeal on behalf of Mr. Singh as he has not appeared and has no intention of appearing. The appeal was therefore dismissed.

35. The dismissal of the appeal by Mr. Singh was then the subject of an application for leave to appeal to the Supreme Court. That was dealt with by the judgment of the court of Clark J., McMenamin J. and Dunne J. which recites both the decision by the Supreme Court to refuse leave to appeal and a concern, if I can put it that way, on the part of the Supreme Court about the way in which the appeal came before the Supreme Court to start with. In particular I refer to paragraph 1.8 of the judgment of the Supreme Court which was delivered on the 15th December 2016. At the end of paragraph 1.8 and having recited that the Supreme Court had refused leave Clarke J. states as follows:-

"The panel dealing with that application decided [and that is an application by Mr. Murphy for the costs of the application for leave] that it would be appropriate to give Mr. Singh an opportunity to make whatever submissions he might consider appropriate as to why costs should not be awarded against him and directed Mr. Singh be written to in that regard."

It is the sequence of events that followed on from that letter that led to the oral hearing which is the subject of this judgment and at 2.1 the court recites:-

“On the 12th April 2016 Mr. Singh replied that he did not bring or prosecute or attempt to prosecute any proceedings before this court. That assertion led to a most unusual situation. The application for leave to appeal document filed in the Supreme Court office described the applicant/appellant as “Nehall Singh”. The document has a signature which purports to be that of Mr. Singh. There is nothing in that document which suggests that it was filed by any person on behalf of Mr. Singh. On the contrary, the document purports to be Mr. Singh’s document and his alone. Against that backdrop Mr. Singh’s assertion that he did not bring, prosecute or attempt to prosecute any proceedings before this Court was extremely disquieting. A document purporting to be signed by him and naming him as the party seeking to bring an appeal was filed in the Supreme Court office. Either that document was genuine, in the sense that it truly was a document prepared and filed either by Mr. Singh or with his authority, or it was not. If it was filed either by him or with his authority then his assertion that he had nothing to do with bringing or prosecuting any proceedings before this Court would be entirely misleading to the point of being disingenuous. On the other hand, if it transpired that some person had, without his authority, purported to file an appeal in his name and appearing, falsely, to bear his signature, then that too would be an even more serious issue for it would arguably amount to a potential offence.”

The court then goes on to recite correspondence with Mr. Singh which the court found to be unsatisfactory, an oral hearing was directed by the court which Mr. Singh did not attend and during the course of the judgment there is a reference by the court to correspondence with Ms. Kelly. At paragraph 2.3 of the judgment it is stated that, in emails received by the office of the Supreme Court one of the emails refers to a discussion between an officer of the Supreme Court and Ms. Kelly purportedly acting on behalf of Mr. Singh. There is then a reference at paragraph 2.10 of the judgment of the Supreme Court to a potential legal relationship between Mr. Singh and Ms. Kelly. Unusually, the conclusion of the court’s ruling was (under the heading “A Final Matter” at paragraph 4.1) a referral by the court of all documents and materials at its disposal to the Commissioner of An Garda Síochána for the purposes of inquiries being carried out to ascertain whether there was evidence that any criminal activity may have taken place.

36. As unusual and lurid as that may all be, the fact remains that there was an appeal, not by Ms. Kelly, against the order removing Mr. Singh, that appeal went nowhere for the reasons that I have summarised in the last section of my judgment and as a result of that the court is dealing with three orders made by Baker J., which were not subject to any variation by an appellate court, which are fairly aged at this point in time (the most recent one of them being May of 2015) and which are final orders for the purposes of the court adjudicating upon the current application. That is not some abstruse rule. The rationale for the conclusiveness of final orders and the finality of litigation is set out in

Delaney and McGrath, *Civil Procedures in the Superior Courts*, third edition as follows at paragraph 24.40 onwards:-

“24.40 The rationale for the finality of orders as set out by Murray J. in the case of *Riordan v. An Taoiseach* in which he stated that ‘if a party solely because he or she disagreed with the judgment of the court of final appeal could by one means or another restart to proceedings to which he ascribed all over again and perhaps even again, it would undermine the functioning of the administration of justice and weaken the authority of the law which are there for the benefit not of the courts but citizens as a whole.’

24.41 Similarly, in *Tolmuth v. McCann Fitzgerald* Denham J. explained that ‘the principle of finality in litigation underpins certainty in the administration of justice, it is a fundamental principle for the common good. It ensures that litigation comes to an end and that there is certainty in the situation’.

24.42 Given the importance of this principle, the circumstances in which a final order may be amended or varied are quite limited.”

That is, if anything, an understatement of the rarity of the circumstances or range of circumstances in which an order can be varied after it has become a final order.

37. The principle set out in Delaney and McGrath constitute, I think, the correct legal analysis as opposed to the consistent reference by Ms. Kelly to the need to set aside these orders *ex debito justitiae* which was the basic legal framework of her application before the court. It is of course the case that an order can be set aside if it is procured by fraud but even in that regard the circumstances in which that could be done are circumscribed.
38. There are two judgments that I want to record in this ruling. The first is a judgment of McKechnie J. in *Kelly v. National University of Ireland (Orse. University College Dublin) & Anor.* [2009] IEHC 484 and that dealt with an assertion that a judgment had been procured by perjury and of course, as we know, Ms. Kelly is making such an assertion. At paragraph 21 of the judgment, delivered on the 5th May 2009, McKechnie J. who was in this court says as follows:-

“Therefore, having reviewed the relevant case law, in my view, a court may set aside a judgment where it is proven on the balance of probabilities, that such judgment was obtained through the fraudulent testimony of one or more witnesses, that such perjury was known of or instigated by the successful party (in this case the Defendant), and that such testimony was material to the decision. I thus explicitly reject the Plaintiff’s contention in this motion that if any perjury is found it will ‘taint’ the decision and it will automatically follow that the judgment must be set aside.” [original emphasis]

That is important, I think, in considering the assertions (unconstrained as they are) by Ms. Kelly about both “perjury and fraud”. The requirement of showing that the judgment

actually was (as a matter of probability) obtained through fraud is one that lies on her shoulders. Even if perjury was to be found (and I find no such perjury in this case) that does not in itself taint a decision in such a way that makes it capable of being set aside.

39. The second judgment and the last judgment in this heading I am going to refer to is the judgment of Fennelly J. in the Supreme Court in *Kenny v. Provost, Fellows and Scholars of the University of Dublin, Trinity College* [2008] IESC 18. At paragraphs 49 – 57 of that judgment he sets out a general rule in relation to the setting aside of judgments in the case of fraud. He says:-

“49. The jurisdiction to set aside judgments on the ground of fraud must be seen against the background of the important principle of *res judicata* and of the public policy which discourages endless litigation expressed in the maxim: *interest rei publicae ut sit finis litum*. Keane J, as he then was, commented thus in *Dublin Corporation v. Building & Allied Trade Union and others* [1996] 2 I.L.R.M. 547, at 556:

‘[...] it is important to bear in mind that the public interest referred to reflects, in part at least, the interest of all citizens who resort to litigation in obtaining a final and conclusive determination of their disputes.’

50. From a reading of the authorities it appears necessary to consider three aspects of this important, though exceptional power: firstly, the quality or degree of fraud or dishonesty that must be alleged; secondly, the extent to which it must be shown that the alleged fraud affected the impugned judgment; thirdly, the particularity with which the fraud must be pleaded.
51. What degree of fraud or dishonesty must be alleged? Murphy J, in *Tassan Din*, cited two passages from the Amphyll Peerage Case. That celebrated and unique case was concerned with an attempt to impugn a declaration of legitimacy affecting inheritance of a peerage. The law lords applied the principles relevant to all cases of attempts to set aside judgments. Lord Simon was of opinion that:

‘To impeach a judgment on the ground of fraud it must be proved that the court was deceived into giving the impugned judgment by means of a false case known to be false or not believed to be true or made recklessly without any knowledge of the subject. No doubt, suppression of the truth may sometimes amount to suggestion of the false: *The Alfred Nobel* [1918] P. 293. But, short of this, lack of frankness or an ulterior or oblique or indirect motive is insufficient.’

52. To similar effect, Lord Wilberforce, at page 571:

‘What is fraud for this purpose? Learned counsel for John Russell without venturing upon a definition suggested that some kind of equitable fraud, or lack of frankness, was all that is meant, but I cannot accept so anaemic an ingredient. In relation to judgments, and this case is surely a fortiori or at least analogous, it is clear that only fraud in a strict legal sense will do. There

must be conscious and deliberate dishonesty, and the declaration must be obtained by it. Authorities as to judgments make clear that anyone wishing to attack a judgment on grounds of fraud must make his allegation with full particularity, must when he states it be prepared to prove what he alleges and ultimately must strictly prove it.'

