THE HIGH COURT

[2023] IEHC 162

2021/3557P

BETWEEN

ANTOINETTE DARCY

PLAINTIFF

AND

AIB PLC and EVERYDAY FINANCE DAC and HILARY LARKIN and AMY BYRNE

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 29 March 2023

Introduction

1. This judgment relates to the second named defendant's application for an order pursuant to section 123 of the Land and Conveyancing Law Reform Act 2009 (the "**2009 Act**") vacating the *lis pendens* registered by or on behalf of the plaintiff against four identified registered properties, being the properties comprised in Folio 169737F Co Dublin, Folio 4988 Co Dublin, Folio 172402 Co Dublin and Folio 169731F Co Dublin (together "**the Properties**").

2. The plaintiff borrowed substantial monies (it would appear jointly with her husband) from the first named defendant in 2007 and 2008. She executed deeds of mortgage in relation to the Properties as security for the monies advanced. The plaintiff's loan and

related security was sold to the second named defendant who is now the registered owner of a charge on three of the four Properties.

3. The third named defendant is the receiver appointed by the second named defendant. The fourth named defendant appears to be employed by Mazars and was party to conversations regarding one of the Properties which is alleged to be the plaintiff's family home. It is not clear however from the pleadings in precisely what capacity the fourth named defendant is sued or what relief is claimed against her.

The plaintiff's claim in these proceedings

4. On 30 April 2021 the plaintiff issued these proceedings, seeking damages and various declaratory reliefs including: that she is the registered owner of and holds a beneficial interest in the Properties; that she is entitled to possession of the Properties; that the deed of appointment of the receiver over the Properties is unlawful; and that any attempted conveyances of the Properties by the defendants are unlawful, null and void. She also seeks an undertaking that the defendants will not sell or market or otherwise dispose of the Properties. She registered a *lis pendens* over the Properties on the same day as the proceedings issued.

5. The plaintiff then delayed in serving her statement of claim, which was not served until 15 July 2022, after she was directed to do so by Order of the High Court on 27 June 2022. The statement of claim is a confusing, poorly drafted document and not easy to follow. In brief terms however, it is pleaded that in January 2006 the plaintiff was introduced to an assistant manager employed by the first named defendant and that this manager negotiated and verbally agreed to loan a sum in excess of €4 million to the plaintiff's husband. The plaintiff alleges she was not party to such negotiations, that she

was never advised to seek independent legal advice, that she was never provided with any "*paperwork*" and that she did not sign a family home declaration.

6. It is pleaded that the loan facilities obtained by the plaintiff's husband were to be repaid from the sale of completed properties which were to be developed using the loan monies. Planning difficulties arose. It is alleged that the first named defendant required the plaintiff's husband to withdraw various legal proceedings and investigations which he had instituted concerning the refusal of planning permission for the proposed development.

7. The statement of claim pleads that on 12 April 2012 the first named defendant obtained a possession order for the plaintiff's "*family home and registered assets*". It is pleaded that on 13 September 2013 the Supreme Court overturned the possession order and directed a plenary hearing.

8. The statement of claim confirms that the plaintiff and her husband made a number of offers to the first named defendant to settle the indebtedness which were refused.

9. It is alleged that on 14 June 2019 the first named defendant "*without notice*" sold its legal rights and interest in the relevant mortgage facilities to the second named defendant. The second named defendant appointed the third named defendant as a receiver over the Properties in October 2019.

10. When the receiver sought to take possession of the Properties, the plaintiff's husband informed the fourth named defendant that one of those properties, Woodview Grays Lane, was their family home. Allegations are made that the receivers took money belonging to the plaintiff located in the family home, changed locks and appointed auctioneers to sell the family home by auction on BidX1. It is pleaded at para 29 of the

Statement of Claim that taking ongoing costs into account, "*the value of all the assets that could be obtained is €900,000 less than what [the plaintiff]is currently offering*."

