[2024] IEHC 157

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.P.2023.0001353]

BETWEEN

GLENVEAGH HOMES LIMITED

PLAINTIFF

AND

PAT LYNCH AND DENISE LEAVY (OTHERWISE DENIS LEAVY, DM LEAVY, OR D LEAVY)

DEFENDANTS

JUDGMENT of Humphreys J. delivered on Monday the 15th day of April, 2024

1. Lawsuits designed to silence critics rather than to achieve justice, frequently known as SLAPPs (strategic lawsuits against public participation), are a modern form of abuse of process, and should be struck out at an early stage before generating significant adverse consequences for defendants. On the other hand, the entitlement to litigate in defence of one's rights is guaranteed by common law, the Constitution, the ECHR and EU law. Plaintiffs will always say that a given action is in the latter category; defendants sometimes assert the former. The plaintiff here contends that the defendants engaged in a "shakedown" by making large number of planning observation and appeals to "extort" the plaintiff to buy land at an inflated price. The defendants move to strike out the action. The law provides that a strike-out order can only be made in a clear case. Is this such a case?

Facts

2. Clonmagadden SDZ lies to the north-east of Navan, Co. Meath. The plaintiff and defendants own separate agricultural lands within the SDZ boundaries.

3. Given that in a motion to strike out, the plaintiff's case must generally be taken at its height, we must start with the plaintiff's pleas of fact, subject to any argument by the defendants that there is no prospect of proving these. The statement of claim contends as follows:

> "1. The Plaintiff is a limited liability company (Reg No. 368093) and has its registered office at Block B, Maynooth Business Campus, Maynooth, County Kildare, W23 W5X7. The Plaintiff is the registered owner of certain lands the subject of the within proceedings which are more particularly described in the First Schedule to the Plenary Summons and hereto.
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> 2. The First Defendant is an insurance consultant and resides at Batterstown, Proudstown, County Meath.
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> 3. The Second Defendant is a bank clerk and resides at Batterstown, Proudstown, County Meath.
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> 4. The name 'Denis Leavy' or 'DM Leavy' or 'D Leavy' is a person unknown and a fictional/ contrived pseudonym used by or on behalf of the First and/or Second Defendant, in circumstances where a putative person(s) using the name 'Denis Leavy', 'DM Leavy' or 'D Leavy' has (have) made a series of submissions and/or observations on planning applications made by or on behalf of the Plaintiff to planning authorities, and have appealed decisions on development consents to An Bord Pleanála, all from an address at Proudstown, County Meath, which is the address of the Defendants.
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> Background
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> 5. The Plaintiff has been engaged in the business of property development since 2003 or thereabouts and owns or has consent to use the lands including the lands specified in the First Schedule to the Plenary Summons and hereto, being development lands at various locations throughout the State, several of which are in various stages of the planning process at any one time.
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> 6. In July 2001, the Minister for the Environment formally designated lands at Clonmagadden Valley, Navan, County Meath, as a residential Strategic Development Zone ('the Clonmagaden SDZ') under Part IX of the Planning and Development Act 2000, as amended ('the Act'). The development agency specified in the Ministerial Order is Meath County Council.
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> 7. On 18 May 2004, An Bord Pleanála approved a Planning Scheme for the Clonmagadden SDZ.
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> 8. At all material times concerning the issues raised in these proceedings, the First Defendant has owned lands within the SDZ.
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> 9. In July 2018, the Plaintiff purchased ALL THAT AND THOSE the lands comprised in Folios MH50717F, MH11904F, MH43255F and MH11891F of the Register of County Meath. In March 2022, the Plaintiff purchased ALL THAT AND THOSE the lands comprised in Folio MH60470F of the Register of County Meath (together 'the Plaintiff's Lands') from the First

Defendant acting by his receiver Ken Tyrrell. The Plaintiff's lands extend to approx. 60 acres within the SDZ.

10. The Plaintiff's Lands are located immediately adjacent to lands in the ownership of the First Defendant. The First Defendant's lands are comprised in Folios MH59368F, MH30453F and MH68644F extending approx. 15.22 acres with a registered address at Batterstown, Proudstown Road, Navan, County Meath.

11. The Plaintiff's Lands are also located in proximity to lands owned by Denise Leavy, the Second Defendant (approx. 1 acre) comprised in Folio MH60467F, and Kathleen Lynch (approx. 0.77 acre) comprised in Folio MH11877.

12. The First Defendant's lands, the Second Named Defendant's lands and the lands owned by Kathleen Lynch comprising in total approx. 17 acres are referred to herein as (the 'Lynch Lands').

13. The Plaintiff's Lands are also located in proximity to lands owned by Martin W. Lynch (approx. 7.5 acres), of Castletown, County Meath.

14. The Plaintiff's lands are also located in proximity to lands owned by Martin Lynch (approx. 10 acres) of Roodtown, Ardee, County Louth.

15. All of the above lands are identified in the map in the Third Schedule to the Plenary Summons and hereto.

16. In July 2018 and in March 2019, shortly after coming into ownership of the lands, the Plaintiff was approached by two separate estate agents acting on behalf of the first Defendant and on behalf of Pat Lynch, Kathleen Lynch and Denise Leavy inviting the Plaintiff to purchase the Lynch Lands. No agreement was concluded at that time as the price sought was well in excess of the open market value of the lands."

4. The plaintiff's reply to particulars (which includes a typo at the outset incorrectly stating that it is provided on behalf of the defendants) sets out details:

"The First Defendant's land was offered to the Plaintiff at initially €700,000 *per* acre or €11,900,000 for the entire. When the Plaintiff declined to make an offer the price was reduced to €500,000 *per* acre or €8,500,000 for the entire. The Plaintiff purchased their lands following an open market bidding process in July 2018 for €161,017 *per* acre or €9,500,000 for 59 acres. The Clonmagadden SDZ zoning criteria had not changed. The First Defendant had been trying to sell his lands for a number of years and has been unable to secure a sale."

5. The statement of claim continues:

"17. On 18 March 2021, Mr. Stephen Garvey, Chief Executive Officer of the Plaintiff companies, together with Mr. Eoin Hughes, met with the First Defendant and his planning advisor, Raymond O'Malley, in an attempt to negotiate a deal to purchase the Lynch Lands in the SDZ. …"

6. We can pause here to indicate that the schedules to the statement of claim record that the first adverse submission in relation to the plaintiff's development occurred a few days later on 25th March, 2021.

7. The statement of claim continues:

"17. … Mr Hughes had several further meetings and discussions with the First Defendant in the period from March to May 2021 and outline parameters of a deal were agreed in principle, subject to contract, and indicative terms were recorded by a hand written note. However, no formal agreement was executed as the First Defendant demanded improved terms.

18. At or around that same time, planning observations began to be lodged in the name of Denis Leavy, D Leavy or DM Leavy against live applications for planning permissions made by the Plaintiff.

19. In May 2021, at a meeting in the First Defendant's house at [house name], one of a series of meetings at both Glenveagh offices and the Defendants' house during negotiations, a representative of the Plaintiff asked the First Defendant if he knew a 'Denis Leavy'. The First Defendant said that he knew of him and that 'he had a degree in an area where you do not want him to have one', or words to that effect, and that 'Leavy was very clever', all of which words were intended to convey that the Plaintiff was dealing with a real person who had an understanding of the planning process."

8. The reply to particulars sets out details:

"Dates of meetings 18 March 2021, 4pm – Stephen Garvey, Eoin Hughes, Pat Lynch, and Raymond O'Malley at the Defendants' Home, [house name]. 22 March 2021, 4pm – Eoin Hughes and Pat Lynch at the Defendants' Home, [house name]. 12 May 2021, 5pm - Eoin Hughes and Pat Lynch at the Defendants' Home, [house name]. 27 May 2021, 2pm - Eoin Hughes and Pat Lynch at Glenveagh's office in Maynooth.

See a copy of a note, contemporaneously hand written on 27 May 2021 at the meeting between Eoin Hughes and the First Defendant. It was in the Boardroom in the Plaintiff's

office. Mr Hughes offered to type the terms, but the First Defendant wanted them to be handwritten. The meeting lasted approx. 1½ hours. During this meeting, which resulted in the Heads of Terms, the First Defendant advised that he could make the submissions/ observations on the Plaintiff's planning applications the subject of the - 183 proceedings 'go away'. The First Defendant left the meeting apparently very happy and the Plaintiff fully anticipated that the agreed terms would progress to executed commitments.
The agreed purchase price as *per* the handwritten note was €450,000 *per* acre or €7.65m. The deal did not progress any further because the First Defendant verbally stated in communications after the meeting on the 27 May 2021 that he and his family wanted more money for the land and wanted an extended period of 3 years to live at the Property. Furthermore, the First Defendant demanded a greater price in 2022, a land price of €493,670 *per* acre, despite land market values having reduced during the intervening period."

9. The statement of claim continues:
"20. In March 2022, following a competitive tendering process, the Plaintiff closed the purchased 1.28 acres of lands in the Clonmagedden SDZ from a receiver placed over certain assets of the First Defendant.
21. Between 25 March 2021 and 16 January 2023, the fictional/ contrived pseudonyms 'Denis Leavy', 'DM Leavy' and/or 'D Leavy', each with the same address at Proudstown, Navan, County Meath, filed observations and/or appeals in respect of 16 separate applications for planning permission made by or on behalf of the Plaintiff on landholdings around the State.
22. During August 2021, at the invitation of the First Defendant, Mr Noel Dempsey acted as a broker in negotiations between the Plaintiff and the First Defendant. On or about 22 September 2022, negotiations concluded with agreement reached and draft Heads of Agreement were drawn up and circulated by Mr Dempsey. The terms of the agreement included payment terms and, at clause 5, that;
'all the objections, submissions and observations on Glenveagh's planning applications lodged by anyone associated with this agreement will be withdrawn from local authorities and An Bord Pleanála.'
23. At clause 6 of the draft Heads of Agreement, it was recorded that:
'This Heads of Agreement shall be signed by 30th September 2022 by both parties and, on signature by Glenveagh, the submission on planning file 22/924 under the name Denis Leavy shall be withdrawn immediately.'"

10. The notice for particulars states:
"Mr Noel Dempsey initially got involved at the request of the First Defendant, who had known Mr Dempsey from a previous dealing. Mr Dempsey had an existing relationship with Glenveagh. Mr Dempsey disclosed a potential conflict of interest with the First Defendant who confirmed that he was happy with Mr Dempsey's involvement. Mr Dempsey issued two emails in August 2021 and there were a number of conversations between him and the parties.
…
The First Defendant drafted the Heads of Terms and provided Mr Dempsey with a copy. Furthermore, the First Defendant had met with a solicitor to draft a Contract for Sale. Please see email dated 14 November 2022 from Mr Dempsey to Mr Garvey of the Plaintiff enclosed herewith at Appendix 3.
…
The Plaintiff provided letters in November 2022 outlining its commitment to the agreement. The Plaintiff understood that these letters were procured to satisfy the members of the Lynch family. For the second time, Glenveagh understood that a deal was agreed between parties. However, the Defendants, despite a commitment to Mr Noel Dempsey to stop making observations/appeals and to withdraw two named appeals in Clonmagadden and Trim, did not do so. An already tested relationship became strained and the deal did not proceed due to the Defendants' actions."

11. The statement of claim continues:
"24. The agreement was not signed or otherwise executed by the parties. Since that date, yet further submissions have been filed against new planning applications by the Plaintiff by the fictional/ contrived pseudonym 'D M Leavy', though the signatures appear to vary, and no existing submissions or observations or appeals have been withdrawn."

12. There were further submissions by the defendants in relation to the plaintiff's projects, up to 11th April, 2023, the next significant factual development was as follows:
"35. In May 2023, after the within proceedings had been served on the Defendants, the first Defendant has placed the lands the subject of the concluded agreement for sale on the open market."

13. Insofar as the defendants suggest that there is no reasonable prospect of the plaintiff being able to furnish evidence to prove the allegations in the statement of claim, that hasn't been made out, subject to the more specific arguments discussed below.