53. It is worth also quoting the words of Lord Russell of Killowen, at page 598, if only for the purpose of eliminating any suspicion that the learned law lords were influenced by the very extraordinary nature of the proceeding, to set aside a declaration of legitimacy made many years before and to affect the status of a peer of the realm:

'I consider that fraud in this context is the same as that which is required to be established in an action to set aside an ordinary judgment *inter partes* on the ground that it has been obtained by fraud: less than that will not suffice. In such an action, particulars of that which is alleged to have been the fraudulent conduct must be given, and *strong proof* of the fraudulent conduct is required. This is not a mere matter of court practice: it is something which justice requires, having regard to the gravity of an accusation of dishonest dealing designed to pervert the course of justice and achieving that aim.'
[emphasis added]

54. I am satisfied that, in order to ground an action to set aside a judgment, the plaintiff must allege fraud in the true sense, that is deliberate and purposeful dishonesty, knowing and intentional deceit of the court. That approach is consistent with the statement of principle made by Keane J, in *Dublin Corporation v. Building & Allied Trade Union and others*, with the interests of parties to litigation who have secured a final decision of a court and with the overriding public interest in finality of litigation.
55. In addition, the fraud alleged must be such as to affect the impugned decision in a fundamental way. It will not suffice to allege that the new situation revealed by the uncovering of the fraud might have affected the judgment. It will not be enough to show, for example, that a witness lied unless it is shown that the true version of his evidence would probably have affected the outcome. Mr Galligan, on behalf of Trinity, submitted that the court should adopt the test adopted by O'Hanlon J in *Kelly v. Ireland*, cited above. The test would be whether new evidence 'changes the whole aspect of the case.' That was, of course, a very different type of case. The plaintiff claimed damages for alleged assault by gardaí. He had been convicted in a criminal trial, where the court had rejected as untrue the allegations now made in a civil action. Thus, there was a question of issue estoppel. However, in the course of the proceedings, the plaintiff claimed in addition to have found new evidence which had not been before the criminal court. O'Hanlon J adopted the test I have mentioned, following a dictum of Goff LJ in *McIlkenny v. Chief Constable of the West Midlands* [1980] QB 283. Would the alleged new evidence "change the whole aspect of the case? I believe that, in an action to set aside a judgment based on an

allegation that the court was deliberately deceived into making the impugned decision no less stringent test should be required. There must be something fundamental, something that goes to the root of the case.

56. An additional point arises. In general, a court approaches an application to dismiss pursuant to Order 19, rule 28 on the basis of the pleadings. Do the pleadings, as they are read by the court, disclose a cause of action? Would the alleged facts, if true, confer a cause of action? That test clearly applies in a modified form to such an application when made in a case such as the present. Where the substance of the claim is the validity of a final decision of a court of competent jurisdiction, the court hearing an application to dismiss must be permitted to examine the impugned decision, including the reasoning of the judgment. It cannot be constrained by the version of that decision disclosed in the pleadings seeking to set it aside.
57. The third matter is the necessity for particularity in pleading. It is the unanimous view of the various judges cited in argument that the allegation of fraud said to have deceived the former court must be pleaded with particularity and exactness. I have cited the statement of Barrington J in *Waite*. Lord Buckmaster in *Jonesco v. Beard*, Cited above, insisted that 'the particulars of the fraud must be exactly given [...]' Similarly, according to Lord Wilberforce, 'anyone wishing to attack a judgment on grounds of fraud must make his allegation with full particularity [...]' In essence, the nature of the fraud, deceit or dishonesty must be clearly and unambiguously alleged. It is not enough to allege mere non-disclosure, unless the plaintiff can identify an obligation to disclose arising either under law or from the circumstances."
40. It is fair to say that paragraphs 54 and 55 in particular chime with the judgment of McKechnie J. where he stressed that it is not enough to show that the fraud might have affected the judgment, it must have, to use the phrase employed by Fennelly J. changed the whole aspect of the case or as he puts it there must be something fundamental, something that goes to the root of the case.
41. While none of this was opened to me during the course of the argument, it is, I believe, the law of this State in respect of the allegations made by Ms. Kelly.
42. I now want to look at Ms. Kelly's affidavit to illustrate two things. First is the nature of the allegation that she makes in respect of fraud and secondly, and this is important, the similarity of the case she makes to me as to the case that she made or it was open to her to make to Murphy J. and Baker J. during two applications last year.
43. I have as I said carefully considered all of the papers put before me by Ms. Kelly but it might be helpful to illustrate the case she makes, and it is for the purpose of illustration that I go to the following paragraphs in her affidavit. Paragraph ten of Ms. Kelly's affidavit grounding the motion sets out an excerpt from the DAR for the 17th February 2014. It is a significant part of the case that Ms. Kelly makes. It is worth noting at this point in time that Ms. Kelly informed me that she had access to this DAR recording as early as January

2018 and that is of some importance when one considers the case that she makes now. I now set out paragraph ten of Ms. Kelly's affidavit:-

"The DAR of/for 17/02/2014 as is frequently mentioned throughout the herein document clearly and unambiguously documents and verifies critically and factually what Orders Baker J., specifically made on the 17/02/2014 which was as follows:-

'I am satisfied to make an order replacing Mr. Singh, sorry. First of all removing Mr. Singh as liquidator of the company pursuant to section 228 of the act. And an order pursuant to that act appointing Mr. Gerard Murphy as liquidator in his stead, and I do so for the reasons I've outlined.'

I beg to refer to a copy of said Affidavit allegedly made by the Master of the High Court as 'Exhibit AK-FR-01' which I have signed my name prior to the swearing hereof. Tab 2,3." [Original *Emphasis*]

44. At paragraph fifteen of her affidavit towards the bottom of that page, five lines from the bottom of the page Ms. Kelly makes the following allegation:-

"[...] In fact he [Mr. Murphy] brought an unlawful application under O.28 R.11, where he, in concert with his legal advisors committed perjury and has misled Baker J., who at a minimum ought to have been aware of the facts that she was being misled, and where Baker J. had the DAR readily available to her at all material times where certainty was and ought to have been required, rather than believe their outrageous stories as to how s.277 was left out of the orders of the 17/02/2014 when s.277 was never in and or intended to be in the orders of the 17/02/2014. Furthermore, [Mr. Murphy], is currently and outrageously fraudulent in misleading the Court in proceedings bearing record number 2020 / 53COS where Mr. Murphy is critically and legally aware of the fact that he is NOT legally entitled or in any legal position to maintain and or move said proceedings owing to his unlawful and untenable position, owing to his own incompetence and fraudulent and deceitful behaviour. [...]"

45. At paragraph 16 of her affidavit Ms. Kelly makes allegations against others. She says:-

"The said first named respondent herein, Gerard Murphy had through his own admission been engaged by the Solicitors, Mullen Lynch Byrne, Solicitors for the second named respondent Costello Transport Limited to keep an eye on the affairs of Kelly Trucks Limited, making the appointment of Gerard Murphy as liquidator legally questionable in the first place where Mr. Murphy ought to be impartial, and easily identifiable as being impartial, and not an agent of one small group of Creditors being two firms of Solicitors who were owed their Costs from litigation between Costello Transport Limited -v- Kelly Trucks Limited."

That pulls in, I think, firms of solicitors into the frame and it is an allegation of conflict of interest on the part of Mr. Murphy.

46. At paragraph nineteen at the end of that page there is a very serious allegation against Baker J. where it stated:-

"[...] The deeper Baker J., tried to delve, the more cumbersome matters became to the extent that Baker J., recused herself, rather than deal with the fact the Motion in its actual form could not be lawfully before the Court inter alia Baker J., never afforded me a fair hearing at any time when I was before her, she was ignorant and biased and incompetent and quite simply would not listen to me. [...]"

47. Then over the page at paragraph 21 there is an allegation against another judge of the High Court White J.:-

"[...] Mr. Justice White merely assured me of the integrity of the Liquidator. The same Liquidator who is unlawfully appointed and unlawfully before [t]his Court on several fronts, this was clear bias and incompetence and laziness on the part of Mr. Justice White, where rather than deal with the facts of the matter and bring same facts into his knowledge, he chose to merely carry on where Baker J. left off regardless of how unlawful and incompetent. [...]"

48. At paragraph 24, there is what Ms. Kelly describes as the real fraud at the end of that page where it says:-

"[...] This is where the real Fraud takes place, [i.e. the application under the slip rule] as Mr. Murphy and his Solicitors and in fact Baker J. all acted in concert in what only can be described as an ad hoc legal process, devoid of any real legal merit, which in fact was and is unlawful, and astonishingly the Superior Courts have turned a blind eye to the goings on since, but in doing so facilitated the perversion of the course of Justice, and fraud on and in the Court. There simply is no provision in law for the first respondent, Mr. Murphy to be a little bit wrong herein. He is entirely wrong and bad in law, and must be treated accordingly, and likewise those who have aided and abetted him."

I take it that means the solicitors and counsel acting for Mr. Murphy or possibly for Costello Trucks, but it is not entirely clear.

49. At paragraph 26 there is an allegation against Cregan J. where the following is stated:-

"[...] So much so that Cregan J. in concert with council for Gerard Murphy ordered that an O.28 R. 11 motion in order to correct the errors, when a slip rule application was NOT an appropriate application to deal with errs in law by Baker J. particularly when the Motion paper, seeking reliefs which were/are Bad in law is taken into consideration. [...]"