11. The final paragraph of the statement of claim confirms that:

> "*The Plaintiff claims damages as against the defendants for misrepresentation, breach of contract, violations of the Plaintiffs entitlements under Section 4 [sic] the Human Rights Act 2003 and Article 1 Protocol 1 of the European Convention on Human Rights*".

The second named defendant's application

12. The motion in this case, filed on 20 May 2022, was issued on behalf of the second and third named defendants although at the hearing it was expressly said to be advanced only on behalf of the second named defendant. The affidavit grounding that motion was sworn on 18 May 2022 by Andrew McCrudden, legal manager with the second named defendant.

13. Mr McCrudden exhibits signed facility letters dated 17 July 2007 and 4 June 2008 in relation to the loan facilities advanced to the plaintiff and her husband. The letter of sanction dated 17 July 2007 is addressed to both the plaintiff and her husband at Woodview, Grays Lane. It refers to 2 facilities, the first for €9,054,000 and the second for €1,000,000 (to add to the initial sanctioned sum of €4,748,000), to fund stated property developments. The Properties are each identified as security for the loans. The Woodview, Grays Lane property is the first property identified. Both the plaintiff and her husband appear to have signed and accepted the terms and conditions of this facility on 18 July 2007.

14. The second letter of sanction dated 4 June 2008 relates to an amount of €15,808,303, being a renewal of an existing facility limit. It is a demand facility addressed both to the

plaintiff and her husband. The security includes an all sums due legal charge over Woodview, Grays Lane and the remaining Properties as well as assignments of life policies in the name of the plaintiff and her husband. The copy letter exhibited appears to be signed on behalf of the plaintiff on 4 June 2008 to confirm acceptance with its terms.

15. The extensive borrowings of the plaintiff are secured on the Properties. Mr McCrudden exhibits, at exhibit EF2 to his affidavit, a copy indenture of mortgage dated 27 January 2006 signed by the plaintiff under which the plaintiff agreed at para 3.01

> "…*on demand to pay to the Bank all monies and discharge all obligations and liabilities whether actual or contingent now or hereafter due owing or incurred to the Bank by the Mortgagor in whatever currency denominated whether on any current or other account or otherwise in any manner whatsoever (and whether alone or jointly and in whatever style name or form and whether as principal or surety) when the same are due*…".

The security is deemed to be "*a continuing security*" for the Bank (clause 9.02) and it refers to the mortgaged property by reference to land registry application dealing numbers for properties which appear to have become Folio 169731F and Folio 172402 (being two of the four Properties). There are also two other folios identified but they are not part of the Properties as described although they are stated by Mr McCrudden to have later been registered on Folio 169737F (Woodview, Grays Lane).

16. Mr McCrudden also exhibits a deed of mortgage dated 27 July 2007 which is signed by the plaintiff. It recites the mortgaged property as the property comprised in Folio 4988, being the remaining one of the four Properties. The plaintiff's signature and that of her

husband on both mortgage deeds is witnessed by the same witness whose occupation is "*solicitor*".

17. The mortgages were registered as charges in favour of the first named defendant on 6 March 2006 (Folio 169737F, Folio 172402 Folio 169731F) and on 13 August 2007 (Folio 4988).

18. A copy of the deed of transfer (redacted) is exhibited to Mr McCrudden's affidavit to evidence the transfer of the plaintiff's loans and mortgage security to the second named defendant. The second named defendant was registered as the owner of the mortgage charges on Folio 169737F, Folio 172402 and Folio 169731F on 29 July 2019.

19. Mr McCrudden avers that the plaintiff defaulted on her repayment obligations under the loan facilities and that by demand dated 11 August 2020 the second named defendant's agent demanded payment by the plaintiff of the sum of €21,334,151.20, being the balance then outstanding. That demand letter is exhibited and is addressed to the plaintiff at one of the Properties (not Woodview, Grays Lane).

20. The second named defendant appointed the third named defendant as receiver over the Properties by deed of appointment dated 10 September 2020, which appointment was accepted by the third named defendant on 16 October 2020.