Procedural history

14. The proceedings were instituted by way of Plenary Summons on 27th March 2023. An order for substituted service was made on 24th April 2023 by Ferriter J. The application for that order was grounded on the affidavit of a summons server from Clipeum Ltd t/a National Summons Servers of Drumnacarra, Ravensdale, Dundalk, County Louth which averred as follows:

> "1. I was engaged by AMOSS LLP to effect personal service of the Plenary Summons issued herein on 27 March 2023 on the Defendants. I make this Affidavit from facts within my own knowledge.
>
> 2. I did attend at [house name], Proudstown County Meath on Saturday 1 April 2023 at approximately 1pm and there was no answer to the front door of the property despite several attempts at knocking. There was one vehicle present and there were lights on inside the property.
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> 3. I did attend at [house name], Proudstown County Meath on Tuesday 4 April 2022 at approximately 2.30pm and the door was answered by a woman. l asked her for Pat Lynch and Denise Leavy and she said that they were not there and immediately closed the door on me. She did not say that they did not live at that address. I am advised by Gavin Simons of AMOSS LLP that Ms Leavy's date of birth is [date stated] and I believe that the woman that answered the door was of approximately that age.
>
> 4. I did attend at [house name], Proudstown County Meath on Wednesday 5 April 2023 at approximately 3pm and there was no answer to the front door of the property despite several attempts at knocking. There was one vehicle present and there were lights on inside the property.
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> 5. I believe that I have exercised due and reasonable diligence in endeavouring to personally serve Pat Lynch and Denise Leavy with the within Plenary Summons without effect.
>
> 6. I was previously engaged to effect personal service of proceedings on Mr Lynch at the same address and also had difficulty in doing so as I believe he was actively attempting to avoid being served at that time. From memory I believe those other proceedings were High Court probate proceedings. I believe that Pat Lynch and Denise Leavy may also now be actively attempting to evade service of proceedings."

15. The summons was served by certified post on 28th April, 2023.

16. The defendants entered an appearance on 9th May, 2023.

17. The defendants issued a motion for entry to the List on 8th June, 2023 returnable to 19th June, 2023.

18. The statement of claim was delivered on 15th June, 2023.

19. Directions were given on 26th June, 2023 in relation to the motion to admit which was opposed by the plaintiff. The plaintiff filed an affidavit on 30th June, 2023 and the defendants filed replying affidavits on 14th July, 2023.

20. The motion to admit was heard by Farrell J. on 17th July, 2023, following which the Court gave an *ex tempore* judgment granting the defendants' application for admission and reserving costs.

21. The defendants delivered a notice for particulars on 20th September, 2023. The plaintiff provided replies to particulars on 20th October, 2023

22. The defendants delivered their defence and counterclaim on 23rd November, 2023.

23. The defendants issued the present motion on 8th December, 2023 seeking to have the plaintiff's claim struck out as being bound to fail and/or abuse of process and/or being in breach of Article 3(8) of the Aarhus Convention. The motion to strike out was made returnable for 18th December, 2023.

24. The plaintiff delivered its reply to the defence and counterclaim on 14th December, 2023 and its replying affidavit to the strike out motion on 26th January, 2024.

25. The parties agreed voluntary discovery on 26th January, 2024.

26. The defendants served their written legal submissions on 12th February, 2024.

27. The plaintiff served its written legal submissions on 23rd February, 2024

28. The strike-out motion was given a hearing date of 5th March, 2024 for one day. On that date the matter was heard and judgment was reserved.

29. On 11th March, 2024, I informed the parties that the matter would be going to trial and that reasons would follow later. I also allowed an amendment sought by the plaintiff (discussed further below), subject to noting that a declaration was not pressed on the basis that it could be included under further and other relief.

Relief sought in proceedings

30. The plaintiff's statement of claim as delivered sought the following relief:

"1. A declaration that, in respect of the planning application/ appeal filed specified in the Second Schedule to the Plenary Summons and hereto, the First and/or Second Defendants have unlawfully engaged in an abuse of the public consultation procedures provided in the Planning and Development Act, 2000, as amended, and contrary to section 127(1)(b) and 127(2)(a) of the Act.

2. A declaration that the observations and/or appeals listed in the Second Schedule to the Plenary Summons and hereto were commenced for improper and collateral purposes and amount to an abuse of process.

3. A declaration that the filing or the observations and/or the filing of appeals constituted and/or would constitute malicious abuse of the statutory process.

4. A declaration that the First and Second Defendants, or their servants or agents, have wrongfully and unlawfully conspired to injure the Plaintiff by wrongfully delaying and interfering with the orderly development of lands the subject of the planning applications as set out in the Second Schedule to the Plenary Summons and hereto.

5. A declaration that the First and Second Defendants, or their servants or agents, have, and each of them has, in concert and on the basis of a shared understanding, carried out unlawful acts with the purpose or aim of injuring the Plaintiff and are, therefore, guilty of conspiracy by unlawful means;

6. A declaration that filing each and or all of the 16 observations and/or appeals amounted to and/or would amount to tortious interference with the Plaintiff's economic relations and contractual and business relationships;

7. Damages for malicious abuse of the statutory process;

8. Damages for conspiracy;

9. Damages for tortious interference with economic relations;

10. Damages for tortious interference with contractual and business relationships;

11. An order for all necessary accounts and inquiries;

12. Orders of *Mandamus* directing the First and/or Second Defendants to immediately withdraw each of the following appeals:

(a) An Bord Pleanála file Reference no. 314242 (Trim 1B/2)

(b) An Bord Pleanála file Reference no. 313091 (Rathgowan 2)

13. An Order permanently restraining the First and Second Defendants or parties associated with them or on their behalf from:

(a) making any submissions and/or observations on any application for development consent filed by or on behalf of the Plaintiff companies, their subsidiaries or connected entities with any local authority in respect of any of the developments sites specified in the First Schedule to the Plenary Summons and hereto (including any future submissions on the same lands);

(b) filing any appeal with An Bord Pleanála in respect of any of the development sites specified in the First Schedule to the Plenary Summons and hereto and any further sites that the Plaintiff owns or might acquire.

14. Such further or other order as the court shall deem fit;

15. Costs."

Proposed amendment

31. The plaintiff, arising from the hearing of the present motion, sought to amend its reliefs as follows (strikethrough as pleaded, new or amended reliefs underlined):

"AND THE PLAINTIFF'S CLAIM IS FOR:

~~1. A declaration that, in respect of the planning application/ appeal filed specified in the Second Schedule to the Plenary Summons and hereto, the First and/or Second Defendants have unlawfully engaged in an abuse of the public consultation procedures provided in the Planning and Development Act, 2000, as amended, and contrary to section 127(1)(b) and 127(2)(a) of the Act.~~

~~2. A declaration that the observations and/or appeals listed in the Second Schedule to the Plenary Summons and hereto were commenced for improper and collateral purposes and amount to an abuse of process.~~

~~3. A declaration that the filing or the observations and/or the filing of appeals constituted and/or would constitute malicious abuse of the statutory process.~~

~~4.~~ 1. A declaration that the First and Second Defendants, or their servants or agents, have wrongfully and unlawfully conspired to injure the Plaintiff by wrongfully delaying and interfering with the orderly development of lands the subject of the planning applications as set out in the Second Schedule to the Plenary Summons and hereto.

~~5. A declaration that the First and Second Defendants, or their servants or agents, have, and each of them has, in concert and on the basis of a shared understanding, carried out unlawful acts with the purpose or aim of injuring the Plaintiff and are, therefore, guilty of conspiracy by unlawful means;~~

~~6. A declaration that filing each and or all of the 16 observations and/or appeals amounted to and/or would amount to tortious interference with the Plaintiff's economic relations and contractual and business relationships;~~

2. Damages for malicious abuse of the statutory process;

3. Damages for conspiracy;

4. Damages for tortious interference with economic relations;

5. Damages for tortious interference with contractual and business relationships;

6. An order for all necessary accounts and inquiries;

7. ~~Orders of *Mandamus*~~ A mandatory injunction directing the First and/or Second Defendants to immediately withdraw each of the following appeals:

(a) An Bord Pleanála file Reference no. 314242 (Trim 1B/2)

(b) An Bord Pleanála file Reference no. 313091 (Rathgowan 2)

8. An Isaac Wunder Order ~~permanently~~ restraining the First and Second Defendants or parties associated with them or on their behalf, without the leave of this Honourable Court, from:

(a) making any submissions and/or observations on any application for development consent filed by or on behalf of the Plaintiff ~~companies, their~~ its subsidiaries ~~or connected entities~~ with any local authority in respect of any of the developments sites specified in the First Schedule to the Plenary Summons and hereto (including any future submissions on the same lands);

(b) filing any appeal with An Bord Pleanála in respect of any of the development sites specified in the First Schedule to the Plenary Summons and hereto ~~and any further sites that the Plaintiff owns or might acquire~~.

9. Such further or other order as the court shall deem fit;

10. Costs."

32. Ultimately the changes to the injunctive relief were not opposed (they represented a scaling back of the claim). The dropping of the battery of declarations was also not opposed. The proposed new declaration as relief 1, was essentially unnecessary, as discussed at the mention date of 11th March, 2024, and it was agreed not to include this on the basis that if necessary the claim for further and other relief would be taken to include declaratory relief if the court was minded to grant such relief in due course (not a normally particularly likely situation in any event – if the defendants have committed an actionable wrong the plaintiff will presumably get some form of damages, and if so a declaration in the form sought would add nothing).

33. As a result of the amendments, the more controversial parts of the pleadings fell away and the defendants were left with a somewhat reduced claim to meet.

34. The proposed Isaac Wunder order restraining a party from making applications in an administrative process as opposed to a judicial process is not unprecedented or impermissible: see for example *Stevenson v. O'Neill* [2010] IEHC 1, [2010] 1 JIC 1102 (Kearns P.) which was an injunctive order against an individual restraining them from making any further complaints within a self-contained statutory code (the Solicitors Act 1954 as amended), not just by way of court application. Whether it should be granted is another thing, but it is certainly not so implausible as to warrant refusal of the amendment.

Grounds of claim

35. The essential grounds of the plaintiff's claim are outlined in the statement of claim as follows:

"25. The name 'Denis Leavy' or 'DM Leavy' or 'D Leavy' is a person unknown and a fictional/ contrived pseudonym used by/ on behalf of the First and/or Second Defendants for the purposes of applying undue influence and/or otherwise coercing the Plaintiff into agreeing unfair or otherwise onerous terms in respect of contract negotiations between the Plaintiff and the First Defendant for the purchase of the Lynch Lands to the benefit of the First and Second Defendants. In circumstances where the submissions and/or appeals were all filed using a fictional/ contrived pseudonym, each individual instance was a breach of section 127(1)(b) and also section 127(2)(a) of the Planning and Development Act, 2000.

26. The First and Second Defendants and/or each of them conspired to take actions aimed at injuring the Plaintiff.

27. The Plaintiff, its servants and/or or agents, have made various replying submissions in attempts to have An Bord Pleanála use its statutory powers to convene an oral hearing into the various appeals before it at any given time. However, the Board has declined to convene an oral hearing.

28. Each and/or every instance of the 16 observations and/or appeals filed to date by or on behalf of the fictional pseudonym 'Denis Leavy' of 'DM Leavy' of 'D Leavy' were filed in breach of section 127(b)(i) of the Act and were done for the improper and collateral purpose of unlawfully attempting to leverage the Plaintiff into agreeing terms more financially advantageous to the First and/or Second Defendants.

29. Each and/or every instance of the 16 observations and/or appeals filed amount is vexatious, designed to introduce delay and to create risk of judicial review proceedings, all of which amounts to an abuse of the statutory process.

30. Each and/or every instance of the 16 observations and/or appeals constituted a malicious abuse of the civil process and the further consideration of those applications and/or appeals which are still under consideration, would amount to further such malicious abuse. The observations and/or appeals were lodged, and are being maintained, without reasonable or probable cause and for an improper, wrongful and malicious purposes. Further, they have caused the Plaintiff to suffer damage and/or may be presumed by the law to cause the Plaintiff damage.