The allegation of illegality against Mr. Murphy, his solicitors and the judge is striking.

50. At paragraph 27 on the hearing of the application of the slip rule the following is said by Ms. Kelly:-

"[...] Nothing could prepare any litigant for what was to actually happen. Baker J. refused to listen, and shockingly and maliciously and fraudulently misled her own Court, by confirming that she remembered the matter clearly, and that she had allegedly made the Orders removing and appointing liquidators in 214/28COS under s.277 of the Companies Acts, notwithstanding the legal facts that she could NOT have, as said relief's were NOT sought in the Motion paper which was before her at the material time. [...]"

Leaving aside the fact that there is an inconsistency between alleging that Mr. Murphy deceived the judge and that the judge deceived herself (which is, I think, a profoundly illogical argument to make), nonetheless we are a long way from the strong proof suggested by Lord Russell and endorsed by Fennelly J. as we see in due course when come to consider the substance of the allegation made by Ms. Kelly against a variety of individuals.

51. At paragraph 28 Ms. Kelly says:-

"I say that fraud is a difficult thing to prove and the intent to commit fraud even more difficult but the facts of the matter herein are quite simple and easily determined. [...]"

I do emphasise that precisely because the case made by Ms. Kelly, whatever one thinks of its merits, is a simple case, it is a case that she could have mounted and I believe did mount before bringing the Motion before me during the course of this week. At paragraph 28 Ms Kelly proceeds to say that:-

"[...] The DAR cannot be disputed, and the fact that the reliefs Baker J., is falsely claiming she made were in fact not Sought in the Motion Paper makes the matter all the more worrying, as this is a blatant fraudulent Act on the part of Baker J., where she has knowingly and deliberately misled her own Court so as to allegedly 'correct' an Order which was NOT capable of being corrected as it was already correctly reflecting the Orders as unlawfully made under s.228. This displays a clear bias on the part of Baker J. and more worryingly a clear willingness to lie to cover up her errs in law rather than own up to same. [...]"

52. At paragraph 29 it is alleged that Baker J. acted in contempt and maliciously misled her own court with lies and proceeded to make an order amending the order of the 17th February 2014. Ms. Kelly goes on to say:-

"This act by Baker J., in concert with Cormac O'Regan who has perjured himself in a Sworn Affidavit designed solely to mislead the Court and pervert the course of Justice and Counsel for Gerard Murphy, and Gerard Murphy himself is entirely illegal and unavailable at law to Baker J., as NO Order of any Court may be ordered to reflect a thing which factually did not happen, and the DAR from the 17/02/2014 demonstrates without any doubt whatsoever that Baker J., removed and appointed

liquidators under s.228 of the Acts and not under s.277 as was legally required.”
[Original *Emphases*]

53. At paragraph 30 of her affidavit Ms. Kelly goes on to say the Baker J. is in breach of her duty as a judge on numerous fronts and her position is untenable as she has clearly demonstrated her propensity to break the law and to unlawfully alter orders of the court as they were delivered to suit her own agenda. Why a judge of this court or of any other court would have the agenda alleged by Ms. Kelly is in no way explained. No evidence is led to support that allegation and no rationale is provided for it. Ms. Kelly goes on:-

“[...] These are not the acts of an honest and transparent Judge and are intolerable to say the least. I further say and demand that this Court immediately send the herein to the Garda Commissioner and instruct him to immediately investigate the entirety of the herein and to bring all necessary charges pertaining to same. [...]”

There is a deep irony, I think, about the fact that course of action is exactly what was done by the Supreme Court in connection with the bewildering and concerning circumstances of Mr. Singh’s apparent appeal to that court but I will comment no further on that situation.

54. At paragraph 31 referring to correspondence from one of the registrars at the end of the page in which paragraph 31 appears Ms. Kelly says:-

“[...] This demonstrates the first named Respondent and his Counsel in concert with Baker J., appeared to be in a position to do as they please in and before the Court which again is Fraud perpetrated against and upon the court and indeed myself inter alia. [...]”

Again fraud perpetrated by the court on the court is an unusual concept. It makes no sense and it is profoundly disturbing that this allegation is made notwithstanding the lack of intellectual integrity to it.

55. At paragraph 34 Ms. Kelly goes on to say, and this is important as it outlines her description of the application she brought before Baker J. last year, this:-

“I say that after jumping through hoops inter alia my attempts to have the Court recognise the unlawfulness of and fraud of the acts in the herein matters and as a consequence of the Court continually failing, refusing and or neglecting to recognise and or accept the unlawfulness of the Order of 17/02/2014 as unlawfully amended by Baker J., and subsequent unlawful amending of the Order of 13/04/2015 again by Baker J. on the 19/05/2015, I say that in desperation, and in an effort to demonstrate going forward that the Court and the first and second named respondents herein can bring Motions under O.28 R.11 and have everything and anything altered (wherefore I brought an *identical* application under O.28 R.11 of the RSC), to the Motion brought by Gerard Murphy in the name of Costello Transport Limited (unlawfully) and which was embraced and heard by Baker J. on

13/04/2015, by way of Motion on Notice. The Motion which I brought under the exact same rules, O.28 R.11 RSC was seeking the amending of the Order of the 17/02/2014 to be reversed so as to have the Order of 17/02/2014 reflect exactly what was ordered on that day by Baker J., as is evidenced by the DAR for 17/02/2014. [...]" [Original *Emphasis*]

56. It is worth pausing here. The application brought before Baker J. last year was for an order seeking the setting aside or nullifying of the relevant portion of the order made in May 2015 and also seeking that the order of February 2014 reflect exactly what Ms. Kelly says was ordered on that day. As we will see when we consider the motion papers in that application before Baker J. what was sought by Ms. Kelly last year was to have Mr. Singh reinstated as liquidator. This in essence is the order that she is asking the court to make today. Ms. Kelly continues in the affidavit:-

"[...] I say that this brought out the other side of Baker J., and only served to show that Baker J., was doing as she pleased in the Court whether lawful and or unlawful so as to prevent me from bringing out the truth. This is blatant fraud before the Court on the part of Baker J., as I brought it before her on numerous occasions, demonstrating that the DAR, inter alia, that she could NOT in law and DID NOT in law safely and legally remove and appoint liquidators under s.277 as she falsely and maliciously and fraudulently claims. That she DID unlawfully remove and appoint liquidators under s.228 which she was expressly forbidden from doing under the Companies Act, and that the DAR clearly demonstrate this, yet Baker J., refuses to accept same and has unlawfully shut me down time and again by refusing me due process and by defrauding her own Court she was critically aware of my stance in relation to unlawful acts. Furthermore, I sought clarity in law from Baker J., where I required her to demonstrate the lawfulness of her act/actions which was further ignored." [Original EMPHASES]

57. At the end of the affidavit, it says as follows:-

"[...] All of the legal documentation, and the Court's own record (DAR) demonstrates otherwise. Wherefor I pray the court will grant the Injunctive/Interlocutory reliefs as sought in my Motion, so as to prevent further miscarriages of justice."

58. It is important to consider in light of the allegations in that affidavit the following. Firstly, of central importance in my ruling is that all relevant facts were known by Ms. Kelly to enable her to make the current application at the latest as of the end of January 2018. She has had two years to make this case and as I have pointed out in considering the interlocutory reliefs sought, the delay in making the case (that the impugned orders were obtained by fraud and were therefore void) in itself would justify the refusal of the motion seeking interlocutory relief.

59. However, that would be if Ms. Kelly had in fact delayed in seeking the intervention of a court arising from what she describes as the fraud that she sets out in the affidavit sworn in support of this Motion. The case was made by her or should and could have been made

by her in two cases of last year. I am going to go firstly to the judgment of Murphy J., secondly the notice of appeal from that judgment and then thirdly deal with the application before Baker J. last year.

60. The nature of the application made to Murphy J. by Mr. Murphy was described at paragraph two of the judgment as follows:-

“These proceedings were initiated under the Companies Acts 1963-2012 but are now being maintained under the relevant provisions of the Companies Act 2014. The applicant seeks 1) an order that James Kelly and Anne Kelly are personally responsible, without any limitation of liability, for the debts of Kelly Trucks Limited (in Voluntary Liquidation) and that the first and second-named respondents be held liable for fraudulent and reckless trading; 2) an order directing Kelly Trucks Strokestown Limited to deliver to the applicant all property and assets of whatsoever nature of Kelly Trucks Limited and/or pay such sum to the liquidator on such terms or conditions as to the court seems fit and 3) an order for the disqualification of the first and second-named respondents or in the alternative an order for restriction on the grounds that the conduct of the respondents is such as to warrant disqualification as directors or restriction for such period as to the court shall seem meet [sic].”

