

**THE HIGH COURT  
COMMERCIAL**

[2021] IEHC 243  
**Record No. 2018/7326P**

**BETWEEN:**

**WILLIAM THOMAS POWERS**

**PLAINTIFF**

**-AND-**

**GREYMOUNTAIN MANAGEMENT LIMITED (IN LIQUIDATION), RYAN COATES, LIAM  
GRAINGER, DAVID CARTU, JONATHAN CARTU**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Tony Hunt delivered on 19 March 2021**

1. At issue in this case is the plaintiff's application for pre-trial discovery against the defendants. This was heard remotely on 29 January 2021, when I was informed by Mr. Marcus Dowling SC (of the Inner Bar, for the plaintiff) and Mr. Stephen Dowling SC (of the Inner Bar, for the first defendant) that those parties had reached an agreement on this issue. The issues between the plaintiff and the remaining defendants (represented by Mr. Rossa Fanning SC, of the Inner Bar) proceeded to hearing. For convenience, I will now refer to the second to fifth defendants as "the defendants".
2. This matter has a procedural history, as set out in the judgment of O'Moore J. in *Greffrath & others -v- Greymountain Management Ltd. (in liquidation) & others*, dated 12 June 2020. The plaintiff was one of an original group of 35 claimants in those proceedings, which were against the same defendants as appear here. O'Moore J. directed that the individual claims of the 35 plaintiffs in those proceedings should proceed by way of separate trial. I will refer to certain aspects of that judgment in due course. Mr. Powers was the last-named plaintiff in those proceedings and, in accordance with the order of O'Moore J., his claim has been subsequently pleaded on an individual basis in an amended statement of claim, and there has been a full exchange of pleadings and particulars prior to his application for pre-trial discovery.
3. In summary, the plaintiff claims that he engaged in online trading in so-called "binary options". In essence, this involves speculation on the outcome of an event or series of events on a particular date. The amended statement of claim pleads that these events typically relate to whether the price of a particular asset will rise above or fall below a specified amount at a specified date and time. The process does not involve the acquisition of any proprietary interest in the underlying asset in question. The binary option holder pays a premium to hold the option. If their prediction as to the asset price on the relevant date is correct, they receive a pay-out. If their prediction is incorrect, they lose the amount of premium paid to secure their option.
4. The plaintiff claims that he paid the sum of USD\$130,072 by way of premiums to acquire a range of binary options. These premiums were paid through an online trading platform in the name of [www.glenridgecapital.com](http://www.glenridgecapital.com) ("Glenridge Capital"). The plaintiff pleads that he does not know whether there was a legal entity referable to Glenridge Capital. The plaintiff then claims as follows:-

- a) That his online trading activities were, in fact, part of “a fraudulent binary options trading “scam” “operated by the defendants and each of them,
  - b) The fourth and fifth defendants owned and operated online trading platforms, including Glenridge Capital, as part of that “scam”,
  - c) The fourth and fifth defendants used the first defendant in furtherance of the “scam”, in that the plaintiff was induced to make premium payments for his binary trading options plaintiffs to the first defendant as part of his trading activities,
  - d) Certain documents issued by Glenridge Capital stated that services were provided by the first defendant in that regard,
  - e) The second and third defendants were the Irish directors of the first defendant, and that they operated and managed that entity for the purpose of the “scam”,
  - f) The second and third defendants acted as the undisclosed agents of the fourth and fifth defendants in that respect,
  - g) The fourth and fifth defendants acted as shadow directors of the first-named defendant for the purposes of s. 221 of the Companies Act, 2014.
5. At para. 13 of the amended statement of claim, the plaintiff pleads various implied representations or implied terms against the defendants. He alleges that those representations were false and that the defendants engaged in a conspiracy to defraud the plaintiff, particulars of which are pleaded in para. 16 of the amended statement of claim. By reason of the matters set out in the statement of claim, the plaintiff contends that he lost the entirety of the sum of USD\$130,072 paid by him as aforesaid.
6. Further particulars of the plaintiff’s claim emerge in replies to particulars dated 18 August 2020, wherein at para. 24, the plaintiff alleges that he dealt with purported brokers and advisors said to be working for Glenridge Capital which was supposedly headquartered in Dublin, when those persons were actually located in a call centre in Israel. He alleges that these persons were not brokers working for an investment firm but were working in that call centre “for the purpose of defrauding victims of the binary options scam”. The plaintiff repeatedly claimed that the entire scheme was a fraud involving all of the defendants.
7. Para. 5 of those replies to particulars refers specifically in that regard to various statements in allegations made by the Ontario Securities Commission on 4 May 2020 referable to Glenridge Capital, and to another platform said to be controlled by the fourth and fifth defendants, [www.beeoptions.com](http://www.beeoptions.com), whereby that regulatory authority estimated that over the time period material to the investigation, bank accounts associated with the first defendant and another entity named UKTVM had received approximately USD233 million from the fourth and fifth defendants’ global binary options related operations, and that those accounts disbursed approximately USD55 million to accounts held by entities owned or controlled by the fourth and fifth defendants. Separate amended defences were