31. The First and Second Defendants have, in concert and on the basis of a shared understanding, committed a series of acts, either unlawful in and of themselves, or for the unlawful aim and purpose that is to damage and/or injure the Plaintiff by wrongfully delaying and interfering with the orderly development of the lands in the ownership or control of the Plaintiff, and to thereby cause serious damage to the Plaintiff's interest in the profit to be realised by the completion of the developments in question.

32. The agreement or combination of the First and Second Defendants which led to the 16 observations and/or appeals had the primary or predominant object of injuring the Plaintiff, and has achieved such object.

33. In filing each and/or all of the 16 observations and/or appeals, and/or conspiring in the filing of same, the First and Second Defendants have, and each of them has, in concert and on the basis of a shared understanding, carried out unlawful acts with the purpose or aim of injuring the Plaintiff and seeking unjust enrichment are therefore guilty of fraud and/or conspiracy by unlawful means.

34. The filing of each and/or all of the 16 observations and/or appeals have unlawfully interfered, and/or will unlawfully interfere, with the Plaintiff's economic relations and contractual and business relationships in relation to the lands.

35. In May 2023, after the within proceedings had been served on the Defendants, the first Defendant has placed the lands the subject of the concluded agreement for sale on the open market."

Relief sought in motion

36. The reliefs sought in the defendants' motion are orders as follows:

"1. Striking out/dismissing the plenary summons in the above entitled proceedings and/or proceedings pursuant to Order 19 Rule 28 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of this Honourable Court as failing to disclose any reasonable cause of action and/or as being bound to fail and/or as being frivolous and/or vexatious and/or in ordering that that the proceedings be stayed and/or dismissed.

2. Striking out/dismissing and/or staying these proceedings pursuant to the inherent jurisdiction of this Honourable Court as an abuse of process and/or as being brought for an improper and/or collateral purpose and/or for being an interference with right of access to the Courts and/or where the maintenance of these proceedings is in breach of Article 3(8) of the Aarhus Convention.

3. For such further and ancillary Orders as to the Honourable Court seems proper.

4. Costs of this application and/or of the proceedings, including an order for wasted costs as this Court deems appropriate."

Submissions of parties

37. The statement of case helpfully summarises the essential submissions of the parties as follows (emphasis added):

"Bound to Fail etc

Defendants – The Defendants contend that the Plaintiff's claim discloses no reasonable cause of action, and/or is bound to fail and/or is frivolous or vexatious.

The Defendant contend firstly that the claims are based on the erroneous premise that a planning application gives rise to rights, which have been interfered with by the Defendants in making objections, which entitles them to damages. Furthermore certain of asserted cause of action, are vague and unknown to law. The Defendants further contend that private law causes of action misunderstand the public nature of the planning process and public policy grounds, such alleged causes of action should not be extended to participation in the

planning system, which would be detriment to the public interest in planning decisions by having a chilling effect on public participation.
Secondly, the Defendants contend that even if such private law cause of action can be asserted, the Plaintiff cannot satisfy the constituent ingredients of the torts claims such as statutory abuse of process, conspiracy, interference with economic relations, etc.
Plaintiff – The Plaintiff disputes that its case is premised on a right to planning permission. That is not pleaded and it is denied on affidavit. Rather, the Plaintiff's case is premised on the actions of the Defendants in misusing, and abusing, the privilege of public participation rights to achieve ulterior, financial gain by leveraging the Plaintiff's business operations in a deliberate, targeted manner.
The Plaintiff disputes that the claims made are 'unknown to law' and in written submissions, cites authorities for the heads of claim disputed by the Defendants.
The Plaintiff disputes that it misunderstands the public nature of the planning process and, again, relies on the claim that the Defendants have, for ulterior purposes in an attempt to secure personal financial gain, misused and abused the privilege of public participation rights, gain by leveraging the Plaintiff's business in a deliberate, targeted manner.
It is denied that the making of the orders sought in these proceedings would have a chilling effect on public participation, as the reliefs sought are highly fact-specific and are not of wider general application to the lawful exercise of public participation rights.
The Plaintiff submits that the proceedings cannot, on the facts as pleaded and the evidence, such as it is, be determined as 'Bound to fail etc' in circumstances where the Plaintiff is engaged in an inter-partes discovery process and intends to give oral evidence at plenary hearing in support of its claims. The Plaintiff contends that the legal test required to achieve the dismissal reliefs sought by the Defendants is not met on this application.

Abuse of Process and SLAPP

Defendants – The Defendants contend that the Plaintiff's claim is also an abuse of process.
First, the Plaintiff has not used the statutory remedy under Section 138 of the 2000 Act, an application for planning permission does not give rise to vested rights interference with which gives rise to a cause of action for damages, the planning system is not some form of private arrangement between developer and planning authority.
Secondly, the institution of proceedings are premature and an interference with the planning system, which is inappropriate.
Third, the Plaintiff's claim is in reality a collateral attack on the validity of decisions of planning authorities and the Board to accept submissions and appeals from the Defendants other than by way of judicial review under Section 50 or through the mechanism of Section 138 of the 2000 Act.
Fourthly, the proceedings are calculated to intimidate, persecute and punish the Defendants for making valid planning submissions or appealing against some of the Plaintiff's applications. They are seeking gross excessive damages of 8 million and extraordinary relief such as a permanent injunction restraining the Defendants from making any submissions or observations on any unknown future planning applications by the Plaintiffs.
Fifthly the Court is asked to exercise its powers in light of Article 3(8) of the Aarhus Convention to ensure that the Defendants are not penalized, persecuted or harassed in any way for the exercise of their rights under the Aarhus Convention. These proceedings will have a chilling effect on public participation to the detriment of the public and planning system. The Plaintiff's claim is 'Strategic Litigation Against Public Participation' (SLAPP).
Plaintiff – It is denied that the proceedings are an abuse of process.
First, the suggestion that the Plaintiff's appropriate (and only) statutory remedy is under section 138 of the Act is misconceived. That does not provide an adequate remedy and the Plaintiff is entitled to seek recourse from the Courts, to which it has a constitutional right of access.
Second, it [is] denied that the proceedings comprise 'an interference with the planning system'. The proceedings are fact-specific, and orders can only be made on foot of findings of fact by the Court, which it is not in a position to determine at this preliminary juncture.
Third, it is denied that the proceedings comprise a collateral attack on decisions of planning authorities and/or An Bord Pleanála. That line of argument is opportunistic and mispresents the true nature of the proceedings, which seek relief outside the planning code, and which the Plaintiff is entitled to seek. This is a matter for evidence at trial, before a Court could reach a determination on the fact-specific nature of the claims.
Fourth, it is denied that the proceedings are calculated to intimidate, persecute and punish the Defendants. That assertion by the Defendants made above is predicated on the findings that the Defendants have been intimated, persecuted and punished, or that they will be. Any adverse outcome for the Defendants would be predicated upon the Plaintiff proving its

claims at plenary hearing. If a court makes any orders, it will have done so on the basis of evidence before it. In such circumstances, the Defendants could not legitimately claim to be intimidated, persecuted or punished, in circumstances where the Court would have found a civil wrong has occurred.

Further, the evidence, post-issue of proceedings, of the Defendants engaging further in public participation by making observations on Plaintiff planning applications, undermines the Defendants claim to be intimidated, persecuted, or punished (or harassed).

Fifth, it is denied that the Plaintiff requires the Court to make any orders pursuant to or otherwise arising from the application of article 3(8) of the Aarhus Convention. The law is settled in this regard and the Defendants' reliance on authority is misplaced.

Further, the evidence, post-issue of proceedings, of the Defendants engaging further in public participation by making observations on Plaintiff planning applications, undermines the Defendants claim to be penalized, persecuted or harassed in any way for the exercise of their rights under the Aarhus Convention. The evidence demonstrates that is not the case."

Order 19 r. 28 RSC

38. Order 19 r. 28(1) RSC has been amended since the issue of the proceedings by S.I. No. 456 of 2023, the Rules of the Superior Courts (Order 19) 2023, with effect from 14th September, 2023. As this change is essentially procedural, in that it determines the stage at which a matter can be struck out as opposed to the question of whether it can be struck out (since a claim that is going to fail will fail sooner or later), the presumption is that it applies to proceedings in being. I don't immediately see and certainly haven't been made aware of any strong reason to displace that presumption. Hence I can proceed on the basis that the new provision should be taken as applying to existing proceedings (and even if I am wrong about that, it doesn't change anything much because part of the objective of the new rule is to incorporate the inherent jurisdiction which goes beyond frivolous claims to include those which have no reasonable prospect of success. The distinctions in the caselaw in that regard are now historical because all such grounds are now included in the rules of court.

39. The sub-rule now provides:

"28. (1) The Court may, on an application by motion on notice, strike out any claim or part of a claim which:

(i) discloses no reasonable cause of action, or
(ii) amounts to an abuse of the process of the Court, or
(iii) is bound to fail, or
(iv) has no reasonable chance of succeeding."

SLAPP litigation

40. SLAPPs are a relatively recent iteration of an old phenomenon – the brining of proceedings to disrupt and silence opponents rather than obtain justice. As the defendants point out, such abuses have long been recognised in law in various guises. For centuries at common law, barratry was an offence, described by the Law Commission as "persistently stirring up quarrels in the Courts or out of them" (http://www.bailii.org/ew/other/EWLC/1966/3.html).

41. Abuse of process includes the concept of using litigation for an ulterior purpose or for harassment, extortion or oppression: *Varawa v. Howard Smith Company Ltd*. (1911) 13 C.L.R. 35 per Isaac J. at p. 91, *Riordan v. Ireland (No. 5)* [2001] 4 I.R. 463, [2001] 5 JIC 1104 (Ó Caoimh J.), *Ewing v. Ireland* [2013] IESC 44 (MacMenamin J.), *Goldsmith v. Sperrings Ltd.* [1977] 1 WLR 478, [1977] 2 All ER 566 at 489 *per* Lord Denning M.R., *Doherty v Minister for Justice, Equality and Law Reform & Ors* [2009] IEHC 246, [2009] 5 JIC 1501 *per* McGovern J.

42. While abuse of process is an old problem, as the European Commission has pointed out (and as is discussed below), SLAPP litigation specifically has become a growing problem and has given rise to incredible abuses in numerous jurisdictions. It is appropriate for the legal system to be both aware of and sensitive to that context. Existing legal doctrines must be applied and understood in the light of actual conditions.

43. In *Atlas GP Ltd. v. Kelly & Ors* [2022] IEHC 443, [2022] 7 JIC 1903, Egan J. accepted the submission of the Attorney General, who had been brought in to the case to comment on the issue specifically, that the power to strike out was flexible enough to deal with SLAPP situations:

"17. Although Ireland and the EU have not yet enacted specific anti-SLAPP legislation, the JR applicants submitted that Article 3.8 of the Aarhus Convention (UNECE Convention on Access to Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998) ('the Convention'), which provides that parties thereto shall ensure that persons exercising their rights in conformity with the Convention shall not be penalised, persecuted or harassed in any way, must inform this court's approach to the current application. To that end, the JR applicants served the proceedings upon the Attorney General and the court heard submissions setting out the State's position on the interpretation of Article 3.8 of the Convention, in the event that same arises for consideration by the court.

> The Attorney General's position was that this court is entitled to look at the whole history of the dispute between the parties in the exercise of its inherent jurisdiction to strike out the proceedings. The Attorney General submitted that the existing principles applicable in respect of applications to strike out proceedings provide the court with an adequate mechanism to protect and fully vindicate the JR applicants' constitutional right to access the courts and their rights pursuant to Article 3.8 of the Convention. The Attorney General observed that the conforming interpretative obligation, which requires this court to interpret those provisions of the Convention to the fullest extent possible, can be given expression through the application of the existing authorities governing the courts jurisdiction to strike out proceedings in an appropriate case.
>
> 18. On the facts of the present case, I fully accept that this is so. In making my decision on the present application, it has not been necessary for me to rely upon developments in Europe, or elsewhere, in relation to SLAPP litigation, or upon the provisions of Article 3.8 of the Convention. I have merely applied the well-known domestic principles on applications to strike out and have not found it necessary, by way of support or ballast for my decision, to have recourse to the interpretative obligation placed upon this court. The interpretative obligation would only be of key concern if this court were to determine that the domestic principles applying to applications to strike out proceedings did not entitle the JR applicants to the orders sought."