61. At paragraph 27 Murphy J. sets out the appointment of Mr. Singh as liquidator of the company:-

“Mr. Nehaal Singh was appointed liquidator of the company at the creditors’ meeting with the support of the company directors, Mr. and Mrs. Kelly. Costello Transport Limited objected to the appointment of Mr. Singh and brought an application before the court for his removal. The application to remove Mr. Singh arose, inter alia, due to concerns as to his independence, competence and experience. Costello Transport Limited proposed that Mr. Singh be replaced as liquidator by Mr. Murphy, the applicant. The application was brought in circumstances where Costello Transport Limited was still a creditor of Kelly Trucks Limited, and its earlier petition to wind up Kelly Trucks Limited had prompted the discharge of the judgment amount owed to Costello Transport Limited.”

62. At paragraph 28 she sets out the Notice of Motion to replace Mr. Singh:-

“The notice of motion seeking to replace Mr. Singh bearing record number 2014/28COS proceedings was issued on 16th January, 2014. The grounding affidavit for the application was sworn by Mr. Patrick Mullins of Mullins Lynch Byrne, solicitors for Costello Transport Limited on 14th January, 2014. The notice of motion purports to invoke s. 228 of the Companies Act 1963-2006 both for the removal of Mr. Nehaal Singh as liquidator and for the appointment of Mr. Gerard Murphy as liquidator in his stead. Section 228 relates to liquidators who are appointed subsequent to the making of a winding up order by the court and does not relate to liquidators appointed in a voluntary winding up. This error in the notice

of motion drafted by the applicant's lawyers gave rise to confusion and delays, as will be seen below. However, the notice of motion sought in the alternative, an order pursuant to s. 277 of the Companies Act 1963-2006, which is the appropriate section to invoke when seeking the removal of a liquidator in a voluntary winding up. While the notice of motion did not invoke the power pursuant to s. 277 to appoint a liquidator it seems to this court that upon removal of a liquidator, the court has a power to appoint another liquidator under s. 277(2). It provides that:-

'the court may, on cause shown, remove a liquidator and appoint another liquidator.'

It seems to this court that upon removal the court automatically has a power to appoint."

63. The last line in conclusion on the automatic power to appoint a new liquidator addresses one of the points made by Ms. Kelly to me and on the face of it made to Murphy J. which is why she records her view about it. Ms. Kelly argues that in the application before Baker J. in February 2014, there was no power to appoint Mr. Murphy under section 277 as that was not sought in the motion, Murphy J. has already dealt with the existence of such a power.
64. From paragraphs 82 – 89, of her judgment, Murphy J. sets out the various issues raised by Ms. Kelly during the course of the hearing before her and that does include a reference to the application to have Mr. Singh removed in the 17th February 2014, with particular reference to paragraph 87 as follows:-
 - "82. At the commencement of the hearing the second-named respondent Mrs. Kelly sought to enter a special case pursuant to O. 34, r. 5 of the Rules of the Superior Courts. The respondent argues that issues as to the legality of the proceedings should be addressed before the hearing of the substantive matters before the court. On being informed that the court would rule on her application in due course, and that in the meantime the court intended to proceed with the hearing of the applicant's two applications, the respondent declined to take further part in the proceedings alleging that this was essentially an unfair trial. On the opening day she removed herself from the proceedings. She did however arrange for a stenographer to be present throughout the application.
 83. Mrs. Kelly objected to the proceedings on the basis that the case not being properly before the court, the court has no jurisdiction to entertain the applications that have been brought before it by the applicant Mr. Murphy. The respondent submits that both 2014/333COS and 2014/484COS proceedings are 'impossible at law' as the notices/motions of re-entry were 'defective', being based on the orders of Gilligan J. of 5th March, 2015, the validity of which is contested by the respondent. The respondent submits that, where an application for re-entry is made, grounded upon and solely reliant on a contested order, in this case being the order of 5th March, 2015, the effect of vacating the said order of 5th March, 2015 rendered the

application for re-entry 'void'. She contends that the order of White J. on 17th October, 2016 re-entering the proceedings relied on the liberty to re-enter granted by Gilligan J. on 5th March, 2015. Since the said orders made on 5th March, 2015 were wrongly expressed to have been made on consent, she submits that the order of the 5th March, 2015 and the subsequent order of White J. on 17th October, 2016 are 'invalid'.

84. The second-named respondent contends that she has been subject to 'glaringly obvious breaches of law' due to the 'failure, refusal or negligence' of the High Court to follow and adhere to what she regards as 'standard procedural requirements as defined and set out in law'. The respondent is of the opinion that the various judges who have been involved in hearing these proceedings erred in law having 'failed, refused and/or neglected to bring the full facts of these matters' to the court's attention. The respondent claims to have been 'grossly prejudiced' as a result and further contends that this court has demonstrated 'unacceptable bias' by continuing to hear the applications of Mr. Murphy when, according to the respondent, the court is 'legally barred' from doing so.
85. The second-named respondent also submits that she has been 'discriminated against' by all of the judges mentioned herein, because she contends the applicant's submissions have been taken on board and anything put forward by the respondent has been dismissed as 'vexatious'. On this ground the respondent submits that she cannot receive a fair hearing and/or due process in the course of these proceedings, and that such cannot be 'permitted to stand in a properly constituted court of law'. The respondent opines that serious injustices are being perpetrated against lay litigants, as the law 'cannot be bent and twisted to suit particular litigants', and that the courts herein are being used in order to facilitate the 'unlawful practices' of the applicant.
86. The respondent submits that these proceedings cannot be heard due to breaches of O. 40, rr. 4, 6 and 9 of the Rules of the Superior Courts. She reiterates the complaints made to Baker J., Cregan J., and White J. that the affidavits are deficient in that they do not contain the address of the deponent, nor the time of the swearing of the affidavit. She contends that the applicant's affidavits contain statements which are untrue and therefore "perjurious", however she did not identify any particular averment by the applicant to be untrue. Despite repeated opportunity to do so the respondent has filed no substantive reply and has not controverted any of the factual details contained in the applicant's affidavits.
87. Furthermore the respondent submits that the applicant does not have requisite standing to bring these proceedings because of the errors contained in the order of Baker J. on 17th February, 2014. The respondent submits that this order was never perfected and that the applicant is seemingly operating on foot of a "spurious order" of the Masters Court which purportedly appoints the applicant as liquidator. She submits that the purported order grants reliefs that were not available under

the Companies Acts, and that the reliefs were wrongly sought in proceedings which were brought by Costello Transport Limited. As a result, according to the respondent, the applicant was never in possession of a lawful and perfected order appointing him as liquidator and as such there is no legal basis for the applicant to be acting as liquidator and/or for issuing proceedings as liquidator or otherwise on behalf of the company.

88. The respondents submit that the application under the "Slip Rule" should have been brought in the name of the applicant, or in the name of Kelly Trucks Limited, and not in the name of Costello Transport Limited because the applicant was not entitled as the liquidator to go back in to court as Costello Transport Limited. She contends that as the liquidator, he could only go in in the name of Kelly Trucks Limited or in his own name. On this basis the respondents suggest that the applicant sought reliefs which were only 'legally available' to the applicant in his capacity as the alleged newly appointed liquidator and were not available to Costello Transport Limited. The respondent contends that it is "outrageous" that the applicant can seek various reliefs under the Companies Acts while being in breach of same himself, and submits that the applicant has not come to court with "clean hands". The respondent contends that the liquidator is bound under s. 231(1)(a) of the Companies Act 1963-2012 "to bring or defend any action or other legal proceeding in the name and on behalf of the company", or in his own name. The court observes that s. 231(1) deals with a liquidator in a winding up by the court and not with a voluntary liquidation.
89. The respondent contends that the applicant, along with Costello Transport Limited and their respective solicitors have all acted "in concert" in furtherance of their own "financial interests and to the detriment of the actual creditors" of the company. She states that the first and second-named respondents are the greatest and only secured creditors because of their claimed loan and crystallised charge. The respondent further asserts that the manner of conduct of these proceedings shows the "lengths" that the applicant and his counsel 'are prepared to go...so as to achieve their goals'."
65. With regard to the slip rule, it is plain with reference to paragraph 88 that in the course of the proceedings before Murphy J. Ms. Kelly either could have or did contest the validity of the orders made in February 2014 and in May 2015.
66. At paragraph 94 Murphy J. concludes that portion of her judgment by saying:-
- "The respondent submits that, rather than calling for these proceedings to be re-issued, that the court must dismiss the entirety of the proceedings. The respondent also seeks the removal of Mr. Murphy as liquidator of Kelly Trucks Limited owing to his 'outrageous incompetence' and also seeks an order forbidding him from ever holding the position of liquidator again in the future. The respondent also seeks for the original liquidator, Mr. Singh, to be reinstated as liquidator of the company."

That of course is one of the orders which Ms. Kelly seeks now.

67. The other relevant portions of the judgment of Murphy J. are paragraphs 134 – 136 as follows:-

“134. This case was heard over a period of eight months and was adjourned on multiple occasions in order to facilitate the delivery of affidavits. Adjournments were also given so that the DAR could be produced for the multiple hearings which took place during 2015, 2016 and 2017. This court wished to ascertain precisely what took place in the course of these proceedings for the avoidance of further dispute, and in the absence of agreement between the parties as to what had transpired before various judges of this court. The court observes that there were difficulties in this process and the court ended up with the somewhat onerous task of setting out the multiple events that have occurred in multiple courts over the course of these proceedings.