21. At para 11 of his affidavit, Mr McCrudden refers to the plenary proceedings brought by the plaintiff on 30 April 2001 (as outlined previously in this judgment). On foot of those proceedings the plaintiff completed an application form for the registration of a *lis pendens* which was registered with the Central Office of the High Court on 30 April 2021.

22. Mr McCrudden avers at para 14 of his affidavit that

"*the second named defendant is directly and materially affected by the register [sic] of the lis pendens against the mortgaged properties on foot of the within proceedings. In this regard, I believe that the mortgaged security will be very difficult if not impossible to realise so long as the lis pendens are registered against the mortgaged properties*"

23. Mr McCrudden further avers at para 15 of his affidavit that he believes the plaintiff's claim for damages and expenses sustained by the plaintiff in consequence of breach of contract which she sought in the plenary summons

"*is not being prosecuted bona fide, within the meaning of section 123 of the Land and Conveyancing Law Reform Act 2009. I believe that there could be no dispute by the plaintiff that she took out the borrowings on foot of signed facility letters, and gave the mortgage security by way of signed indentures of mortgage, and therefore it is difficult to understand how she can now allege that the Second Named Defendant is in breach of contract in enforcing the mortgage security*."

24. At para 16 of his affidavit Mr McCrudden states his belief that the plaintiff has failed to prosecute her action in a timely manner despite the obligation on any person who registers a *lis pendens* on foot of proceedings, to move with greater expedition than would normally be required.

25. At para 17 of his affidavit Mr McCrudden states his belief that

"*it is reasonable to draw an inference from the Plaintiff's delay in prosecuting her proceedings, and the nature of the proceedings themselves, that the bringing of the proceedings (and the registration of the lis pendens on foot of those proceedings) was done for an ulterior purpose namely to frustrate the realisation of the*

mortgage security by the Second Named Defendant and, as such, the proceedings herein also amount to an abuse of the process of the court".

26. The final affidavit in support of the second named defendant's motion is an affidavit of Keith Vaughan sworn on 13 July 2022. Mr Vaughan exhibits a report from the Property Registration Authority (the "**PRA**") which confirms that as of 17 June 2022 the application status of the *lis pendens* was "*queried*" by the PRA. There was no update on that position by the time this application was heard by this court on 27 February 2023.

27. It will be apparent from the above overview of the grounding affidavit and the statement of claim that these documents do not present a consistent picture or even address the same issues. The statement of claim was delivered after the grounding affidavit was served and therefore it could and should have addressed the specific allegations made by Mr McCrudden. Instead, the statement of claim not only ignores the existence of signed mortgage documentation but positively avers that the plaintiff received no "*paperwork*". Furthermore, the amount of the indebtedness referenced in the statement of claim, while substantial, is a fraction of the total indebtedness. There are multiple issues referenced in the statement of claim which appear to be of little or no relevance to the issues between the parties to these proceedings such as disputes with planning authorities and other individuals involved in the planning process.

28. On the other hand, no further affidavit was filed by the defendants to address the issues raised in the statement of claim. The affidavit of Mr McCrudden does not provide any evidence of the notice of the transfer which was given to the plaintiff in circumstances where the plaintiff alleges there was "*no notice*". Furthermore, Mr McCrudden's affidavit contains no information whatsoever regarding the previous proceedings between the parties which are referenced in the statement of claim and which allegedly concern failed attempts by the defendants or some of them to secure possession of the

Properties. As I have no information regarding these previous proceedings I am not taking account of them in any way in relation to this application. It would however have been far preferable had they been explained to the court by the parties.

The second named defendant's submissions

29. Counsel for the second named defendant argued that there were two separate bases on which this court should vacate the *lis pendens* on the Properties. He argued firstly that the plaintiff's statement of claim makes no claim to an estate or interest in land. Second he argued that the registration of the *lis pendens* was for an improper purpose which he said was to apply pressure on the second named defendant in relation to the negotiations which were canvassed in some detail by the plaintiff in her statement of claim.