subsequently delivered by the first defendant on 4 October 2020 and the second to fifth on 6 October 2020.

8. In summary, the categories of document sought by the plaintiff and the response of the defendants are as follows:-
  - a) Category 2, relating to any binary options merchant, online platform or website for trading in binary options owned, operated, controlled or associated with the fourth and/or fifth defendants, their servants or agents or any person acting on their behalves. This category was refused in full.
  - b) Category 3, relating to documents evidencing or recording any communication of any nature whatsoever between the first and/or second and/or third defendants and the fourth and/or fifth defendants including, but not limited to any contracts for service or otherwise. The defendants have offered documents relating to contracts of service or for services between the first defendant and the fourth and fifth defendants and documents between the various defendants insofar as they relate to Glenridge Capital.
  - c) Category 7, relating to the time between the incorporation and liquidation of the first defendant evidencing or recording the software and/or computer systems used by the defendants for the purpose of trading in binary options or for making or receiving payments for trading on binary options. The defendants have offered such documents insofar as they relate to the execution or processing of any trades and binary options for and on behalf of the plaintiff.
  - d) Category 8, relating to communications between the defendants and any regulatory body or State authority (in any jurisdiction whatsoever), in relation to binary options trading. This category was refused in full.
9. It is apparent from the discovery request and counter-offer that the essential difference between the parties on the issue of pre-trial discovery is as to whether it should be confined to documents concerning the plaintiff's dealings with Glenridge Capital as facilitated by the first defendant, or whether it should extend to any activities of the fourth and fifth defendants through entities other than Glenridge Capital, or to binary options trades with persons other than the plaintiff. The justification advanced by the plaintiff for the broader form of discovery is based upon his allegation that the trading scheme in which he participated was entirely fraudulent, or a "scam" as it is described in the pleadings, and that this was part of a wider pattern of similar fraudulent trading instigated by the fourth and fifth defendants.
10. The plaintiff submits that he has pleaded the broader fraud issue to the maximum possible extent, having regard to the clandestine nature of what is alleged against the defendants. He lays heavy emphasis on the fact that the defence of the defendants is simply a traverse of the plaintiff's allegations and does not highlight any specific defence thereto. In response, the defendants argue that the pleadings by the plaintiff concerning

the alleged broader fraud are lacking in the necessary specificity. They accuse the plaintiff of “fishing” for documents and submit that the material sought is not probative of any wrong alleged to have been committed by the defendants against the plaintiff, and that the real purpose of the request for documents concerning the alleged broader fraud is simply to discredit the defendants.