135. At the commencement of the hearing on 15th June, 2017 the second-named respondent presented to the court a special case pursuant to O. 34, r. 5 of the Rules of the Superior Courts in which she raised as a preliminary issue the jurisdiction of the court to embark on the hearing. Her special case is set out in extenso at para. 80-92 of this judgment. Essentially, she argues that this application is still before Cregan J., before whom the applicant’s motion to amend his application and Mrs. Kelly’s motion seeking declarations as to the deficiencies and admissibility of grounding affidavits, first came on 2nd March, 2015. Mrs. Kelly maintains that since those applications are still extant the orders made by other judges such as Gilligan J. in the interim are null and void. As set out earlier in this judgment the motions which came before Cregan J. on 2nd March, 2015 were ultimately disposed of before White J. on 22nd June, 2015 when the applicant’s motion to amend the application was adjourned generally and the respondent’s motion seeking declarations of deficiencies and inadmissibility of affidavits was struck out.

136. As can be seen from the history of this application Mrs. Kelly has repeatedly sought to go behind orders made by various judges of the High Court, in order to advance an argument that this court has no jurisdiction. The mechanism provided by our law for questioning the validity of an order made by a court is an appeal that order, to a higher court or, in appropriate circumstances, to seek judicial review. Mrs. Kelly has appealed or sought to appeal multiple orders made by the High Court in the course of this application, including the original order granting judgment to Costello Transport Limited arising from the supply of a defective truck, and the order removing Mr. Nehaal Singh as liquidator, and the order made by Baker J. 13th April, 2015 under the “Slip Rule”, all of which have been unsuccessful. Mrs. Kelly has also sought to challenge before me the validity of orders made by Gilligan J. and White J. Mrs Kelly is simply unwilling to accept the validity of any court order with which she is not in agreement, be that an order of the High Court, the Court of

Appeal or the Supreme Court. This court cannot and will not look behind the orders made by other members of this court, or courts of superior jurisdiction to this court, whose rulings I am bound by law to follow. Accordingly the court finds that Mrs Kelly's arguments are fundamentally misconceived and rejects her preliminary claim on the issue of jurisdiction."

68. Lest there be any doubt but that Ms. Kelly sought in the proceedings before Murphy J. to agitate the issues that she now agitates before me I refer to the Notice of Appeal launched by Ms. Kelly against the ruling of Murphy J. In that notice of appeal, the "Ground of Appeal" are set out as follows:-
- "1. Ms. Justice Murphy erred in law by failing to accept and or recognise after the DAR for the original hearing 2014/28/COS was made available to her, and that the taking up of same DAR by Anne Kelly was Ordered by Murphy J. Wherefore Ms Justice Murphy erred in law by failing to take Judicial notice when asked/required by Anne Kelly of the fact that Ms. Justice Baker Erred in law by removing and appointing liquidators under s.228 of the Companies Acts 1963-2006, a remedy which was/is unavailable at law, causing the said Order to be legally invalid and of no legal force or standing at law as the remedy was legally unavailable to Baker J under s.228 and as a consequence of same Baker J / The Court was deprived of Jurisdiction inter alia. It must be legally noted that at no stage was Ms. Justice Murphy ever asked and or required to look behind the Order(s) of Baker J., (17/02/2014 as unlawfully amended on 13/04/2015). Rather to merely pause the proceedings to facilitate a review and or Order 28 rule 11 application inter alia back before Baker J. to correct her errors in her Judgment of 13/04/2015, which Murphy J continuously refused to do, causing unnecessary proceedings to continue under colour of law, and depriving herself/The Court of Jurisdiction in the process.
 2. A fact in law relating to point 1 above is as follows:- Baker J enjoyed no Jurisdiction whatsoever on the 13/04/2015 to correct and or amend her Order of 17/02/2014 as is clearly evidenced and confirmed by the DAR of 17/02/2014 where her Judgment of 13/04/2015 making amendments caused the Order to reflect and Order which simply was not made on the 17/02/2014. The Order of 17/02/2014 as amended by Judgment of Baker J of 13/04/2015 order now spuriously and falsely claims that Baker J appointed the Respondent (Gerard Murphy) as liquidator of Kelly Trucks Limited (In Liquidation) under s.277. This is simply untrue and the DAR of 17/02/2014 clearly demonstrates that Baker J unlawfully acted and appointed the Respondent under s.288 wherefore Baker J could not just correct such a scenario, and the same could only ever have been dealt with by means of an Appeal which did not happen, nor has the Respondent ever attempted to raise an appeal pertaining to same. Wherefore the Respondent clearly enjoys no legal or otherwise standing before this Court in proceedings in which he was lawfully entitled to instigate. Wherefore Murphy J has erred in law by relying upon a most unlawful practice whereby the original Order as unlawfully made under s.228 and as witnessed by the DAR of 17/02/2014 has been unlawfully manipulated and

cannot support the Judgment and or the Orders as made by Murphy J, wherefore it behoves this Court to clarify the position of the Order which Murphy J's Judgment and Orders depend upon, and which it is easily at law recognised that as Murphy J suggests in her Judgment that the standing of the Respondent is ok by the virtue of the Judgment of Baker J of 13/04/2015 as is so heavily relied upon by Murphy J in her Orders which are on appeal in the herein. The Respondent must be lawfully appointed under s.277 of the Acts to have issued his proceedings, and this quite simply is not legally the case.

3. Ms. Justice Murphy Erred in law by permitting two applications where the legal standing of the Applicant (Gerard Murphy) was and is vigorously contested, to be heard without ever critically or otherwise validating the standing of the Applicant when legally required to do so, prejudicing the Appellants case and infringing the Appellants rights inter alia.
4. Ms. Justice Murphy erred in law and failed in her Duty to bring all of the material facts pertaining to the unlawful appointment of the Respondent under s.288 of the Acts, particularly when all of the material facts were placed in front of her, where Murphy J., was legally obliged to comprehend and understand same at law, and where there are conflicting Orders which she intends to rely upon, to ascertain the lawfulness of same, where Murphy J ought to have instructed the Respondent and his Counsel to account for the legal anomalies in the amended Order of 17/02/2014 and the DAR of 17/02/2014 where the Original Order was amended by Judgment of Baker J of 13/04/2015 to reflect a position which is wholly untrue and fraudulent. Murphy J has the DAR in her possession and has had same prior to making the Orders on appeal in the herein, wherefore it is legally and factually impossible for her not to know of the conflict between the amended Order of 17/02/2014 and the DAR (What actually happened, was ordered) and the consequences of same for her Judgment and Orders. In fact the DAR had been readily available to Murphy J at all material time during the hearing of the herein matters.
5. Ms. Justice Murphy Erred in law by failing to ascertain the facts of the herein matter and the lack of legal standing of the Respondent particularly after Murphy J confirms in her Judgment as follows:- *"This Court wished to ascertain precisely what took place in the course of these proceedings for the avoidance of further dispute."* And where she claims that she ended up with the *"somewhat onerous task of setting out the multiple events that have occurred in multiple courts over the course of these proceedings"* Wherefore it is a most worrying development when a Judge has undertaken to get to the bottom of all facts, and the most glaring fact that one party in the herein has actually shown Ms. Justice Murphy undeniable evidence of the lack of legal standing of the Respondent in the herein, yet Ms. Justice Murphy failed, refused and or neglected to ascertain same facts at law after being made aware of the legal situation and the conflict of the amended Order with the DAR. Wherefore it is not too outrageous to suggest that there may very well be a particular willingness on the part of Murphy J. to not ascertain the true facts,

which raises a far more serious set of allegations, and where in the interests of Justice a file ought to be immediately sent to the DPP as the failures pertaining to the herein are far more than incompetence and require adequate investigation.