30. In relation to his first argument, namely that the plaintiff's statement of claim makes no claim to an estate or interest in land, counsel for the second named defendant relied on the decision of the Supreme Court in *Clarke v O'Gorman* [2014] IESC 72, [2014] 3 IR 340 where O'Donnell J (as he then was) stated at para 10 (page 346) of his judgment:

> "*In the course of this appeal it was argued on behalf of the defendant, correctly in my view, that a statement of claim which does not repeat any cause of action set out in the indorsement of a claim in the plenary summons, is taken to abandon that claim*".

31. Counsel for the second named defendant argued that any possible claim which had been advanced in the summons by the plaintiff claiming an estate or interest in the Properties had been abandoned by the omission of any such claim in the statement of claim.

32. In relation to his second argument, counsel for the second named defendant said that he was asking the court to draw an inference from the extensive reference to the settlement

negotiations in the statement of claim. The inference to be drawn, he said, was that the purpose of the plaintiff's proceedings was an invalid purpose - namely to put pressure on the second named defendant to engage in those negotiations. Counsel referred in particular to the provisions of clause 29 of the statement of claim which states as follows:

> "*To date this claimant and her husband have made several offers of settlement to Everyday. On the application for a GDPR from Mazars by this claimant's husband it was identified that this claimant and her husband are currently offering in excess of €600,000 six [sic]above the six independent valuations commissioned by Mazars. In addition, it was also identified that in excess of ten thousand euro a month for security is being paid for empty fields. An agreement of 1.1 percent of the sale of the properties is offered by Mazars to Gallagher and Quigley auctioneers on the sale of all of the assets. Taking these on-going costs into account. The value of all of the assets that could be obtained is €900,000 less than what this claimant is currently offering*"

33. Counsel for the second named defendant said that this amounted to a complaint that the second named defendant was behaving unreasonably in relation to a settlement proposal which had been advanced by the plaintiff. He relied on the decision in *Bennett v Earlsfort Centre (Developments) Unlimited Company* [2018] IEHC 61 where McGovern J held that the action was not being prosecuted bona fide insofar as it was, as he stated at para 26, "*an attempt to exert the maximum pressure on the defendant to meet the demands of the plaintiffs*…".

34. Counsel also relied on the decision in *O'Loughlin v Moran* [2021] IEHC 852. In that case it was argued that the proceedings were not being prosecuted bona fide as the registration of each *lis pendens* was in itself for the improper motive (on the part of the

plaintiffs) of applying pressure on the defendants for commercial advantage in negotiation. O' Moore J found at para 43 of his judgment that the affidavit evidence before him regarding the allegations of improper motivation by the registering party were "*simply not disputed*". In those circumstances he found that "*the act of registering the lis pendens in each case was done for the purpose of obtaining monies from the defendants, and not for any proper purpose*".

35. While the affidavits filed by the second named defendant also relied on the plaintiff's delay in delivering her statement of claim, the issue of delay was not pursued in oral submissions by counsel for the second named defendant. While there is an obligation on any party who has registered a *lis pendens* to move with expedition, it also appears that the defendants have taken no steps in these proceedings since service of the statement of claim in July 2022. In any event, delay was not pleaded at the hearing.

The plaintiff's submissions

36. On the first occasion when this matter came before the court, the solicitor representing the plaintiff sought to argue that there was not in fact any *lis pendens* "registered" and that the second named defendant's application was in some way premature. He indicated that the plaintiff might not address the queries and so the *lis pendens* would never then be registered. At the relisting of this matter on 27 February 2023 (when the plaintiff was represented by counsel), this argument was not repeated.