44. Forensically abusive tactics have evolved, and the judicial branch of government in a changing society must look at matters as they stand now, not as of the 19th Century or whenever one chooses to look at the origin of case law on abuse of process. Without re-writing the law, the court can apply the strike-out doctrine in such a way that if the defendant shows that the case has the *indicia* of an abusive SLAPP action, then the defendants would have made out a *prima facie* case of abuse such that the onus would shift to the plaintiff to demonstrate that the case was *bona fide* and not taken for the purpose of oppression.

45. Such a context-sensitive approach to the burden of proof reflects existing (and for what it's worth, proposed) developments including in other jurisdictions where SLAPPs have been subjected to legal analysis.

46. In *Mineral Sands Resources (Pty) Ltd v. Reddell and Others*; *Mineral Commodities Limited and Another v. Dlamini and Another; Mineral Commodities Limited and Another v. Clarke* (7595/2017; 14658/2016; 12543/2016) [2021] ZAWCHC 22; [2021] 2 All SA 183 (WCC); 2021 (4) SA 268 (WCC) (9th February 2021), the High Court Of South Africa, Western Cape Division, Cape Town, *per* Goliath DJP, provided useful background and support for a nuanced approach to the burden of proof (notes omitted):

> "The Features of SLAPP
>
> [39] SLAPPs are Strategic Lawsuits or Litigation Against Public Participation, meritless or exaggerated lawsuits intended to intimidate civil society advocates, human rights defenders, journalists, academics and individuals as well as organisations acting in the public interest. They are litigated into silence by corporations and often times drained of their resources. The term SLAPP was first coined by Professor George W Pring and Penelope Canan. Pring and Canan initially described the classic SLAPP lawsuit as a civil claim targeting a 'non-government party' on an issue of considerable social importance involving local citizens who take a position on a particular public issue and express their views in the public arena. SLAPP suits are still a relatively new phenomenon in most jurisdictions. Essentially its aim is to silence those challenging powerful corporates on issues of public concern. In essence the main purpose of the suit is to punish or retaliate against citizens who have spoken out against the plaintiffs.
>
> [40] The signature elements of SLAPP cases is the use of the legal system, usually disguised as an ordinary civil claim, designed to discourage others from speaking on issues of public importance and exploiting the inequality of finances and human resources available to large corporations compared to the targets. These lawsuits are notoriously, long drawn out, and extremely expensive legal battles, which consume vast amounts of time, energy, money and resources. In essence, SLAPPs are designed to turn the justice system into a weapon to intimidate people who are exercising their constitutional rights, restrain public interest in advocacy and activism; and convert matters of public interest into technical private law disputes.
>
> [41] The person instituting the SLAPP generally have more resources to sustain litigation against their targets. The plaintiff is generally aware of its advantage, and may seek to protect business or economic interest. Targets are typically individuals, local community groups, activists or non-profit organisations who are advancing a social interest of some significance. Many targets often act without any personal profit or commercial advantage. In some instances, the plaintiffs propose settlements which include a damages payment, an

agreement to stop the activism that prompted the litigation, and an undertaking not to discuss the terms of the settlement.

[42] Generally, exorbitant damages claims are part of the strategy chilling public participation and sending a clear message to activists that there are unaffordable financial risks attached to public participation. The emotional and financial harm caused by the SLAPP may result in the withdrawal from actions involving public participation. For this reason, some jurisdictions prefer not to focus on the elements of the legal action in the SLAPP, but rather on the effect of public participation.

[43] A SLAPP does not need to be successful in court to have its intended effect. Proceedings can be continued until the desired effect and impact is achieved. Prolonging and dragging out proceedings and shifting the debate out of the public domain to the courts can fulfil the intended objective. The mere threat of being sued is sometimes sufficient to engender fear and intimidate the target.

…

[51] In Europe, despite strong lobbying from interest groups, SLAPP remains unrecognised. However, the European Union support and actively apply SLAPP-like measures, and anti-SLAPP legislation is actively debated. Notwithstanding the absence of legislative SLAPP interventions, the European Court of Justice considers public interest as a decisive consideration in favour of freedom of expression. In *Handyside v United Kingdom*, Case No. 5493/72, the court stated that a democratic society should tolerate ideas that 'offend, shock, or disturb the State or any sector of the population.' Furthermore, in *Steel and Morris v United Kingdom*, also known as the McLibel case, the court held that in a democratic society even small and informal campaign groups should be enabled to contribute to public debate on matters of general public interest, such as health and the environment. Academics and journalists who participate in democratic public discourse are regularly attacked by SLAPP suits in member States. Criminal defamation is still maintained in 23 EU member States. This creates fertile ground for criminal SLAPP suits. EU member States have not yet reached agreement on a legislative proposal to deal with the SLAPP phenomenon.

[52] In 1704604 *Ontario Ltd v Pointes Protection Association*, an appeal heard on 12 November 2019 in a matter dealing with the environmental impact of a private development, the Supreme Court of Canada dismissed the developer's suit as a SLAPP suit. The developers sued and claimed damages for CAD$6 million for defamation and breach of contract. The court emphasised the public interest in SLAPP legislation, noting that the case was 'about what happens when individuals and organisations use litigation as a tool to quell such expression, which, in turn quells participation and engagement in matters of public interest.'

[53] The court approved the principles established and enunciated in *Grant v Torstar Corp*. in determining what constitutes 'a matter of public interest.' Public interest is to be given a broad interpretation. It is irrelevant at the threshold stage whether 'the expression is desirable and deleterious, valuable or vexatious, or whether it helps or hampers the public interest … the question is only whether the expression pertains to a matter of public interest, defined broadly. '

[54] The defendant must demonstrate that the proceedings arise from an expression relating to a matter of public interest. This threshold must be established on a balance of probabilities. Once the defendant meets this threshold burden, the onus shifts on the plaintiff to show why proceedings should not be dismissed. The plaintiff is the required to clear what is referred to as the 'merits based hurdle' and the 'public interest hurdle'.

[55] The merits based hurdle requires the plaintiff to satisfy the court that there are grounds to believe that the proceedings have substantial merit, and that the defendant has no valid defence in the proceedings. The public interest hurdle requires the plaintiff to satisfy the court that 'the harm likely to be or have been suffered by the [plaintiff] as a result of the [defendant's] expression is sufficiently serious that the public interest in permitting the proceedings to continue outweighs the public interest in protecting the expression'. Simply put, the court held that a plaintiff claiming defamation must address the merits of the claim and demonstrate that the public interest in vindicating that claim outweighs the public interest in protecting the defendant's freedom of expression. Significantly, to overcome the public interest hurdle, one consideration must outweigh the other."

47. The defendants rely on a paper, "Participation from the Deep Freeze: 'Chilling' by SLAPP Suits" by Judith A. Preston, a paper presented to the International Symposium 'Towards an Effective Guarantee of the Green Access: Japan's Achievements and Critical Points from a Global Perspective' Hosted by Green Access Project, Graduate School of Law and Politics, Osaka University Japan Association for Environmental Law and Policy 30-31 March 2013 Awaji Island, Japan. Ms Preston concluded (note omitted):

"The right of citizens to participate in and influence decision-making has, and continues to be, recognised throughout the world in both international and domestic (environmental) laws. Litigation designed to suppress and 'chill' the exercise of such democratic freedoms by preventing any opposition to controversial policies and programmes is repugnant to true democracy based on the Rule of Law. Bullying tactics of well heeled and politically influential parties to silence critics and deny the rights of participation, expression and protest must be vigilantly regulated. Various responses to this anti-democratic phenomenon have included SLAPP-back litigation, anti-SLAPP laws and rigorous enforcement of court/tribunal procedural rules to ensure there is a reduced chance of: abuse of process; compromising the ethical and legal duties of lawyers to the court, client and community and, waste of taxpayers' resources and money at the expense of more worthy cases. These solutions, whilst laudable, require a vigilant and fearless judiciary who will encourage the executive to pass effective anti-SLAPP legislation or enforce existing legislation to protect the targets of this legislation. '[T]he free public expression of both good and bad ideas plays a role in our social ethos and our individual ideology – It is, therefore, not only acceptable, but also important that both good and bad public participation is freely allowed. For as the famous American [jurist] Justice Oliver Wendell Holmes Jr. once remarked, '…the ultimate good is better reached by free trade in ideas … [and] the best test of truth is the power of the thought to get itself accepted in the competition of the market…'".

48. An uncomfortable issue for the legal profession is that the shadow of iniquity associated with a SLAPP action can fall on its professional enablers, not just on the plaintiff herself. Many legal practitioners might bristle at that concept, seeing as how used one could be to the defence of merely carrying out ostensibly lawful instructions. But societal and professional norms are not static and can move on to address current problems, and in England & Wales, the Solicitors Regulation Authority has issued a Warning Notice in November, 2022 in relation to conduct of lawyers in a SLAPP context: https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/. Its text is instructive:

"Warning notice
Strategic Lawsuits against Public Participation (SLAPPs)
Strategic Lawsuits against Public Participation (SLAPPs)
Published: 28 November 2022
Status
This document is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.
Who is this warning notice relevant to?
This warning notice is relevant to all firms and individuals we regulate who conduct litigation and who give dispute resolution and pre-action advice.
Our concerns
There is public concern - and we are concerned too - that solicitors and law firms are pursuing a type of abusive litigation, known as strategic lawsuits against public participation (SLAPPs), on behalf of their clients.
The term SLAPP is commonly used to describe an alleged misuse of the legal system, and the bringing or threatening of proceedings, in order to harass or intimidate another who could be criticising or holding them account for their actions and thereby discouraging scrutiny of matters in the public interest.
The key aim of a SLAPP is to prevent publication on matters of public importance, such as academic research, whistleblowing or campaigning or investigative journalism. Claims of defamation or invasion of privacy are the causes of action most associated with SLAPPs, but other causes of action (such as breach of confidence) could also be used for this purpose.
The government has proposed a three-part test to identify a SLAPP claim that would, under its proposed reforms, be subject to early dismissal as a result:
That the case relates to a public interest issue.
That it has some features of an abuse of process.
That it has insufficient evidence of merit to warrant further judicial consideration.
Regardless of whether or not a case fulfils all three limbs of the above test, we are able to take action in respect of abusive conduct. SLAPP threats, if they achieve their goals, often do not reach court. Again, this does not prevent us from investigating complaints.
Examples of abusive conduct both before, in the lead up to and during litigation are given in our recent guidance, Conduct in Disputes. This involves the use or threat of litigation for reasons that are not connected to resolving genuine disputes or advancing legal rights. Purposes can include silencing criticism or stalling another process. An aim may often be to use the threat of cost or delay to achieve these outcomes. Our guidance also highlights that

it is improper to bring cases or allegations without merit, or to do so in an oppressive, threatening or abusive manner.

Making advice and legal representation available to all is in the public interest. This includes taking action to prevent or remedy the infringing of a client's rights in respect of their privacy and their reputation. It is not in the public interest for false or misleading information to be needlessly published, and lawyers can have a legitimate role in encouraging journalists and others to ensure that what is published is legal and accurate.

We also recognise that in the course of conduct leading up to and including litigation, lawyers will need to act in defence of their client's interests and that correspondence will sometimes properly be robust or formal and lengthy – for instance, where this is strictly necessary in order to comply with a pre-action protocol.

However, proceedings must be pursued properly, and that means making sure that representing your client's interests does not override wider public interest obligations and duties to the courts.

The Standards and Regulations

You must comply with the Principles and in particular:

Principle 1 - act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice

Principle 2 – act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons

Principle 3 – act with independence

Principle 4 - act with honesty

Principle 5 - act with integrity

You must also comply with the relevant paragraphs in the Code of Conduct for Solicitors, RELs and RFLs and the Code of Conduct for Firms where applicable. For example:

Paragraph 1.2 of the Code of Conduct for Solicitors states that you must not 'abuse your position by taking unfair advantage of clients or others'.