6. Ms. Justice Murphy Erred in law by refusing to hear lawfully issued Motions by the Appellants where the legal deficiencies of the Respondent were sought to be clarified at law, where as a consequence of same the Appellants factual case pertaining to the absolute lack of legal standing of the Respondent (Gerard Murphy) were suffocated and the Respondent allowed and facilitated to unlawfully prevail under colour of law while being unlawfully appointed liquidator by Baker J under s. 228 of the Companies Acts 1963-2006 as is reflected/witnessed and confirmed by the DAR of said hearing of 17/02/2014. The Respondent has no legal right to be the respondent in the herein Appeal, just like the Respondent has no legal right whatsoever to have issued the proceedings on appeal in the herein Appeal 2014/333COS and 2014/484COS. No amount of legal manipulation and showboating by Counsel and the Judiciary involved in this disgrace will ever change and or alter these legal facts.
7. Ms. Justice Murphy Erred in law by as confirmed by her, refusing and failing , to read and take account of a very specific Affidavit proffered to the Court by Anne Kelly sworn on 30/10/2017 (colour coded) where had Ms. Justice Murphy adequately perused said lawfully Sworn Affidavit, and brought the facts of this Affidavit of Anne Kelly into her knowledge, Ms. Justice Murphy would have had the legal clarity required to know that the Respondent was unlawfully before her with no legal standing and no legal rights and or ability to issue the proceedings which were before Ms. Justice Murphy being the proceedings the subject matter of herein appeals 2014/333COS and 2014/484COS.
8. Ms. Justice Murphy Erred in law by breaching her duty to the Appellant herein where Ms. Justice Murphy persistently refused to take stock of the legal facts being laid before her. Ms. Justice Murphy had and has a duty to both parties in all cases to ensure the legal validity of each party is correct and verified. Ms. Justice Murphy enjoys no legal right and or ability to hide behind any Order of the High Court which has been shown and demonstrated to be inauthentic.
9. Ms. Justice Murphy Erred in law by solely relying upon an Order of Baker J 13/04/2015 (said Order unlawfully amending and interfering with the Order of 17/02/2014 as factually made by Baker J.) out of the High Court, when it had been clearly demonstrated to Murphy J, and where it is legally safe to claim that Murphy J at material times when hearing the matter and making her Judgment that she was aware of the legal defects concerning the Order she was wholly reliant upon, and or at minimum ought to have been critically aware of same, and that there were serious legal issues pertaining to how such an Order emanated from nothing but unlawful practices and procedures inter alia. Murphy J could not have made her Judgment and subsequent Orders without Baker J's Judgment which she cites in her

own Judgment, where it is impossible at law for Murphy J., to not have known the original Order appointing the Respondent in the herein was factually made by Baker J under s.228 of the Companies Acts as witnessed and confirmed by the DAR of 17/02/2014, the DAR which the taking up of was sanctioned / ordered by Murphy J, and which Murphy J cannot feign ignorance of inter alia, as it has been cited to her on numerous occasions, and is contained in Sworn Affidavits which were before her at material times prior to her Judgment and subsequent Orders being made.

10. Ms. Justice Murphy Erred in law by failing and refusing and or neglecting to bring the entirety of the facts of the matter forward in her Judgment, which in fact is heavily one-sided and biased to say the least, and where her Judgement is simply untrue and conflicting with the legal facts of the matter.
11. Ms. Justice Murphy Erred in law by failing, refusing and or neglecting to amend and or correct mistakes which were pointed out to her, and likewise Ms Justice Murphy's Registrar failed in her duty to the Appellants when the Registrar was aware of errors and in the absence of consent pertaining to same is legally obliged to bring the matter back before the Court where the Court can lawfully deal with the same. The Registrar is likewise legally obliged to be aware of her legal obligations to the Court and the Parties at all material times. The Appellants have been legally prejudiced by the herein scenario's inter alia.
12. Ms. Justice Murphy Erred in law by presiding over a situation where the Appellants were never afforded the opportunity during the hearing process to pause the hearing process so as to make applications similar to those directed by Creegan J when he was made aware of same, It must be legally noticed that Creegan J did not instruct and or suggest that the Respondent go back before Baker J and manipulate the Court and or cause the Court to make an Order as witnessed and confirmed by the DAR of 17/02/2014. This is factually what happened, and had the Respondent not tricked Baker J with false and untrue Affidavits convincing Baker J that she had actually made her Order under s.277 which is simply untrue and same untruth is confirmed by the DAR of 17/02/1024, meaning had the Respondent conducted himself lawfully and accordingly Murphy J would not have been caused to hide behind an inauthentic Order so as to find in favour of the Respondent in her spurious Judgment and Orders which simply cannot stand at law, as same are based upon untruths and an Order which perverts the course of Justice, as same Order of Baker J was unlawfully altered on 13/04/2015 by Baker J upon a spurious application under O.28 R.11 which was not legally permissible under the legal circumstances, and these legal facts are borne out and witnessed and confirmed by the DAR of 17/02/2014 which clearly states as follows:- *"I am satisfied to make an order replacing Mr. Singh, sorry. First of all removing Mr. Singh as liquidator of the company pursuant to section 228 of the act. And an order pursuant to that act appointing Mr. Gerard Murphy as liquidator in his stead, and I do so for the reasons I've outlined."* Where there is no legal basis for Murphy J's Judgment and or Orders, and no lawful means for same to prevail and or stand at law, as they are based

upon untruths and serious legal misrepresentations by the Respondent and his legal advisors whom are both critically and legally aware that their Client Gerard Murphy was unlawfully appointed liquidator by Baker J on the 17/02/2014 under s. 228 of the companies Acts 1963-2006 as is clearly witnessed by the DAR of 17/02/2014 and any other scenario put forward by the Respondent and or the Respondents Counsel and Solicitors is wholly untrue and known by/to them to be wholly untrue, and these persons are all in possession of the DAR and indeed the Transcript of 17/02/2014, yet they, The Respondent and the Respondent's Counsel and Solicitors shamelessly and unlawfully persist in the herein knowing their client was and is unlawfully appointed. The Court must take Judicial notice of these facts in law during the hearing of the herein Appeal, and take the appropriate actions pertaining to same." [Original Emphasis]

69. The allegation contained in paragraph twelve is one of trickery, of untruth and effectively of perjury against the applicant before Baker J. Baker J. herself is described as "spurious". The quote from the DAR upon which Ms. Kelly relies so heavily in this application was deployed by Ms. Kelly in front of Murphy J. and it is plain that the nature of the application that she made before Murphy J. (also part of her appeal against the order of Murphy J.) is in all material senses identical to the argument that is made before me. If I am incorrect about that, the argument made before me is certainly an argument which could have been made before Murphy J. but in truth my primary finding is that there is no material difference between the submission made to Murphy J. and not accepted by her.
70. I now refer to the motion papers and the affidavit for the application brought in 2019 before Baker J. The grounding affidavit of Ms. Kelly (headed "Order 28 rule 11 Correction of Errors" which was filed on 22nd February 2019) sets out the complaints that Ms. Kelly then agitated before Baker J. subsequent to the judgment of Murphy J. At paragraph two she referred to again what she described as the critical element of the DAR. At paragraph three she said as follows:-

"I say that a very sinister set of developments have arisen in the herein where it now becomes apparent that the views expressed by me previously to Ms. Justice Baker and various other judges of the High Court in the herein or related matters being what the applicant wants, the applicant appears to get regardless of the consequences. I further say that I have been branded by Ms. Justice Baker and various other judges of the High Court as being difficult, cheeky and refusing to accept the orders of the High Court but the facts are now well and truly now before the High Court and it is obvious that the original judge Baker J. in the hearing debacle was and is wrong in law. There are legal maxims which speak self evident truths [...]"

One of those maxims is both quoted and translated.

71. At paragraph six of the affidavit Ms. Kelly says the following:-

"I say then that Ms. Justice Baker is being rather economical with the truth in her judgment of the 13th April 2015, in fact I put it to Ms. Justice Baker that she has in fact lied in her judgment and as a consequence has misled her own court and perverted the course of justice in the herein where Ms. Justice Baker displayed a willingness to give the applicant whatever it wished regardless of the legality of same."

Again one is struck by the similarity of language between what was said in the application in 2019 made to Baker J. that she had misled her own court and one of the central premises of the application before me which is that the court had misled itself.

72. At paragraph nine Ms. Kelly fleshes out her complaints about Baker J. when she says:-

"I say that this matter can be discussed and debated any which way but when the simple facts are taken into account as follows Ms. Justice Baker acted foolishly and unlawfully when rushing into removing and appointing liquidators under section 228. Ms. Justice Baker was herself only a novice judge on the 17th February 2014."

There follows another adverse comment about Baker J. with which the parties will be familiar. The fourth bullet point:-

"Ms. Justice Baker did on the 17th February 2014 and of her own volition make orders under section 228 of the Acts which were not legally available to her and then on the 13th April 2015 untruthfully confirmed that she did indeed make same orders under section 277. Thus Ms. Justice Baker and as the applicant saw it 'fixing a problem' when in fact such an outrageous application and in turn order which were and contrary to the court DAR of the 17th February 2014, which clearly demonstrate that Ms. Justice Baker acted under section 228 and it was not open to Ms. Justice Baker to 'fix the problem' under Order 28 rule 11."

I was going to say that has a striking similarity with the argument made before me. In fact it is materially identical to the argument made before me that Baker J. was not honest in the way in which she had handled these matters.

73. At paragraphs 11 and 15 of the Notice of Motion as follows:-

"11. An Order confirming that Baker J. enjoyed no right and or ability whatsoever, legal or otherwise on the 13th day of April 2015, or on any date for that matter to alter and or amend the Order which she factually made under section 228 of the Companies acts 1963 – 2006 on the 17th day of February 2014 as is critically and legally evidenced and demonstrated by the Court DAR for the hearing of 17th day of February 2014.

[...]

15. An Order confirming that Mr. Singh stands in law as not being removed lawfully and or at all, as liquidator of Kelly Trucks (in Liquidation) as a consequence of the

failures of Baker J to act in accordance with law as clearly evidenced by the Court DAR of the 17th day of February 2014.”