37. At that second hearing an unsworn affidavit was furnished on behalf of the plaintiff and it was agreed, with the consent of the second named defendant, that the plaintiff would swear and file it. In this affidavit, the plaintiff exhibited correspondence from the agents of the second named defendant dated 19 July 2022 addressed to her husband which she said indicated that there had been a failure on the part of the second named defendant to

adhere to the Code of Conduct on Mortgage Arrears (the "**CCMA**"). This correspondence confirms that the security includes the plaintiff's "*primary residence*" and that accordingly her account was "*now being managed*" in line with the CCMA. The plaintiff argued that contrary to the CCMA the defendants had unlawfully "*seized*" her family home. She averred at para [d] of her affidavit that the registration of the *lis pendens* by her on 30 April 2021 was "*the singular reason this plaintiff's family home was not unlawfully disposed of by Everyday Dac's appointed agent*s".

38. Counsel for the plaintiff acknowledged that the statement of claim did not repeat the reliefs which had been sought in the plenary summons. He said the statement of claim was somewhat obscured by not having been drafted properly. He submitted however that this could be amended (although there was no formal application made to the court to consider any amendment). He argued that the plaintiff should not be prejudiced by this drafting issue, for which she was not responsible.

39. He said that the plaintiff was proceeding in a bona fide manner both in relation to the proceedings and to the registration of the *lis pendens*. Her proceedings take issue with the validity of the appointment of the receiver and what she believes to be a trespass on her family home. He referred to the decision of the High Court in *Fay v Promontoria (Oyster) DAC* [2022] IEHC 483 where Butler J refused to vacate a *lis pendens* in circumstances where the plaintiff's proceedings challenged the validity of the receiver's appointment and sought damages for trespass by the receiver who had taken possession of the property with a view to selling it. Butler J held that such a claim must be characterised as an action making a claim to an estate or interest in land. She held that the object of the proceedings was to ensure that the plaintiffs maintained their estate or interest in the mortgaged property and to prevent its alienation by a person who they claimed had no legal right to sell their property.

40. Counsel for the plaintiff argued that there was an admission by the second named defendant that the CCMA applied to this security and he said that impacted the treatment of all the Properties and undermined the validity of the receivership. He said that the CCMA applies to commercial loans where part of the security for those loans includes a principal private residence (as in the present case). In that regard he referred to the decision of Simons J in *AIB v Buckley* [2019] IEHC 97 where the defendant resisted an application for possession on the basis that the plaintiff had not complied with the CCMA. Given that the plaintiff in that case had not pleaded or adduced evidence that it had complied with the CCMA, Simons J held the moratorium in provision 56 of the CCMA was applicable and he refused the possession application, holding that the proceedings were instituted in breach of the CCMA (the summons having failed to distinguish between other property held as security for a loan where the loan was also secured against the borrower's primary residence).

Reply by the second named defendant

41. In response, counsel for the second named defendant urged the court to deal with the papers before it and not to approach this application on the basis of some amended statement of claim that might at some future point be delivered. He sought to distinguish *Fay* on the basis that there was a stated intention in that case for the receiver to sell the property- he argued that there was no such stated intention here. He said that it was the second named defendant who was the party seeking the application to vacate the *lis pendens* in this case and not the receiver.

42. Counsel for the second named defendant also argued that there was no plea whatsoever regarding a failure to follow the CCMA nor was there any evidence of a failure to so comply by the second named defendant. On the contrary, he said that the letter

exhibited by the plaintiff in her unsworn affidavit demonstrated that the second named defendant was affording all CCMA protection given the inclusion of a "*primary residence*" within the security held.

Analysis and the findings of this court on the evidence.

43. The key legislative provisions for the purposes of this case are section 121 of the 2009 Act (which deals with the register of *lis pendens* maintained by the Central Office) and section 123 of the 2009 Act which deals with the power of the court to vacate a *lis pendens*. In so far as relevant, section 121 provides as follows: –

"*(1) A register of lis pendens affecting land shall be maintained in the prescribed manner in the Central Office of the High Court.*

(2) The following may be registered as a lis pendens:

(a) any action in the Circuit Court or the High Court in which a claim is made to an estate or interest in land (including such an estate or interest where a person receives, whether in whole or in part, by an order made in the action) whether by way of claim or counterclaim in the action; and

(b) any proceedings to have a conveyance of an estate or interest in land declared void."