Paragraph 1.4 of the Code of Conduct for Solicitors states that you must not 'mislead, or attempt to mislead your clients, the court or others, either by your own acts or omissions or by allowing or being complicit in the acts or omissions of others (including your client)'.

Paragraph 2 imposes obligations including:

Not seeking to influence the substance of evidence (paragraph 2.2)

Only making assertions or putting forward statements, representations or submissions to the court or others which are properly arguable (paragraph 2.4)

You should have regard to our requirements under Code of Conduct for Solicitors, RELs and RFLs paragraphs 7.7, 7.8 and 7.9 regarding your obligations to make reports to us, and to not subject any person to detrimental treatment for making or proposing to make such a report as a result of their obligation to us. You may also wish to have regard to our warning notice on the use of non-disclosure agreements.

Our expectations

Identifying SLAPPs

We expect you to be able to identify proposed courses of action (including pre-action) that could be defined as SLAPPs, or are otherwise abusive, and decline to act in this way. We expect you to advise clients against pursuing a course which amounts to abusive conduct, including making any threats in correspondence which are unjustified or illegal.

The following are red flags or features which are commonly associated with SLAPPs. Although they might not by themselves be evidence of misconduct, nor will they necessarily be present in all cases, they might help you to identify a proposed SLAPP:

The target is a proposed publication on a subject of public importance, such as academic research, whistle-blowing or investigative journalism.

Your instructions are to act solely in a public relations capacity, for example by responding to pre-publication correspondence with journalists about a story which is true and does not relate to private information.

The client asks that the claim is targeted only against individuals (where other corporate defendants are more appropriate), is brought under multiple causes of action or jurisdictions/fora, and/or in a jurisdiction unconnected with the parties or events.

Conduct of the case

There are a number of behaviours commonly associated with SLAPPs. Those which we consider matters of concern and are likely to result in regulatory action include:

Seeking to threaten or advance meritless claims, including in pre-action correspondence, and including claims where it should be clear that a defence to that type of claim will be successful based on what you know.

Claiming remedies to which the client would not be entitled on the facts, such as imprisonment upon a civil claim, or specific or exaggerated costs consequences.
Making unduly aggressive and intimidating threats, such as threats which are intended to intimidate recipients into not seeking their own legal advice.
Sending an excessive number of letters that are disproportionate to the issues in dispute and the responses received.
Sending correspondence with restrictive labels (see below) that are intimidating but inaccurate.
Pursuing unnecessary and onerous procedural applications, intended to waste time or increase costs, such as for excessive disclosure.
As stated above, an important consideration is whether the claim is meritless, or - in light of your understanding of the defences that are available to your opponent - is bound to fail. We expect you to take reasonable steps to satisfy yourself that a claim is properly arguable before putting it forward, either in correspondence or via an issued claim. We expect you to have considered the prospects of a proposed course of action being unsuccessful or counter-productive, and to have advised your clients properly before starting.
In a defamation context, relevant factors to take into account might include:
The truth of the alleged defamatory statements
Insufficient connection to the jurisdiction (S.9 Defamation Act 2013).
Where the proposed claimant is a corporation, will the client be able to evidence a likelihood of serious financial loss (S.1 Defamation Act 2013).
Whether the proposed claimant is a governmental body (Derbyshire County Council v Times Newspapers [1993] AC 534).
Any inability to acquire a pre-publication injunction due to the rule in Bonnard v Perryman [1891] 2 Ch 269
The prospects of early strike out based on the case of Jameel v Dow Jones & Co Inc [2005] EWCA Civ 75, or on other grounds (such as any anti-SLAPP legislation as and when it comes into force)
In a privacy or breach of confidence context a claim will be unarguable for example if it focuses on information which cannot properly be regarded as either private or confidential.
Labelling correspondence
We expect you to ensure that you do not mislead recipients of your correspondence, and to take particular care in this regard where that recipient may be vulnerable or unrepresented. One way this can happen in this context is by labelling or marking correspondence 'not for publication', 'strictly private and confidential' and/or 'without prejudice' when the conditions for using those terms are not fulfilled.
We accept that marking a letter with such terms might be necessary if (for instance) an individual needs to disclose private and confidential information in order to disprove facts intended for publication. If so, it might also serve a purpose in ensuring correspondence is not read by an unintended recipient and/or to inform the recipient that they cannot rely on the defence of consent if they choose to publish any of the relevant material. Recipients might also properly be warned as to the legal risks of publication of such correspondence (which may include aggravation of any damages payable).
However, you should carefully consider what proper reasons you have for labelling correspondence in these ways, and whether further explanation is required where the recipient might be vulnerable or uninformed. Such markings cannot unilaterally impose a duty of privacy or confidentiality where one does not already exist. Clients should be advised of this and warned of the risks that a recipient might properly publish correspondence which is not subject to a pre-existing duty of confidence or privacy.
If the client is not content to bear this risk, they can be advised of other options (see paragraphs 20 to 28 of Practice Guidance - Civil Non-Disclosure Orders July 2011 (judiciary.uk). You should ensure that you are satisfied that the recipient will know they are allowed to seek legal advice on your correspondence. Where a recipient indicates they wish to publish correspondence they have received, they must not be misled as to the consequences. Unless there is a specific legal reason which prevents this, recipients of legal letters should be able to generally disclose that they have received them.
Equally, correspondence should not be marked as 'without prejudice' if that correspondence does not fulfil the conditions for that label. You should consider whether the communication represents a genuine attempt to compromise an existing dispute. There should ordinarily be no need to apply it to correspondence which does not offer any concessions and only argues your case and seeks concessions from the other side. You should also consider whether you may wish to rely on the correspondence in any proceedings without the recipient's consent, including to evidence your pre-action conduct.

Enforcement action

If an issue arises, failure to have proper regard to this warning notice is likely to lead to disciplinary action.

For further information on our approach to taking regulatory action, see our Enforcement Strategy and in particular our guidance on Conduct in Disputes.

Further guidance

For guidance on any of the above conduct matters contact the Professional Ethics helpline"

49. While not law, or even meant to apply to purely domestic actions, the Commission's proposed directive is instructive https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0177. It recommends mechanisms to strike out SLAPP actions at an early stage, at which point the onus would be on the plaintiff to show that the action was not manifestly unfounded.

50. The proposed directive draws a distinction between public participation and activity motivated by economic considerations. The recitals illustrate examples of this:

"(17) Public participation should not normally cover commercial advertisement and marketing activity, which are typically not made in the exercise of freedom of expression and information.

(18) The notion of a matter of public interest should include also quality, safety or other relevant aspects of goods, products or services where such matters are relevant to public health, safety, the environment, climate or enjoyment of fundamental rights. A purely individual dispute between a consumer and a manufacturer or a service provider concerning a good, product or service should be covered only when the matter contains an element of public interest, for instance concerning a product or service which fails to comply with environmental or safety standards.

(19) Activities of a person or entity in the public eye or of public interest are also matters of public interest to which the public may legitimately take an interest in. However, there is no legitimate interest involved where the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity of a particular audience regarding the details of a person's private life."

51. The proposed directive defines a SLAPP in these terms (art. 3(3)):

"'abusive court proceedings against public participation' mean court proceedings brought in relation to public participation that are fully or partially unfounded and have as their main purpose to prevent, restrict or penalize public participation. Indications of such a purpose can be:

(a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;

(b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;

(c) intimidation, harassment or threats on the part of the claimant or his or her representatives."

52. The explanatory memorandum expands on this:

"Manifestly unfounded or abusive court proceedings against public participation (commonly referred to also as strategic lawsuits against public participation or 'SLAPPs') are a recent but increasingly prevalent phenomenon in the European Union. They are a particularly harmful form of harassment and intimidation used against those involved in protecting the public interest. They are groundless or exaggerated court proceedings typically initiated by powerful individuals, lobby groups, corporations and state organs against parties who express criticism or communicate messages that are uncomfortable to the claimants, on a matter of public interest. Their purpose is to censor, intimidate and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition. Unlike regular proceedings, SLAPPs are not initiated with a view to exercising the right of access to justice and the purpose of winning the legal proceedings, or obtaining redress. Instead, they are initiated to intimidate the defendants and to drain their resources. The ultimate goal is to achieve a chilling effect, silence the defendants and deter them from pursuing their work.

Typical targets of SLAPPs are journalists and human rights defenders. This extends beyond individual persons to media and publishing houses and civil society organisations, such as those involved in environmental activism. Other persons engaged in public participation such as researchers and academics may also be targeted.

A healthy and thriving democracy requires that citizens are able to participate actively in public debate without undue interference by public authorities or other powerful interests. In order to secure meaningful participation, citizens must be able to access reliable information, which enables them to form their own opinions and exercise their own judgement in a public space in which different views can be expressed freely.

Journalists have an essential role in facilitating public debate and in imparting information, opinions and ideas. They need to be able to conduct their activities effectively to ensure that citizens have access to a plurality of views in European democracies. Investigative journalists play a key role in combating organised crime, corruption and extremism. A robust system of safeguards is needed to enable them to fulfil their crucial role as watchdogs on matters of legitimate public interest. Their work carries particularly high risks and they are experiencing a growing number of attacks and harassment. Human rights defenders have a critical role to play in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes without fear of intimidation.

Imbalance of power between the parties with the claimant having a more powerful position than the defendant - for example financially or politically - is often a characteristic of SLAPPs. While it is not always the case, where present such an imbalance of power contributes significantly to the potential of SLAPPs to produce harmful consequences for the targets, with chilling effects for public debate as a result. SLAPPs can have a deterrent effect also on other potential targets, who may decide not to assert their right to investigate and report on issues of public interest. This risks leading to self-censorship."

53. Not that one would be influenced by it other than as context, but the Irish government has published a General Scheme of a Defamation (Amendment) Bill as of March 2023 https://www.gov.ie/pdf/?file=https://assets.gov.ie/251457/c05b57f5-8ad7-4a5f-872b-ede710368183.pdf#page=null, which includes anti-SLAPP measures. Definitions include the following:

"'act of public participation' means any statement or publication by a natural or legal person that is expressed or carried out, in the exercise of the right to freedom of expression and information, on a matter of public interest, [and preparatory, supporting or assisting action directly linked thereto];

'matter of public interest' means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:

(a) fundamental rights, public health, safety, the environment, or climate;

(b) activities of a public figure;

(c) matters under consideration by a legislative, executive or judicial body, or any other official proceedings;

(d) allegations of corruption, fraud or other criminal offences;

(e) activities aimed to fight disinformation;

'proceedings against public participation' means proceedings brought under another Part of this Act against an act of public participation;

'feature of concern', in relation to proceedings against public participation, means any of the following features:

(a) the making of claims of a disproportionate, excessive or unreasonable nature;

(b) intimidation, harassment or threats made by the plaintiff or his or her representatives against the defendant or associated parties, including prior to the institution of the proceedings;

(c) the existence of multiple proceedings initiated by the plaintiff or associated parties against the defendant or associated parties, in relation to similar matters;

(d) the conduct of the litigation by the plaintiff in a manner which is disproportionate, excessive or unreasonable, including (but not limited to) the use of aggressive, unreasonably frequent, or intrusive pre-action communication;

(e) the conduct of the litigation by the plaintiff in a manner which is likely to generate disproportionate, excessive or unreasonable costs or delays to the defendant, especially when the balance of financial resources between the parties is significantly in favour of the plaintiff: this includes (but is not limited to) the choice of jurisdiction and the use of requests for disclosure or discovery;

(f) the seeking by the plaintiff of remedies that are disproportionate, excessive or unreasonable."

54. Head 26 provides for strike-outs:

"Provide that:

1. Where proceedings are brought under another Part of this Act by a plaintiff, in relation to public participation by a defendant, the defendant may [in accordance with rules of court], apply to the court at any time after the issue of the proceedings for the early [summary] dismissal of the proceedings.