11. The basic premise of O. 31 of the Rules of the Superior Courts providing for discovery of documents is that this will not be ordered unless shown to be necessary for disposing fairly of the cause or matter or for saving costs. The documents sought must relate to a matter in question in the proceedings. Generally speaking, where pre-trial discovery is sought, the relevance of the requested documents to any matter in question in the proceedings must be determined by reference to the state of the pleadings at the time at which the application for discovery is brought. The pleadings in this case allege that the transactions between the plaintiff and the defendants were fraudulent in character. There is no dispute between the parties as to the entitlement of the plaintiff to discovery of documents relating to his own transactions with the defendants.
12. However, the plaintiff’s pleadings also alleged that the defendants engaged in broader fraudulent activities of a similar nature with parties other than the plaintiff, both in this country and elsewhere. As I understand the plaintiff’s pleadings, proof of the alleged nature of transactions concerning third parties will be put forward to advance the claim that his personal transactions with the defendants were fraudulent. In essence, the defendants dispute the relevance of the broader fraud claim to the narrower personal claim of the plaintiff or, alternatively, assert that the documents sought in relation to the broader issue relate only to credibility, which is not a proper purpose for discovery of documents.
13. Having considered the matter, I am satisfied that the plaintiff has established the requisite relevance to a matter in question in the proceedings. It is a well-established principle that allegations of fraud in civil claims must be pleaded to a standard of precision higher than that required in pleading generally. Full and precise allegations of fact are required. As against that, it is now equally well-recognised that it is often in the very nature of fraud or other unconscionable wrongdoing that a party who is the victim will not have the means of knowing the precise extent of what was done to them until they have obtained discovery. Consequently, each case must be assessed individually in the light of these competing considerations.
14. On this basis, I am satisfied that the plaintiff’s pleadings have, in the particular circumstances of this case, passed the test of sufficient particularity, having regard to the limits of the information available to the plaintiff as to possible broader activities on the part of the defendants. In my view, the argument that the plaintiff should be confined to proof of facts concerning his own transactions with the defendants in order to prove that his transactions were fraudulent in nature is excessively narrow. It is frequently the case that a fact or transaction viewed on a narrow, individualised basis may be understood in a very different light if viewed in a wider context.

15. As a general proposition, a single fact viewed in isolation may have no apparent significance whatsoever. A collection of facts, when viewed together and placed one against the other, may establish that each of those facts, viewed both collectively and individually, acquire a very different significance. This derives from the cumulative force of the proved facts and circumstances, where each individual fact or circumstance would not be sufficient to prove the fact in issue. I am satisfied that there is substance in the plaintiff's contention that proof of a broader spectrum of facts is capable of casting his own transactions in a different light than if those transactions were examined on a standalone basis. Proof of indulgence in fraudulent conduct on one occasion is capable of being logically probative that broadly similar conduct on another occasion also had that character. This is not an automatic conclusion; actual relevance and probative effect depends on the characteristics and weight of the evidence in each case. This will be evaluated at the trial of the action in this case.
16. It also follows that I do not accept the argument that fraud, or the "scam" described by the pleadings in this case, appears in the plaintiff's pleadings for some ulterior purpose, such as attacking credibility, or warding off a statute bar or an onerous contractual term. On the contrary, the plaintiff has pointed to independent information in the reply to particulars, which continues to emerge, which raises concerns about the activities of the defendants across a broad front and, as Mr Dowling put it, "aligns" with the allegations already made by the plaintiff in the pleadings. In other words, I am satisfied that the pleadings and particulars in this case have identified real and relevant issues to be tried, one of which is whether the allegedly fraudulent nature of the plaintiff's transactions with the defendants is illustrated by, and/or is part of a broader course of such conduct. I am satisfied that the plaintiff has established a basis for this pleading and the potential relevance of the broader fraud claim to his primary claim for damages based on his own transactions. It has not been demonstrated to me that this pleading is confected or unsupported. It follows that I do not accept that the request for discovery is speculative, amounts to impermissible fishing outside the case, or is a covert means of attacking the credibility of the defendants.
17. As noted at the outset, the plaintiff's claim in these proceedings is one of a number of similar claims ordered to be severed by O'Moore J. In summary, this was because the individual claims of each plaintiff did not arise from the same "series of transactions" within the meaning of that phrase in O. 15, r. 1(1). In effect, to be joined on the same writ, the transaction or series of transactions in question must arise between the same parties. The sole fact that claims by different persons are alleged to be fraudulent in nature does not make them part of the same series of transactions for the purpose of the rule. The fact that fraud may have been committed against another person does not, of itself, to any right to damages on the part of any other claimant.
18. At para. 42 of his judgment, O'Moore J. stated as follows:-

"It is argued that the "series of transactions" are made up of all the occasions on which the defendants "passed on money to the fraudsters". However, no individual

plaintiff complains that he or she is entitled to damages because of the theft by the alleged fraudsters of the money of any other plaintiff: Ms. Greffrath cannot claim that she is entitled to compensation because Mr Norton's money is stolen as well as her own. *The similarity between Ms. Greffrath's case and Mr. Norton's case may provide some assistance in proving that Ms. Greffrath was defrauded, but the theft of Mr. Norton's money is not a transaction (or one of a series of transactions) which gives rise to Ms. Greffrath's right to obtain compensation for any wrong done to her.* To put it simply, Ms. Greffrath's claim is not in respect of or arising from a series of transactions made up of the theft of money from other Plaintiffs and from her; she would have had exactly the same claim if no such other frauds had occurred and her claim does not arise from the commission of such frauds". *(Emphasis added)*.