44. Section 123 provides that a court may make an order to vacate a *lis pendens* on application by

"(b) any person affected by it, on notice to the person on whose application it was registered—

[…] (ii) where the court is satisfied that there has been an unreasonable delay in prosecuting the action or the action is not being prosecuted bona fide".

45. The plaintiff in this case is, along with her husband, the registered owner of the Properties. In the proceedings she issued, some of the reliefs sought relate to declarations by her that she holds an interest in the Properties and that she is entitled to possession of them. The proceedings also seek a declaration that the deed of appointment of the receivers is unlawful and an undertaking that the defendants or their agents will not sell or market or otherwise dispose of the Properties and, if they do, that any such conveyance is void. On its face, claims of this nature appear to come within the scope of proceedings which claim an estate or interest in land.

46. It is absolutely fair to say that the statement of claim does not reflect these claims and to that extent these claims are "abandoned". The height of what may be said to constitute a relevant claim as expressed in the statement of claim is contained in paragraph 26 which confirms that the fourth named defendant "*was informed that Woodview, Grays Lane was our family home and a receiver was not applicable*". While not expressed in particularly coherent terms, this could be interpreted as a plea that the receiver had not been validly appointed and/or that the status of part of the security as a family home was relevant to that. The reliefs expressly sought in the statement of claim however are confined to damages and, on their face, do not amount to a claim for an estate or interest in land.

47. I have come to the view that, despite the poorly drafted statement of claim, this dispute is essentially about a challenge to the appointment of the receiver and her ability to sell the Properties. It may be that the plaintiff will not succeed in establishing any grounds to challenge the validity of the receiver's appointment. However, the question is whether the claim made by the plaintiff seeks an estate or interest in land – not whether that claim will necessarily succeed. While the statement of claim, as drafted, does not reflect the reliefs sought in the summons, I believe that if an application was brought by

the plaintiff to amend the statement of claim to correctly mirror the reliefs sought in the summons, then the claim would be one in respect of which a *lis pendens* could be registered. While I accept that a court should generally deal with the papers before it, nevertheless, where the interests of justice require it, I believe that the court must look to the essential nature of the dispute and, if appropriate, permit amendments to pleadings that would more accurately reflect the originally pleaded claim (if it is still advanced) and the actual issues in dispute between the parties.

48. As Butler J noted at para 15 in *Fay* the registration of a *lis pendens* is not intended for the benefit of either party to the litigation but rather to benefit a third party who might otherwise be unaware that the rights of the party from whom they are acquiring an interest in land are subject to challenge. Strictly speaking the registration of a *lis pendens*, *per se*, does not preclude any dealing in the land in respect of which it is registered. However, in practical terms I accept that purchasers may be unwilling to take the risk that the person from whom they are purchasing might ultimately be held not to have had the right to sell. I believe that a "queried" *lis pendens* (as in the present case) is just as effective from that perspective as one which has concluded the registration process. There is therefore nothing premature about the second named defendant's application in this case.

49. Counsel for the second named defendant stressed that the application was only brought by the second named defendant and not the receiver (contrary to what is stated on the face of the motion itself). He said that the second named defendant has no stated intention to sell the Properties. He sought to distinguish the comments of Butler J in *Fay* in that regard where she stated at paragraph 37 of her judgment that

> "*[i]n circumstances where the stated intention of the receiver is to sell the property in order to realise the first defendant's security and, indeed, the object of this*

motion is to facilitate such sale, it seems to me that the plaintiff's proceedings which challenge the validity of the receiver's appointment and seek damages for trespass by the receiver having taken possession of the property with a view to selling it must be characterised as an action making a claim to an estate or interest in land. The object of the proceedings is to ensure that the plaintiffs maintain their estate or interest in the mortgaged property and to prevent its alienation by a person whom they claim has no legal right to sell their property."