2. On such application by the defendant ['the applicant'], where the court is satisfied that the proceedings are proceedings against public participation:

(a) the court shall dismiss the proceedings without continuing to a full hearing, if it is satisfied that they are manifestly unfounded; it shall be for the plaintiff in the original proceedings to satisfy the Court that they are not manifestly unfounded;
(b) subject to (c), the court [shall/may] dismiss the proceedings without continuing to a full hearing, if it is satisfied that they exhibit one or more features of concern; it is for the applicant to satisfy the Court on this point;
(c) the court shall not dismiss the proceedings under (b), if the plaintiff satisfies the court that :
(i) the plaintiff's claims are likely to succeed if the case proceeds to full hearing, and
(ii) taking account of all the considerations listed in Head 25, the public interest in allowing the proceedings to continue outweighs the public interest in dismissing the case before a full hearing.
3. When an application is made for early dismissal under this Head, the main proceedings shall be stayed until a final decision on the dismissal application has been issued.
4. An appeal lies against the making or refusal of an order under this Head.
5. The court shall, as far as possible, expedite the hearing of an application or an appeal under this Head.
6. (a) If the court dismisses proceedings on foot of an application under this Head, the applicant shall be entitled to their costs on a full indemnity basis, unless the court determines that all or part of such an award of costs is not appropriate in the circumstances.
(b) If the court does not dismiss the proceedings on foot of an application under this Head, the respondent shall not be entitled to their costs of that application, unless the court determines that such an award is appropriate in the circumstances.
7. Nothing in this Part affects the court's inherent jurisdiction, or its jurisdiction under rules of court, to dismiss an action summarily"

55. In case reference to heads of a Bill raises any hackles, I record these matters just for information and context and as illustrative of some current societal understandings of the issues raised by SLAPPs. At the risk of insulting the reader's intelligence, draft legislation is just a draft, and the legislative process has its own separate jurisdictional course, enclosed behind the bulkheads of the separation of powers, on which there is no call for judicial comment in this context at this stage. But contextually, the proposal does illuminate some of the issues which are currently knocking at the door of the courts.

56. In the UK, s. 195 of the Economic Crime and Corporate Transparency Act 2023 makes provision for SLAPPs in an economic crime context only. The provision defines a SLAPP as follows:

"(1) For the purposes of section 194 a claim is a 'SLAPP claim' if—
(a) the claimant's behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech,
(b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,
(c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and
(d) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
(i) harassment, alarm or distress,
(ii) expense, or
(iii) any other harm or inconvenience, beyond that ordinarily encountered in the course of properly conducted litigation.
(2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (c), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored.
(3) For the purposes of this section, information mentioned in subsection (1)(b) 'has to do with economic crime' if—
(a) it relates to behaviour or circumstances which the defendant reasonably believes (or, as the case requires, believed) to be evidence of the commission of an economic crime, or
(b) the defendant has (or, as the case requires, had) reason to suspect that an economic crime may have occurred and believes (or, as the case requires, believed) that the disclosure of the information would facilitate an investigation into whether such a crime has (or had) occurred.
(4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account—

(a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;
(b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;
(c)any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.
(5)F or the purposes of subsection (4)(c) a failure, or anticipated failure, is 'relevant' so far as it relates to—
(a) the choice of jurisdiction,
(b) the use of dilatory strategies,
(c) the nature or amount of material sought on disclosure,
(d) the way to respond to requests for comment or clarification,
(e) the use of correspondence,
(f) making or responding to offers to settle, or
(g) the use of alternative dispute resolution procedures.
(6) In this section—
'court' has the same meaning as in section 194;
'economic crime' has the meaning given by section 193(1);
'the right to freedom of speech' means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
(7) In the definition of 'the right to freedom of speech' in subsection (6) 'the European Convention on Human Rights' means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom."

57. The defendants also rely on Sharon Beder, "SLAPPs – Strategic Lawsuits Against Public Participation: Coming to a Controversy Near You" Current Affairs Bulletin, vol. 72, no. 3, Oct/Nov 1995, pp. 22-29. Under the heading "Who are the targets?", she writes (table and notes omitted):

"As in the case of the use of the Trade Practices Act, SLAPPs are not restricted to environmentalists, and have covered other issues such as consumer protection issues in both the US and Australia. Canan, in her study with Pring, found that those filing the suits assumed that economic rights were superior to public interests. 'The idea is that because a business has money at stake, business should receive priority over civic, communal opposition.

The targets of these law suits are generally not radical environmentalists nor professional activists. They are ordinary middle-class people who are concerned about their local environment and have no history of political activity. They are often the organisers of opposing groups, or perceived trouble makers. At Hinchinbrook when over 100 people protested whilst Mangroves were cleared, only one woman was sued by the developer for trespass and damages - Margaret Thorsborne, 67, who had been one of the leaders of the campaign to stop development in the area. The action was later withdrawn but not before it had cost her considerable worry and money for lawyers' fees.

The concentration on local resident protestors rather than professional environmentalists is no accident either. Local residents often have most to lose and don't have the support and ideological commitment that a professional environmentalist in a large environmental organisation usually has. Law suits are usually aimed at intimidating middle-class citizens who have assets and mortgages that could be seized and are less threatening to young activists without assets who have little to lose. Kelpie Wilson, who was one of six activists SLAPPed in Oregon by a logging company argues that Non-violent civil disobedience, historically a political tool of great importance to this country, is no longer a viable option for many activists....in future activists will probably have to divide into two camps. Those who do direct action will have to stay lean, mean and low on the food chain. They can't keep suing us when they don't get anything out of it.

However, in Britain, McDonald's, one of the largest companies in the world, has made the mistake of suing two unemployed activists who have nothing to [lose] and much to gain from the case. Dave Morris and Helen Steel were allegedly distributing London Greenpeace pamphlets 'What's Wrong With McDonalds'. (London Greenpeace is an anarchist group not affiliated to Greenpeace International.) The publicity generated by the case has meant that the original pamphlet has had massive distribution around the world. 'In the UK alone, over

a million leaflets have been distributed since the writs were slapped on us' says Steel. Their views are being broadcast from the court around the world whilst McDonald's struggles to minimise the poor publicity. It has been reported in an article in The Independent entitled 'McLibel Two make silly burgers of McDonald's' that McDonald's is now attempting to end the action in secret negotiations with the activists.

Because this is a libel case Morris and Steel have no right to legal aid and are defending themselves against McDonald's top lawyers. Even before the case went to trial in 1994, there had been several years of pre-trial hearings. It is now the longest running libel trial in UK history.

Steel claims that in the past people have been intimidated by McDonald's threats of law suits and backed off from criticisms of the company. Morris argues that a climate of fear had been created and the word had gone out that if you said anything against McDonald's you would get a writ. McDonald's claims that it is taking the action to establish the truth. Prior to the case McDonald's infiltrated the meetings of London Greenpeace to gather evidence against them and the private investigators who did this later gave evidence at the trial. McDonald's has also been successful in petitioning the judge not to have a jury for this case, arguing that the issues were too complex for a jury to understand.

Morris and Steel are now supported by an international 'McLibel Support Campaign' which is raising money to help with costs. They intend to call about 170 witnesses to give evidence against McDonald's practices and products. To win their case Morris and Steel have to prove that every statement in the pamphlet is true. They are also suing McDonald's in what is termed a SLAPP-back (sometimes also used by US targets of SLAPP suits), for distributing leaflets calling them liars."

58. Since the motion was heard, the Council of Europe has adopted a recommendation on SLAPPs in the form of Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) (Adopted by the Committee of Ministers on 5 April 2024 at the 1494th meeting of the Ministers' Deputies). While addressed to the executive branches of member states specifically, it recommends as follows:

"Recommends that the governments of the member States:

i. implement, as a matter of urgency and through all branches of State authorities within their competence, the guidelines set out in the appendix to this recommendation, taking full account of the principles included therein, in particular regarding structural and procedural safeguards, remedies, transparency, support for targets and victims, education, training, awareness raising as well as capacity building;

ii. pay specific attention to SLAPPs in the context of their reviews of relevant domestic laws, policies and practices, including in accordance with Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, to ensure full conformity with member States' obligations under the Convention;

iii. promote the goals of this recommendation at the national level, as well as in relevant European and international forums, and engage and co-operate with all interested parties to achieve those goals;

iv. regularly review the status of implementation of this recommendation with a view to enhancing its impact, in particular improving support mechanisms for targets and victims, and inform the Committee of Ministers about the measures taken by member States and other stakeholders, the progress achieved and any remaining shortcomings."

59. Definitions include the following:

"Key terms

4. For the purposes of this recommendation and in line with the rights enshrined in the Convention, as interpreted by the Court in its case law, the following key terms are understood in a comprehensive and inclusive manner:

a. 'Public participation' refers to everyone's democratic right to participate in public debate and public affairs, online and offline, without fear or discrimination. This includes the right to express opinions and ideas that run counter to or are critical of those defended by the official authorities or by a significant part of public opinion, or which offend, shock or disturb the State or any sector of the population, as clarified by the Court. The notion of 'everyone' encompasses all public watchdogs and contributors to public debate and all participants in public affairs, including, but not limited to: journalists, media organisations, media professionals and other media actors, such as citizen journalists; civil society organisations, for example environmental and anti-corruption associations and activists; unions; whistle-blowers; academics; bloggers; human rights defenders; legal professionals; users of social media; cultural actors and creative industry actors.

'Public participation' also refers to the right to freedom of assembly and association and the right to vote and stand in elections. Public participation can thus include a wide variety of

activities such as advocacy, journalism, investigating and reporting violations of the law or ethical norms, academic research, teaching, debate, writing to government officials or corporate customers, circulating petitions, being parties in litigation designed to advance social change or protect existing rights or the environment, engaging in peaceful protests or boycotts, engaging with regional or international mechanisms, or simply speaking out against misuse or abuse of power, human rights abuses, corruption, fraud or indeed commenting on any matter of public interest. The scope of the term also covers actions preparing, supporting or assisting public participation.
CM/Rec(2024)2 4
b. 'Public interest' refers to all matters which affect the public and in which the public may legitimately take an interest, especially those matters concerning important social issues or affecting the well-being of individuals or the life of the community or the environment. The public has the right to receive information and ideas and thus to be informed about matters of public interest, and journalists and the media have the task of imparting such information and ideas. Public interest extends to issues which may give rise to considerable controversy, but it cannot be reduced to the public's thirst for information about the private lives of others, or to an audience's wish for sensationalism or voyeurism. Politics, current affairs, human rights, justice, social welfare, education, gender equality, sexual orientation and gender identity, sexual or gender-based harassment or violence, health matters, religion, culture, history, corruption, climate and environmental issues are thus all examples of topics of public interest, unlike individuals' private relationships or family affairs. Topics may be of public interest at the local, national or international level.
Definitional criteria of SLAPPs
5. Targeting public participation – The legal action seeks to misuse or abuse the legal process to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.
6. Covering all causes of legal action – Legal actions may entail the misuse or abuse of all types of statutory or common law to prevent, inhibit, restrict or penalise contributions to public debate, including, but not limited to, defamation, insult, invasion of privacy, conspiracy, breach of intellectual property rights, economic interference or infliction of emotional harm. While this will generally mean a civil lawsuit, in some jurisdictions it is possible to trigger misdemeanours, administrative measures or criminal charges against their critics, including through the use of injunctions. This definition also extends to "legal intimidation tactics" – interlocutory or interim measures, aggressive subpoenas or simple threats designed to intimidate the other party into backing down.
7. All stages of legal action – All stages of legal action are relevant, including an initial threat of legal action, which is in itself capable of having a chilling effect on public participation, as well as enforcement proceedings.
SLAPP indicators
8. SLAPPs manifest themselves in different ways and various indicators can be used to identify them. Such indicators include, but are not limited to, the following elements:
a. the claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant;
b. the arguments put forward by the claimant are partially or fully unfounded;
c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
d. the claims amount to abuse of laws or procedures;
e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;
f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
g. the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake;
h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

9. While SLAPPs do not necessarily include all these indicators, the more of them that are present or the more acute the behaviour, the more likely the legal action can be considered as a SLAPP."