74. I would remind the parties of the order sought from Baker J. at paragraph 14 of the Notice of Motion was an order confirming that Baker J. was:-

“[W]rong in law to make orders on the 17th February 2014 under section 228 of the Acts removing and appointing liquidators and that such reliefs were not available to Baker J. and were and are wrong in law.”

Ms. Kelly has not even attempted to distinguish those orders being sought by her from Baker J. almost a year ago with the orders she currently seeks. But it seems to me that the gist of the order sought from Baker J. and the basis of the orders sought from Baker J. are identical to the orders sought before me today. If I am correct in that it simply is not open to another High Court judge, no matter how much of a novice I am, to second guess a determination by another High Court Judge made by the same applicant against the same interested party, Mr. Murphy, in circumstance where the relief sought and the basis for that relief is materially the same.

75. The ruling of Baker J., was delivered on the 7th March 2019. Of significance is her description (at paragraphs 9 – 12 inclusive of that ruling) of the Motion and the description as to what was involved:-

“9. The present judgment is given in regard to an application brought by Mrs Kelly by notice of motion entitled “Order 28 Rule 11, Correction of Errors” dated 22 February 2019, by which she seeks various reliefs arising from the 2015 judgment.

10. The motion was returnable on 1 March 2019 on notice to Messrs. James Riordan & Partners Solicitors. The motion is grounded on the affidavit of Mrs Kelly and while counsel appeared for the respondent, no replying affidavit was served.

11. Mrs Kelly argues that by availing of the “Slip Rule” to make the amendments made by the 2015 Order, there was impermissibly added or substituted an order which was never part of the original judgement or order made in February 2014.

12. The notice of motion seeks unusual relief and I propose setting out in general terms the jurisdiction purported to be relied upon by Mrs Kelly before dealing with the specific reliefs sought. “

76. I refer below to paragraphs 23, 24, 27, 32, 34, 35, 36, 37, 38, 42, 44, 47 – 49 52, 55, 57, 59, 61 – 63 64 and 65, the conclusion with regard to the 12th, 13th relief and the 14th relief at paras 67 – 69 and at 70.

77. When Baker J. dealt with the application with regard to the position of Mr. Singh. Also of relevance are paragraphs 72 and 75 of the ruling of Baker J. The relevant paragraphs read as follows:-

- “23. Mrs Kelly argues that there was an error made in the exercise of the “Slip Rule” or inherent jurisdiction of the Court when, in 2015, the 2014 Order was corrected. She points to a single sentence in the digital audio recording (“DAR”) of the hearing on 17 February 2014 in support of her proposition. She pleads that the 2015 Order was made wrongly, that there was a legally inappropriate reliance on the “Slip Rule”, and that the exercise of the jurisdiction invoked on 13 April 2015 was “unsupported and unsubstantiated” (para. 5 of her grounding affidavit), that the order was made unlawfully and is what she describes as a “spurious Order” (para. 10 of her grounding affidavit).
24. The arguments on which Mrs Kelly relies are arguments relating to the jurisdiction exercised by me on 13 April 2015 and, in essence, Mrs Kelly’s argument is that the jurisdiction was wrongly exercised for improper purposes and without any legal or factual basis. She alleges that there exists an error in the 2015 Order, but not an error of the type envisaged by O. 28, r. 11 RSC or by the authorities which identify the inherent jurisdiction of the Court to correct errors. The errors she alleges are not ones deriving from an accidental slip or omission, or arising by reason of an oversight. Indeed, the opposite proposition is more apt, and she rather points to an error in my characterisation of the omission, accidental slip or mistake in the 2014 Order which she now asserts were not genuine mistakes, or omissions of an accidental type, or errors which arose by way of oversight. [...]
27. I adopt that statement of the law and, in my view, the matters raised by Mrs Kelly are quintessentially matters for an appellate court. This Court is functus officio, and I have no jurisdiction to set aside or vary the order made. [...]
32. In the present case, I am satisfied that even without the jurisdictional arguments already considered above, the delay in bringing the application has been such that it would not merely be inequitable, but wholly wrong, to accede to the application made by Mrs Kelly having regard to the number of steps that have occurred in this litigation since the time the order was made in April 2015 and, in particular, having regard to the reliance on that judgement by Murphy J. in her judgement in *In re Kelly Trucks Ltd (In Voluntary Liquidation)*. [...]
34. Mrs Kelly seeks what is described as an “order in the interests of justice” that the “authenticity and accuracy of the Court DAR of 17 February 2014 be made” and an ancillary order that the Court “does not dispute or contest” the contents of the DAR from that day.
35. In support of this application, Mrs Kelly has exhibited a transcript of one page of the DAR of 17 February 2014 which is an extract from the ex tempore ruling given on that date by which I replaced Mr Singh as liquidator of the Company and replaced him by Mr Murphy for the reasons therein previously outlined. A reading of the transcript shows that the order was made or purported to be made pursuant to s. 228 of the Companies Act 1963.

36. The record of the DAR speaks for itself, and I do not propose to make any order confirming its "authenticity or accuracy" as sought by Mrs Kelly. There is no need for such order, the DAR is the transcript of the hearing the order made, the basis of making that order and the section of the Companies Act 1963 under which it was purported to be made.
37. As will appear later in this judgment, the provisions of s. 228 of the Companies Act 1963 were not correctly identified as the basis of the jurisdiction under which the 2014 Order was made.
38. This relief seeks an order that I, as judge who heard the matter on 17 February 2014 "[accept] that [I remember] the matter quite well" and that the relief made under s. 228 of the Companies Act 1963 was "not legally available" and made in error.
42. The third relief sought is an order correcting what Mrs Kelly's grounding affidavit described as "untrue/false section" of the 2015 judgment, where I made reference to the grounding affidavit of Mr O'Regan which Mrs Kelly now says contained no averments in support of the ruling. At para. 13 of the 2015 judgment I said as follows:
- 'The order recites that I made an order pursuant to s. 228 of the Companies Act 1963-2006. Counsel suggests to me, and it is stated in the grounding affidavit of Mr. O'Regan, that I could not have made an order under s. 228 of the Companies Act 1963 as such an order would have been relevant and possible only were this to be a court appointed liquidator i.e. an official liquidator appointed pursuant to an order where the court wound up this company. Again I accept what counsel says, and I accept the contents of the affidavit of Mr. O'Regan.' [...]
44. In the circumstances, I do not understand the basis on which this relief is sought. [...]
47. The fourth relief that Mrs Kelly seeks is an order seeking that what she describes as "untrue/false" sections of the 2015 judgment be corrected. She recites part of that judgment and her argument is that it was given in error. She gives two reasons for her assertion: First, that an explanation as to why the 2014 Order was erroneously drawn up was not, in fact, contained in the documents before me; and second, that the explanation was "concocted" either by counsel or by myself.
48. The motion paper seeks to involve the registrar who sat with me on 17 February 2014 in an unnecessary and, in my view, scandalous manner.
49. Insofar as Mrs Kelly suggests that the transcript of the DAR on 17 February 2014 shows that the 2014 Order was indeed made under s. 228 of the Companies Act 1963 Mrs Kelly is correct, but for the reasons already set out in my 2015 judgment,

that was an error, and was corrected. Mrs Kelly believes that the correction was either wrongly done or done in excess of jurisdiction. [...]

52. Mrs Kelly challenges the very jurisdiction relied on to make the 2015 Order and the appropriate remedy is an appeal of that order. [...]
55. The seventh relief sought is an order correcting what are described as the "untrue/false" parts of the 2015 judgment on the grounds that it is contrary to the contents of the transcript of 17 February 2014. [...]
57. The eighth relief sought by Mrs Kelly relies on the "failure, refusal and sheer neglect" of the High Court to uphold her rights under the Constitution and under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and an order that Ms Logan, or another suitable commissioner of the Irish Human Rights and Equality Commission ("IHREC"), be appointed as amicus curiae for the remainder of the process. [...]
59. The ninth relief sought is an order that I would confirm that I "willingly and knowingly" or "negligently" made an order under O. 28 r. 11 RSC, and in circumstances where I knew that the jurisdiction to do so does not exist. [...]
61. The tenth relief sought is an order that, in giving the 2015 judgment, I "willingly and knowingly misled [my] own court" or in circumstances where I ought to have known that the factual matters relied on were untrue.
62. It is asserted that in making the 2015 Order I "brought false and unsubstantiated statements" into the judgment "so as to pervert the true facts and so as to facilitate the unlawful altering and perverting of a Final and perfected Order" of the Court.
63. Again, the complaint is one as to the correctness of the 2015 Order and the jurisdiction to make the order, and the appropriate remedy is an appeal of the 2015 Order.
64. The eleventh relief sought is an order that I would confirm that I "enjoyed no right and or ability whatsoever, legal or otherwise" to alter or amend the 2014 Order.
65. Again, that is a matter for an appeal of the 2015 Order, but by way of observation, I note that the 2015 Order was made in the context of a motion of 12 March 2015 which sought the rectification of the record under the "Slip Rule" or in the inherent jurisdiction of the Court. [...]
67. For the reasons already outlined above, the matter is more properly one for an appellate court hearing an appeal of the 2015 Order.
68. The thirteenth relief is for an order that the 2014 Order was not legally available and was wrong in law. This is, quintessentially, a matter for appeal and if the 2014

Order made on 17 February 2014 was indeed wrong, as is asserted, the remedy was an appeal of that order.