50. I am not convinced that the identity of the party seeking the removal of the *lis pendens* matters. If the *lis pendens* is removed on the application of any party, then it is removed from the register entirely as against all parties, including the receiver. There is evidence in exhibit AD3 to the plaintiff's supplemental affidavit that there were negotiations with third parties in March 2021 for "*the sale of the site at Woodview Grey's Lane*". Furthermore, Mr McCrudden himself avers to the prejudice of the *lis pendens* as making it "*very difficult if not impossible to realise"* the Properties (at para 14 of his Affidavit).

51. In *Tola Capital Management v Linders (No. 2)* [2014] IEHC 324 Cregan J considered section 123 of the 2009 Act in some detail. He held at para 132 of his judgment that

"…*the meaning of the section is that a court may make an order vacating a lis pendens if it is satisfied that the action as a whole is not being prosecuted in a bona fide manner or if particular steps in the prosecution of the action are not being taken in a bona fide manner*".

52. There is insufficient evidence before this court that the *lis pendens* has been registered otherwise than for a bona fide purpose. It is true that the statement of claim refers to negotiations which have taken place and to the plaintiff's surprise that the offers made

have not been accepted by the defendants. However, I am not prepared to make the assumption which I was urged to do by counsel for the second named defendant that the statement of claim (particularly one so poorly drafted and without the input of counsel) is, of itself, evidence of a lack of bona fides on the part of the plaintiff in registering the *lis pendens*. In *O'Loughlin* there was uncontroverted affidavit evidence of engagement and dealings between the parties to support the court's view of the improper motivation of the registering party. This does not arise on the evidence in the present case. The plaintiff has averred that "*the singular reason*" she has registered the *lis pendens* is to prevent the disposal of her family home pending the prosecution of these proceedings against the defendants.

53. Neither can I conclude at this point that the action is not being prosecuted bona fide. In *Gannon v Young* [2009] IEHC 511 Laffoy J concluded that, where proceedings were bound to fail, they were not being prosecuted bona fide for the purposes of determining whether the *lis pendens* should be vacated. On the basis of the limited evidence before this court, and recognising that I must take the plaintiff's claim at its height, I cannot say that the plaintiff's case is bound to fail or "*doomed to failure*" in the words of Laffoy J.

54. In my view, the plaintiff's current statement of claim does not on its face constitute a claim seeking an estate or interest in land in respect of which a *lis pendens* can be validly registered. However, were it to be amended to reflect the reliefs sought in the plenary summons, it would constitute such a claim. It will be a matter for the plaintiff to amend her statement of claim and to set out in detail the grounds of her challenge to the validity of the appointment of the receivers. That will enable the defendants to know fully the case they are required to meet at trial and will ensure that the real issues in controversy between the parties are before the court. I do not believe that at this stage

of the proceedings an amendment would be likely to prejudice the defendants. On the contrary, it would enable the defendants to understand fully the case they have to meet and would compel the plaintiff to properly particularise the specific grounds of challenge she wishes to advance.

The decision of this court

55. I propose to stay these proceedings until 4 May 2023 to allow time to the plaintiff to amend her statement of claim so as to reflect the reliefs sought in her summons and to properly particularise the basis on which she claims those reliefs. I direct that if the plaintiff wishes to amend her statement of claim she should issue a motion seeking leave to amend and serve it with her proposed amended statement of claim on the solicitors for the defendants within four weeks from the date of this judgment. The motion should be returnable to 4 May. I will list this matter for 10.00 am on Thursday 4 May 2023 to allow the plaintiff to bring her application for the amendments she wishes to make and I will also hear the defendants at that time regarding those proposed amendments. If the plaintiff does not take such steps within that period and instead continues to rely on her existing statement of claim, or if the application to amend is refused or the amendments are otherwise inadequate, then I would propose to make an order vacating the *lis pendens* she has registered. On Thursday 4 May 2023 I will make the relevant orders as appropriate, including any orders as to costs and further directions for the exchange of pleadings to ensure that as early a trial date as possible is achieved for the parties.