19. I am satisfied that O'Moore J. presciently envisaged in that passage that similarity between transactions and circumstances in cases other than that of an individual plaintiff may be probative of a fraud claim in an individual case. The plaintiff has pleaded such a scenario to an acceptable level of specificity and must prove these allegations at trial. He is entitled to discovery of documents in aid of that objective as he establishes that this step is both relevant and necessary to an issue properly pleaded in his claim, especially where that claim has been denied only in the most general terms.
20. The defences delivered by the defendants engage with the claims of the plaintiff only at the most general level of denial, or by putting the plaintiff on proof of his allegations. The general nature of those pleas leave the plaintiff open to a range of suggestions at trial, including possible suggestions that any losses sustained by him were due to poor choices on his part, bad luck in trading or some other form of co-incidence. Therefore, I am satisfied that the discovery sought is also relevant and necessary in order to address and rebut possible defences that may be adduced, as the defendants have not elected to plead their case at any level of specificity so far.
21. In summary, I conclude that the allegation that the defendants indulged in a broader range of similar fraudulent conduct is a matter that is capable of being probative of a range of material issues in the proceedings and is not simply part of a collateral attack on the credibility of the defendants. Consequently, being satisfied of the plaintiff's entitlement to discovery in relation to the broader fraud alleged by him, I propose an order that the second to fifth defendants inclusive discover documents (as defined in O. 31) within their possession, power or procurement relating to: -
  - a) Binary trading operations carried on by them either personally or through connected entities or websites including, but not limited to, [www.glenridgecapital.com](http://www.glenridgecapital.com) (Glenridge Capital), UKTVM and [www.beeoptions.com](http://www.beeoptions.com) between 20 May 2014 and 13 July 2017,
  - b) Communications between the fourth and/or fifth defendants and the first defendant insofar as they relate to binary options trading operations owned, operated or

controlled or otherwise associated with the fourth and fifth defendants, including, but not limited to Glenridge Capital, between 20 May 2014 and 13 July 2017,

- c) Computer software and/or hardware used by the defendants in the course of binary trading operations owned, operated, controlled or otherwise associated with the fourth and fifth defendants, used for the purpose of such trading or for making or receiving payments in the course of such trading, between 20 May 2014 and 13 July 2017,
  - d) Notices, allegations, or pre-investigation or pre-proceeding notifications, or actual proceedings received by the defendants in connection with binary trading operations owned, operated, controlled or associated with the fourth and fifth defendants from financial regulatory authorities in any jurisdiction including, but not limited to, financial regulatory authorities in this jurisdiction and Ontario, Canada.
22. As to the question of costs, the rules provide that, in effect, the costs of interlocutory applications should be dealt with contemporaneously insofar as that is possible. In this case, it seems to me that the plaintiff has succeeded in his arguments on the event of discovery and can claim that the costs of his application should follow that event. On the other hand, it remains possible that the plaintiff's claim could fail at trial, in which event the defendants could justifiably argue that the plaintiff's costs of his discovery motion should not have been incurred, and therefore should not be borne by them, and should be paid by the plaintiff himself. In those circumstances, I propose to order that the plaintiff's costs on his motion for discovery against the second to fifth defendants inclusive be costs in the cause. I propose making no order as to the defendant's costs, to the intent that they should bear their own costs, having failed on the issue of discovery of documents, irrespective of possible ultimate success at the trial of the action.
23. Should either party dissent from any of the orders proposed, or the precise terms thereof, I will hear the parties further remotely, having received brief written submissions in advance of any further hearing, setting out any amendments proposed, and giving concise reasons for such proposals.