69. The fourteenth relief sought is identical or broadly identical to the order sought at para. 13 and, for the same reason, is a matter in respect of which an appeal of the 2015 Order may lie.
70. The fifteenth relief sought is an order that I would confirm that Mr Singh remains liquidator of the Company on account of the “failures” of my Court to act in accordance with the record of the DAR of 17 February 2014. [...]
72. The matters that come before me now are matters which are quintessentially matters of appeal. I note that the Court of Appeal has given a judgment on 19 October 2015 in regard to certain aspects of this liquidation, and that the Supreme Court, in its determination on 8 March 2016 [2016] IESCDET 36 and judgment of 15 December 2016 (Unreported, Judgment of the Court) has also dealt with aspects of the matter. I already noted that, in her extensive judgment of 15 January 2019 in *In re Kelly Trucks Ltd (In Voluntary Liquidation)*, Murphy J., *inter alia*, considered the order made by me by which Mr Singh was replaced as liquidator. The matter has clearly proceeded some distance. [...]
75. For the reasons stated, I therefore propose to refuse all of the reliefs sought in the notice of motion.”
78. That leaves us with the uncontroversial proposition that I cannot look behind those two orders made by Murphy J. and Baker J. respectively given the nature of the application made to them by Ms. Kelly and the basis of those applications. But if I am wrong in my finding that those applications were materially identical in all respects to the current application before me I think that the rule in *Henderson v. Henderson* (1843) 3 Hare 100 will apply. Again it may not be a rule with which Ms. Kelly is familiar but it is set out in Delaney and McGrath, third edition by reference helpfully to a judgment of the current Chief Justice. The commentary and the section in which Clarke J. appears at paragraph 32.148 reads as follows:-

“A useful summary of the distinction between *res judicata* and the rule in *Henderson v. Henderson* and the consequences of their application set out in the judgment of Clarke J. in *Moffatt v. ACC*:

Res judicata per se applies where the matter sought to be litigated has already been adjudicated by a court of competent jurisdiction. *Res judicata* can relate to the cause of action (which may involve a consideration of whether two separate causes of action arise) or an individual issue (issue estoppel). In the latter case, the issue sought to be litigated must be identical to the issue decided in the previous proceedings. The rule in *Henderson v. Henderson* on the other hand applies where a new issue is raised which was not therefore decided in the previous proceedings but is one

which the court determines could and should have been brought forward in the previous proceedings. The importance of the distinction lies in the consequences if a matter is *res judicata* then in the absence of a defence to the application of the doctrine such as fraud, the availability of fresh evidence in respect of issue estoppel only, estoppel or other special cases, the plea will necessarily succeed. On the other hand where the reliance is based on the rule in *Henderson v. Henderson* to the effect that it would be an abuse of process to allow the party concerned to raise a different issue which could have been raised in the original proceedings is well settled that the court adopts a more broad based approach.”

79. I will just intervene there to make the point that I believe that the judgments of Murphy J. and Baker J. in fact are on the identical issue now raised by Ms. Kelly, namely the validity of the impugned orders. There is no suggestion made nor could there be that the rulings of Murphy J. in 2019 and the ruling of Baker J. in 2019 were obtained by fraud.
80. At paragraph 32.152 of the same work there is the following commentary by the authors and a quote from a judgment of Lord Bingham. It reads as follows:-

“Subsequently in *Johnson v. Gore Wood* Lord Bingham in passage quoted with approval by Hardiman J. in *Medical Council* identified the rule in *Henderson v. Henderson* as an aspect of the doctrine of abuse of process the quote from Lord Bingham is as follows:

‘Henderson v. Henderson abuse of process is now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them, the underlying public interest is the same that there should be finality in litigation as a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation in the interest of the parties and the public as a whole.’ ”

I am clearly not bound by *Johnson v. Gore Wood*, but in any event I agree with the sentiments expressed and approved of by Hardiman J. in the Supreme Court. It is intolerable that Mr. Murphy should again be, to use the language of Lord Bingham, vexed in the same matter with regard to the validity of the orders which governed his appointment. They have been raised *ad nauseum* now by Ms. Kelly and indeed litigated in the appellate courts apparently by Mr. Singh, to no effect whatsoever. Therefore, in the event I am wrong about the matter being *res judicata*, I would and do apply the rule in *Henderson v. Henderson* to dismiss the application on that basis alone.

81. There is a further freestanding reason why I would dismiss the application to set aside the orders and it is this. The parties to the original orders in terms of the persons either applying for the orders or notified of the orders were not confined to Mr. Murphy and Ms. Kelly. I note that the Notice of Motion in these proceedings is stated to be on notice to the solicitors for Mr. Murphy and also the solicitors for Costello Transport Ltd. There was no proof of service on the solicitors for Costello Transport Ltd. but much more fundamentally

there was no attempt to make Mr. Singh a notice party to the current application. Mr. Singh must have, regardless of what he would have said to the court, a profound interest in the outcome of an application that seeks to set aside various orders as obtained by fraud. As I understand the logic of Ms. Kelly's position and the intended result of this application by her, it would have the effect that /Mr. Singh would be reinstated as liquidator of a company which he ceased to act as liquidator of in February of 2014. Mr. Singh might have had a lot to say about that but he is not a notice party to the application in any way shape or form. I have not considered further the possibility of there being other appropriate parties that should have been given notice of the application moved before me on Tuesday for example Mr. Kelly may well have been an appropriate notice party but the absence of Mr. Singh as a notice party appears to me to be a fatal flaw procedurally in the application brought before me on Tuesday of this week.

82. As I have said I have based my decision (on the fraud issues before me) on the doctrine of *res judicata* – which is the reason I have gone into (at some length) the precise issues raised by Ms. Kelly in the earlier applications before two other judges last year; if I am wrong about that then the rule in *Henderson v. Henderson* applies; and in any event the application is procedurally fatally wounded as a result of the unexplained failure to join at least one necessary notice party.
83. I will now, if I am wrong in all of that, deal with the substance of the allegation of fraud. I am diffident about doing so because, as I have said, this is a matter which was fully brought before Murphy J. and Baker J. and properly dealt with by them subject to any upset on appeal of their determinations which of course may happen. But for the sake of completeness and for no other reason, given the extreme nature of the allegations made by Ms. Kelly I would comment that none of the allegations of fraud are in fact established. In particular, given the requirements in the jurisprudence, both the judgments of McKechnie J. and Fennelly J., I think it fanciful to suggest that the depiction of a motion as a "Notice of Motion" as opposed to an "Originating Notice of Motion" constitutes an act of fraud or deceit. I think that the suggestion that stamp duty was paid at the wrong level is equally a fanciful assertion that a fraud occurred, still less did either of those events cause a fraudulent judgment to be procured. There was emphasis on a conflict of interest. However, a) that is not a fraud; b) it did not in itself procure the judgments which are impugned. The evidence of Mr. Murphy, the evidence of the solicitors which is attacked, the representations made by counsel do not in my view reach the level of "strong proof of fraud" which is required by Fennelly J. in *Kenny v. Provost, Fellows and Scholars of the University of Dublin, Trinity College* but in addition to that I think that the allegations made against those individuals are incoherent and misplaced. Finally, the allegation that Baker J. was guilty of fraud or dishonesty as well as the plethora of other allegations made against her can be met by a number of responses. Primarily, again there is no coherent or plausible evidence to support any of the allegations against Baker J. What happened is absolutely plain and dealt with in the judgment Baker J. delivered in April 2015 when she says (towards the end of the relevant quote of her judgment) the following:-

"I intended to make an order under section 277 of the Act. That was the order which was sought, that was the order in respect of which I heard arguments and that is the order I made."

84. Much play is made by Ms. Kelly of a single sentence in the DAR recording of the hearing before Baker J. in February 2014. There is a general assertion made that (while the full transcript is not I think laid before me) the DAR does not include any reference to section 277. That ignores entirely the fact that Baker J. said, in the very ruling to which I have referred, that she had read the papers over lunch because of the multiplicity of the arguments raised by Ms. Kelly and therefore had a familiarity with them. It is in no way surprising that Baker J. intended to make an order under section 277 and that the consequent order under the slip rule reflected the true intent of the court. To transmogrify what was said and captured by the DAR into a smoking gun establishing fraud is simply out of this world in terms of its leap of logic and its lack of common sense. If it fell to me to determine the substantive allegations made against all of the individuals concerned I would find in the way in which I have indicated. As I have said, that is not the fundamental basis of the ruling that I now make.
85. I therefore refuse all the reliefs sought.