60. Again, at the risk of stating the obvious, the foregoing various matters relate to law elsewhere, legal analysis, or proposals, and are persuasive or contextual at best. Of course there is a line between drawing on such materials for background and illumination on the one hand, and engaging in unwarranted innovation on the other. Bearing that danger in mind, I think the approach to SLAPPs is best viewed as something to be accommodated within existing legal principles, but on the basis of a context-sensitive understanding and application.

61. Regulation of SLAPPs can involve special procedural elements – a right to bring in *amici curiae* (which a court could anyway be open to in any case where they have something tangible to contribute), or special provision for costs and damages in favour of a successful defendant. These matters don't need to be considered further for present purposes.

62. As regards the *indicia* of SLAPPs, one can identify a number of elements as follows. Of course, not all of these need be present in every case for the matter to be a SLAPP, and some of these *indicia* are not in themselves problematic – for example an imbalance of power between parties doesn't render litigation improper in itself. Indeed an individual or small group can engage in SLAPP tactics against a more powerful entity such as a media organisation for the purpose of shutting down criticism or scrutiny – for example, someone making unfounded novel claims (perhaps a crank organisation or eccentric conspiracist) can abusively cry defamation against scientists, journalists or other writers who subject their theories to critical scrutiny. But when one puts together a range of factors pointing in the same direction, an inference of abuse of process can arise. Hence an attempt at an overall list may be helpful. The potential *indicia* essentially come under four headings, related to parties, the subject-matter of the litigation, the claims made and the conduct of the litigation and related correspondence:

Parties

(i) a significant imbalance of power between the parties especially where accompanied by an attempt to exploit such an imbalance;

(ii) the status of the defendant as a journalist, human rights defender, environmental activist, or other public interest actor;

(iii) the fact that the action complained of was undertaken by the defendant for non-economic purposes and without personal gain arising or intended to arise thereby;

(iv) selective choice by the plaintiff to include the particular defendant in the proceedings (such as a journalist) if there were other better-resourced defendants that could have been included (such as her employer);

(v) selective choice of defendants with assets capable of being charged with costs or damages, if there were other potential defendants particularly with ample resources;

(vi) inclusion of multiple peripheral defendants in a way that is likely to put pressure on a principal defendant (for example, family members or others associated with a principal defendant);

Subject-matter

(vii) a public interest dimension to the work or activities that the suit impugns;

(viii) in particular the fact that the impugned speech or conduct related to addressing or publicising wrongdoing by or involving the plaintiff, such as, purely to take some examples, economic, business or governance issues, related to questioning the practices of secretive persons or institutions such as oligarchs or cult-like "religions", or related to applying scientific scepticism to unproven or controversial claims;

(ix) a likelihood of a chilling effect in deterring further public interest activity by the defendant or others;

Claims made in the proceedings

(x) a disproportionate, excessive, unreasonable or generally heavy-handed claim by the plaintiff, especially to matters which are unlikely to have caused significant harm;

(xi) the inclusion of wide-ranging reliefs disproportionate to the harm allegedly caused;

(xii) unduly vague and unspecific claims;

(xiii) the use of legally unfounded or untenable arguments;

Conduct of the dispute

(xiv) a failure to make reasonable use of pre-action procedures or alternative dispute resolution as an alternative to litigation;

(xv) the choice of a higher than appropriate jurisdiction,

(xvi) the choice of a forum that is unfavourable to public participation or other than that of the defendant's ordinary residence,

(xvii) the pursuit of appeals with little or no prospect of success;

(xviii) the use of procedural mechanisms in the litigation, or conducting it generally, in a way that generates unnecessary or excessive cost;
(xix) failure to seek an early hearing date;
(xx) the use of other delaying procedural mechanisms, or conducting the litigation generally in a way that generates unnecessary or excessive delay or that provokes an excessive workload for the defendant;
(xxi) material non-disclosure or litigation misconduct by the plaintiff;
(xxii) excessive demands for disclosure, discovery, particulars, interrogatories or other information;
(xxiii) minimal or no provision of information in response to the defendant's demands for disclosure, discovery, particulars, interrogatories or other information;
(xxiv) multiple lawsuits brought by the plaintiff or related persons in relation to the same or related matters;
(xxv) intimidation, harassment or threats on the part of the plaintiff including use of correspondence that is excessively threatening or beyond what is necessary in quantity or frequency;
(xxvi) use of misleading or inappropriate correspondence such as correspondence that is excessively labelled, for example as strictly private and confidential or without prejudice, when the conditions for such labels do not apply;
(xxvii) a likelihood of alarm, distress or other harm to a defendant beyond that of a properly conducted legal dispute;
(xxviii) the use of intimidating, inflammatory or scandalous language in correspondence, pleadings or otherwise by the plaintiff; and
(xxix) the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake.

63. As the Council of Europe points out, the more *indicia* that are present suggestive of a SLAPP, the more likely such a finding might be. It would, of course, be inappropriate to strike out an action merely because it has only one or even some of the foregoing *indicia*. One has to look at the case in the round, and take a holistic view of all of the circumstances, to use the multi-purpose phrase of Donnelly J. (originally used in the question of extension of time - *Heaney v. An Bord Pleanála* [2022] IECA 123, [2022] 5 JIC 3123 (Unreported, Court of Appeal, 31st May, 2022), para. 95). But the holistic overview is of particular relevance in a context where there are shades of grey – it doesn't preclude there being a genuine and clear binary dividing line in any given legal situation.

64. An overview should consider all of the various *indicia*, both pro and con a conclusion of abuse of process. But as regards a "balancing test" as to whether it is more in the public interest to allow a case to continue or be struck out, I am not hugely persuaded that this is a particularly meaningful or even appropriate question in practice. Either a case is brought for abusive purposes or it isn't. If not then it should proceed, if so it should be struck out. Some things ultimately are binary. I think that a balancing test is really just another way of asking whether the action is a SLAPP. If it is, there isn't any significant public interest in allowing it to proceed. There is something unduly pious about speaking exclusively in terms of the "public interest" in such a context. Litigants in a free society aren't obliged to act in the public interest in some absolute sense – that's because of something called human rights - and they normally don't. The purpose of litigation is normally to enforce some private right enjoyed by the plaintiff herself, not to promote the public interest in some direct way. Of course a flabby definition of public interest could be concocted which includes the public interest in facilitating people to bring litigation that is not designed to advance the public interest. But why engage in such semantic contortion? Rather than shoehorn litigation into an artificial frame of reference of what serves the public interest, it would be better to situate the debate where it belongs – in the determination of whether something is an abuse of process in the first place.

Law in relation to an application to strike out

65. The law prior to 2023 distinguished between issues arising under particular rules of court, and an inherent jurisdiction to strike out: see *Lopes v. Minister for Justice Equality and Law Reform* [2014] IESC 21, [2014] 2 I.R. 301, [2014] 3 JIC 2701 (Clarke J.), *Haughton v. Quinns of Baltinglass Ltd.* [2019] IEHC 872, [2019] 12 JIC 1909 (Simons J.). Since the 2023 rules referred to above, these previous distinctions in caselaw are less important, as the new rule applies to applications to strike out both of the whole or a part of an action, and also incorporates the grounds previously based in rules as well as those based in inherent jurisdiction.

The default order is that all issues should be addressed at trial

66. An initial obvious point is that the default order is that the issues should be addressed at the trial. There must be an initial onus on any party arguing otherwise to show that such an order should be made: *Towey and Towey v. Ireland & Ors*. [2022] IEHC 559, [2022] 11 JIC 1108 *per* Dignam J. at para. 27. The onus to show an abuse of process is a heavy one: *Grant v. Roche Products*

(Ireland) Ltd. And Others, [2008] IESC 35, [2008] 4 I.R. 679, [2008] 5 JIC 0712 per Hardiman J. at 696, citing *Goldsmith v. Sperrings Ltd.* [1977] 1 WLR 478, per Lord Denning M.R. at p. 498

67. The power to strike out is a jurisdiction to be exercised sparingly and only in clear cases, given that it relates to the constitutional right of access to the courts: see *Barry v. Buckley* [1981] I.R. 306, [1981] 7 JIC 0901 *per* Costello J., *Towey and Towey v. Ireland & Ors*. [2022] IEHC 559, [2022] 11 JIC 1108 *per* Dignam J. In *McGreal v. Whyte* [2016] IECA 365, [2016] 12 JIC 0609, Irvine J. at para. 1 described the strike-out order as "a relatively Draconian relief".

68. If the matter raises complex issues more appropriate to a trial, the court should lean against strike-out: "A court should not entertain an application to dismiss where the legal issues or questions of construction arising are themselves complex and such as would require the type of careful analysis which can only be carried out safely at a full trial in circumstances where the facts can be fully explored": *Moylist Construction Ltd. v. Doheny* [2016] IESC 9, [2016] 2 I.R. 283, [2016] 3 JIC 0401 (Clarke J.) at 291, para. 3.12.

69. If the issue is one which in the normal course of events should be determined at the hearing, a strike out motion should not be used to obtain an early decision on such issues: *McGreal v. Whyte* [2016] IECA 365, [2016] 12 JIC 0609 at *per* Irvine J. at para. 30.

70. In general, the principle of cost effective litigation militates against a multiplicity of interlocutory motions: *Aer Rianta Cpt v. Ryanair Ltd* [2004] IESC 23, [2004] 4 JIC 0215 *per* Denham J.

Where a defendant shows prima facie that an action is abusive (including by reason of being a SLAPP), the plaintiff must show a reasonable basis for concluding that it is bona fide

71. As discussed above, where the defendant shows that the action *prima facie* is abusive (by reason of *prima facie* being a SLAPP or otherwise), the onus ought properly shift to the plaintiff to demonstrate otherwise.

The plaintiff's case must plead claims known to the law or at least a reasonable basis for an evolution of the law

72. The proceedings must disclose a claim for a legally permissible relief, bearing in mind that a plaintiff must have reasonable latitude for creativity if it has a plausible basis to argue that a new form of relief should be considered

73. The mere fact that an action is innovative is not a basis to strike it out. *Millstream Recycling Ltd v. Tierney* [2010] IEHC 55, [2010] 4 I.R. 253, [2010] 3 JIC 0902, [2010] 3 JIC 0906, Charleton J. said:

> "15. A weak or innovative case based upon contested assertions of fact does not fit within the category of a case that should be dismissed unless it can be demonstrated that what the plaintiff asserts is utterly undermined by the known and readily ascertainable circumstances of the claim, usually in written documentary form; *Price and Lynch v. Keenaghan Developments Ltd*. [2007] I.E.H.C. 190, (Unreported, High Court, Clark J., 1st May, 2007)."

The plaintiff's factual case should be taken at its height subject to there being a reasonable prospect that evidence will be available to support it

74. The court must treat the plaintiff's claim at its high-water mark: Clarke J. in *McCourt v. Tiernan* [2005] IEHC 268, [2005] 7 JIC 2905. This applies even where the plaintiff's factual allegations are traversed in opposing pleadings or are contested on affidavit: *per* O'Sullivan J. in *O'Keeffe v. Kilcullen* [1998] IEHC 101, [1998] 6 JIC 2403. Nor does a plaintiff necessarily have to provide evidence of pleaded allegations, since the onus is on the defendant to show the action is abusive or bound to fail: *Salthill Properties Ltd. and Cunningham v. Royal Bank of Scotland Plc & Others* [2009] IEHC 207, [2009] 4 JIC 3002 *per* Clarke J. at para. 3.14,

75. Thus, the Court must be satisfied not just that the plaintiff will not succeed but cannot succeed: see *Wilkinson v. Ardbrook Homes Ltd* [2016] IEHC 434, [2016] 7 JIC 2207 (Baker J.).

76. The principle that the plaintiff's case must be taken at its high watermark is qualified by the fact that if the defendant raises a legitimate issue that there is no prospect of the case being proved, the court can examine whether there is any reasonable basis for the plaintiff's factual statements, or whether they are mere assertion: see *Keohane v. Hynes* [2014] IESC 66, [2014] 11 JIC 2001 (Clarke J.). As regards whether evidence will be available, the court can look at whether a basis could be established in the course of the proceedings, for example by discovery or cross-examination: *Ruby Property Company Ltd & Others v. Kilty & Superquinn* [1999] IEHC 50, [1999] 12 JIC 0101 (McCracken J.), *Coen v. Doyle* [2023] IEHC 310, [2023] 6 JIC 2103, (Simons J.), *Raymond & Ors v. Moyles & Ors* [2017] IEHC 688, [2017] 11 JIC 1010 (Baker J.). *Atlas* is an example where there was no such basis.

77. That said, any evidence purportedly showing that there is no such basis must be admissible non-hearsay evidence because the order sought is a final order and not an interlocutory order (see a discussion on the distinction in a different context in *McKenna v. A.F.* [2002] IESC 4, [2002] 1 I.R. 242, [2002] 2 I.L.R.M. 303, [2002] 1 JIC 3001 (Geoghegan and Fennelly JJ.)).

Application of the legal principles to the facts

78. We then apply the foregoing to the present facts. The questions to be specifically addressed are:

(i) is this *prima facie* a SLAPP action?
(ii) does this case raise complex issues more suitable to a full trial?
(iii) are the pleaded reliefs known to the law or, if innovative, do they have a reasonable possibility of being granted? and
(iv) insofar as the defendants have raised a legitimate issue in this regard , is there a reasonable prospect of evidence being available to support the case?

Is this *prima facie* a SLAPP action?

79. The defendants submit that:

> "In addition to the proceedings being an abuse of process on the basis of being frivolous and vexatious, they constitute an abuse of process on the basis that the proceedings are to intimidate, persecute and punish the Defendants for making valid planning submissions or appealing some of the Plaintiff's planning applications. The Defendants are not unique in this regard since the Plaintiff's applications have attracted numerous submissions and observations and appeals. In fact the Plaintiff itself has lodged appeals on its own applications."

80. However the action shows only a few of the potential *indicia* of a SLAPP. The basic problem for the defendants is that if it was apparent that all they were doing was normal public interest activity then the case should indeed be struck out at this early stage as an abusive SLAPP. But the central thrust of the allegation is, as stated above, that the defendants were trying to shake down the plaintiff for the purposes of extortion, and if the extortion was successful they could make the environmental concerns "go away". The action is not manifestly unfounded.

81. That brings us to art. 3(8) of the Aarhus Convention:

> "8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings."

82. Leaving aside discussion of the EU law pipeline by which art. 3(8) is an enforceable part of the legal order, the proposed defence that Aarhus provides a full answer is by no means unarguable, but that is properly a matter for the trial. It is insufficiently clear without full argument and findings of fact that such a legal defence provides an absolute shield against such liability, if any, as arises from making an abusive submission or appeal of the type alleged, if that's what happened.

83. In fairness to the defendants, there isn't a whole lot of material jumping to hand that suggests that art. 3(8) is subject to the doctrine of abuse of rights (*abus de droit*). If anything the sacrosanct nature of the right to Aarhus costs protection, which can't be lost even if the action is frivolous and vexatious (C-470/16, *North East Pylon Pressure Campaign and Sheehy*, ECLI:EU:C:2018:185, Judgment of the Court (First Chamber) of 15 March 2018), lends support to the concept that the right to Aarhus non-penalisation is similarly cast-iron.

84. The doctrine of *abus de droit* is rather more emphasised as relevant to plaintiffs in SLAPP actions – the very procedure of striking out a SLAPP as an abuse of process is an example of that. As against that, one can argue that there is no obvious reason why only one side should be subject to the doctrine. One could ask if such a one-sided rule is appropriate, or indeed fair. Presumably there will be a variety of answers to that in due course.

85. But any final decision should be made in the context of findings of fact. For good measure, since this is a matter of EU law, it is probably only spelling out what is obvious to lawyers to say that if the matter is not *acte clair* (which of course it may be, following full argument), the domestic courts might not be in a position to provide the definitive answer. But we may or may not get there – the plaintiff will have to prove its factual case, and establish its domestic legal case, before the parties square up for the Alamo of the art. 3(8) defence (and counterclaim).

Does this matter raise complex issues more appropriate to a trial?

86. The answer to whether this case raises complex issues more appropriate to a trial is clearly Yes. The obvious areas requiring deeper investigation include the disagreements of fact, the detailed debate as to the exact scope of relevant torts, and the issue as to whether the Aarhus convention insofar as it is relevantly part of EU law provides the defendants with absolute immunity from a suit of this nature. It would be inconvenient and in any event inappropriate to attempt to determine the legal issues on a preliminary motion, divorced from findings of fact and full argument.

87. The defendants say that such legal issues can all be dealt with at the motion stage, but this would be both abstract and artificial given the factual disputes and inappropriate given that some of the legal issues may or may not arise depending on factual findings.

88. To put it another way, the choice is not between finding the facts first as opposed to some perfect form of procedure with no disadvantages. It is a choice between two concrete options -

conventionally finding the facts first and then turning to the law versus alternatively deciding complex and novel legal issues in a complete factual vacuum. That is a choice between necessarily imperfect options. The latter is however, massively more imperfect and undesirable.

Does the action plead reliefs known to the law or innovative reliefs with a reasonable prospect of success?

89. One then turns to the issue of whether the statement of claim sets out claims known to the law, or that, if innovative, have a reasonable possibility of success. While I by no means discount the possible defences to the various pleaded torts, it is unnecessary to discuss such arguments in detail for the simple reason that they are not so clear-cut as to enable a total victory for the defendants at the strike-out stage. Insofar as the plaintiff's action is innovative (which may not be very far in reality), the points made are not such as to have no prospect of success. The position might have been more problematic in relation to the original versions of some exotic reliefs, but the plaintiff has cut back the foliage in the amended statement of claim to acceptable levels.

90. I suppose it's only fair to point out that the defendants' counterclaim could also be classed as innovative in certain respects. That perhaps slightly dilutes any undue scepticism about the plaintiff's approach.

91. Insofar as it is submitted that the plaintiff is "also seeking grossly exaggerated damages, when in fact there is a no valid claim for any damages", that uses the term "valid" in a sense that is not appropriate at the strike-out stage.

92. Insofar as there is a claim that the damages are "purely designed to oppress private citizens. A large corporation such as the Plaintiff knows it has no realistic basis or even need for such a claim for damages, but it has been inserted to intimidate the Defendants", that is an evidential matter. The plaintiff's basic point is not that complicated. Appeals are capable of causing measurable monetary loss. That potentially constitutes a "realistic basis or ... need" for damages, assuming of course that the allegation stacks up factually and legally.

93. The submission that "bizarrely, the Plaintiff, claims it is the victim of coercive behaviour by the Defendants, an insurance consultant and a retired bank official" is misconceived. If making an abusive submission is a legal wrong (to be determined), then anybody can make an abusive planning submission, so if the defendants have done so (also to be determined) then the fact that they may be mild-mannered white collar workers or retirees doesn't change anything.

94. Any points about the legitimacy of the action in view of alternative remedies or cutting across the public law process are ones for the trial and should not be determined on a summary basis.

95. The submission that the plaintiff doesn't have a right to have its applications approved doesn't mean that it has no rights.

96. The submission that "there is no authority whatsoever, to support a claim that making submissions or appeals in a planning application, can ever constitute any these torts. There is clearly a very strong policy for this" just means that the claim may have an innovative dimension, or even may have a fair bit of choppy water to navigate, but it doesn't mean that the claim has *no* prospect of success.

97. The complaint that "There is no known tort or cause of action of alleged abuse of 'statutory process' ... there is no tort of malicious or abuse of participation in the planning systems" is again just a complaint about the innovative nature of the action and doesn't establish the lack of any prospect of the claim being brought home.

Is there a reasonable prospect of there being evidence for the claims?

98. While the court generally takes the plaintiff's case at its high water mark, that is qualified under the heading of whether there is a reasonable prospect of success by examining whether the defendant has shown there is no prospect of evidence being available.

99. The factual matters to be put forward by the plaintiff are outlined in pleadings and replies to particulars, and in many instances there are named potential witnesses to relevant facts.

100. It is hard to rule out the view that there is at least some possibility of evidence being produced capable in principle of raising issues as to the credibility of the plaintiffs. Even apart from the allegedly false or misleading statement by the second defendant to the summons server, the plaintiff relies on the allegedly false or misleading statement by the first defendant as to whether he knew a Denis Leavy. Of course these matters or any other matters may not be proved at trial but one can't say there is no prospect of evidence supporting the case that the defendants have acted less than straightforwardly. Equally obviously there may be full explanations for such matters. All the more reason to leave the factual issues to be dealt with in the normal way.

101. The submission therefore that "Even if the Plaintiff could make establish the ingredients of the torts (which they cannot), the evidence of leverage is based on mere assertion and no evidential basis underlying the same" is a misconception. The plaintiff in a plenary action doesn't need to put the evidence forward in advance of the trial merely because the defendant brings a strike-out motion. The issue is whether the court can conclude that the defendants have shown that there is

no prospect of such evidence being available. No such conclusion could be drawn from the material before the court, or the circumstances more generally, at the moment.

102. The submission that the court could not even potentially draw an inference against the defendants from the timing of the various interventions in the planning process is not sustainable (the plaintiff uncharitably calls it "risible", I'm afraid with a tincture of justification at the level of principle at any rate, and subject obviously to full exploration and defence of the issue at the trial). More generally, the plaintiff's legal theory is not something that can be rejected at this stage, and nor can one conclude that such a theory, if correct, cannot be backed up by evidence. At the continued risk of stating the obvious, the defendants' legal theory and factual traverse aren't being rejected either.

Summary

103. In outline summary, without taking from the more specific terms of this judgment:

(i) the defendants have not demonstrated that the present action has sufficient *indicia* of a SLAPP or otherwise of an abuse of process so as to demonstrate *prima facie* that it is such an action;

(ii) insofar as can be assessed at the motion stage, the action raises complex issues of fact and law more appropriate to a full trial;

(iii) in particular, disposition of the Aarhus issues is more appropriate following full argument at trial and findings of fact rather than at the motion stage;

(iv) the pleaded reliefs are generally known to the law, and any element of innovation is not one that has no reasonable prospect of success, insofar as that can be assessed at the motion stage;

(v) the defendants have not shown that there is no reasonable prospect of evidence being available to the plaintiff to support the pleaded case; and

(vi) accordingly the motion to strike out the proceedings, whether viewed on the grounds related to having no reasonable prospect of success, or on the grounds related to abuse of process or SLAPPs, must be dismissed, but without prejudice to any defence at the trial including any argument that the action is in fact a SLAPP action or otherwise abusive of the process, or is legally unfounded.

Costs

104. As regards costs, if (as I am finding) it would be premature to decide the Aarhus issues one way or the other on a motion to strike out, then it would seem to be equally premature to determine any Aarhus rights against the defendants in relation to the costs of such a strike-out application. So provisionally and subject to contrary submissions, the default order would be that there would be no order as to the defendants' costs of the motion and the plaintiff's costs would be reserved.

Order

105. The order made on 5th March, 2024 was that:

(i) the plaintiff have liberty to bring a motion seeking to amend the statement of claim, returnable for 11th March, 2024; and

(ii) the matter be listed on the latter date for mention in any event.

106. The order made on 11th March, 2024 was that:

(i) the amendment sought to the statement of claim (other than the declaration at relief 1) be allowed; and

(ii) it be noted that the declaration (proposed relief 1) was not pressed on the basis that in the event that the court was minded to grant a declaration, it was agreed between the parties that such a relief could be included under the further and other relief claimed.

107. For the foregoing reasons, it is now ordered that:

(i) the strike-out motion be dismissed;

(ii) the plaintiff have 2 weeks to deliver an amended statement of claim if not already delivered;

(iii) for the avoidance of doubt this be on the basis of the inclusion as reliefs only of the amended reliefs 2 to 10 in the draft amended statement of claim, to be re-numbered 1 to 9;

(iv) unless any party applies otherwise by written legal submission within 14 days from the date of this judgment, the foregoing order be perfected forthwith thereafter on the basis of no order as to the defendants' costs of the motion and the plaintiff's costs of the motion being reserved; and

(v) the matter be listed for mention on Monday 29th April, 2024.