THE HIGH COURT

[2024] IEHC 351

[Record No. 2022/6229 P]

BETWEEN

LUKASZ WALISZEWSKI

PLAINTIFF

AND

REPUBLIC OF IRELAND

DEFENDANT

JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 11th day of June 2024

1. This is the defendant's application to strike out the plaintiff's proceedings pursuant to O. 19, r. 28 of the Rules of the Superior Courts or, in the alternative, an order pursuant to the inherent jurisdiction of the court, on the grounds that they disclose no reasonable cause of action, are frivolous and vexatious and are bound to fail. Separately, the plaintiff has issued a notice of motion seeking 14 different reliefs including reliefs against a number of entities not party to the proceedings, which reliefs are also identified in the plaintiff's statement of claim.

2. For the reasons set out below, I am allowing the defendant's application to dismiss the proceedings and there is, therefore, no need to consider the plaintiff's application.

3. At the outset of the hearing, the plaintiff referred to difficulties he had encountered in securing the services of an interpreter. He did not make any application to this Court for an interpreter or for an adjournment pending the availability of an interpreter. The matter proceeded on the basis of the plaintiff reading out some of the submissions he had prepared. Due to the limitations on court time, his submissions in relation to his own motion were received by the Court and reviewed. The Court also had the benefit of reviewing a number of folders of documents furnished by the plaintiff.

Background litigation

4. The plaintiff's pleadings focus heavily on the hearing of a previous personal injuries claim he made in 2015 against his former employer. It is, therefore, necessary to consider the history of that litigation. The plaintiff brought High Court proceedings seeking damages for personal injuries at work; *Waliszewski v. McArthur & Company (Steel and Metal) Ltd* [2015] IEHC 264. The case was heard by Barton J. in the High Court who delivered a written judgment on 24 April 2015 in which he dismissed the plaintiff's claim, having concluded that *"the plaintiff cannot but have known that at the time when he was being re-examined by Mr McElwain* [the defendant's orthopaedic surgeon] *in July 2011, the RTA and the aggravation caused by it to his back injury was a matter material to be known to Mr McElwain and that his failure to make such disclosure was misleading and misled Mr McElwain"* (at para. 91) and that *"…there is not, in my view, any proper basis which would justify the court concluding that it would be unjust to dismiss the plaintiff's claim. On the contrary, a manifest injustice would be done by not doing so and, accordingly, I will accede to the application of the defendant under Section 26 of the Act of 2004"* (at para. 97). He went on to address causation for the sake of completeness and said *"I would, in any event, have dismissed the plaintiff's claim on that issue* [of causation] *alone since I am satisfied on the evidence that, insofar as the plaintiff did suffer an injury to his back in the course of his employment with the defendant otherwise than as a result of the accident in December 2006, this most likely arose as a result of the lifting of a beam by him in September 2007"* (at para. 98).

5. The plaintiff appealed to the Court of Appeal and, in an *ex tempore* decision of 19 October 2015, the Court of Appeal (Kelly, Irvine and Hogan JJ.) found that correspondence between the plaintiff and defendant solicitors and a notice of discontinuance signed by the plaintiff meant *"there was accord and satisfaction which brought this appeal to an end"* (as per Kelly J. at para. 13). The plaintiff sought leave to appeal to the Supreme Court, but this was refused in a determination of 1 February 2016; [2016] IESCDET 17. The plaintiff later made a request on 7 December 2022 that the Supreme Court would exercise its exceptional jurisdiction to set aside its determination and reconsider the application for leave, which was refused in a decision of Baker J. on 25 March 2024. She concluded, at para. 24, that *"no basis exists on which this application might be reopened."* She also found that the decision of the High Court was not a finding of criminality and did not, as the plaintiff claimed, find him to be a criminal or a liar (at para. 26).

<u>The plaintiff's pleadings</u>

6. The plaintiff's statement of claim of 17 May 2023 focuses on his previous claim which he describes as *"part of this complaint"* (at para. 9). He details his version of his claim and refers to the *"physical and mental pain and suffering"* he has suffered. He identifies 40 separate violations against the defendant, most of which refer to his previous litigation and how it was handled by the High Court and his subsequent attempts to appeal. The judges involved in the High Court and the Court of Appeal are mentioned by name and the Supreme Court is also mentioned. He refers to his former solicitors who acted for him in his earlier proceedings. He also sets out additional reliefs that he has also sought in a notice of motion of 8 May 2023 that is before this Court, which was issued after the plenary summons of 9 December 2022 and before the statement of claim of 17 May 2023.

7. The plaintiff's current claims clearly relate to his grievances about how he was treated by the High Court, the Court of Appeal and the Supreme Court as well as by his own solicitors and other entities to whom he applied for legal advice and assistance, in relation to his previous litigation. The within proceedings are an attempt to relitigate that case and, to that end, constitute a collateral attack on the decision of the High Court Judge whom he accuses of very serious wrongdoing. Whilst the plaintiff's criticisms of the High Court Judge are specific, the basis for them is vague but, insofar as any are identified, seem to arise from the learned judge's findings that the plaintiff had misled the defendant's orthopaedic surgeon and was guilty of exaggeration and misrepresentation in relation to his injuries.

Discussion

8. The court's jurisdiction to strike out proceedings pursuant to O. 19, r. 28 is one to be exercised sparingly and on the basis that the court takes the plaintiff's case as pleaded at its highest. In the leading case of *Barry v. Buckley* [1981] IR 306, Costello J. described the jurisdiction as existing to ensure that an abuse of the process of the courts does not take place. He said:-

> *"So, if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the plaintiff's claim must fail; per Buckley L.J. in Goodson v. Grierson at p. 765.*
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> *This jurisdiction should be exercised sparingly and only in clear cases; but it is one which enables the Court to avoid injustice"* (at p. 308).

As found by Whelan J. in *Morris v. Marine Hotel (Sutton) Ltd & ors* [2019] IECA 85, the question is whether the facts as pleaded are capable of discharging the onus of proof. If the

statement of claim, even taking the plaintiff's case at its height, discloses no reasonable cause of action, then "*the pleadings are 'frivolous and vexatious' since they are doomed not to succeed*" (at para. 31). The court should also take account of the scarce resources of the courts where a plaintiff seeks to run a case which has no prospect of success (*Fox v. McDonald & ors* [2017] IECA 189).

9. Separate to the O. 19, r. 28 jurisdiction, if it is established that there is no credible basis for suggesting the facts are as asserted by the plaintiff and the proceedings are, therefore, bound to fail on the merits, then the inherent jurisdiction of the court can be invoked to dismiss the proceedings (*Lopes v. Minister for Justice, Equality and Law Reform* [2014] 2 IR 301).

10. The need for finality in litigation was addressed by the Supreme Court in *Bula v. Crowley (No. 4)* [2003] 2 IR 430 where Denham J. (as she then was) said, at pp. 463 and 464:-

> *"…it is clear that the application was in essence a second application for a stay, which had already been refused by the High Court and from which there had been no appeal to the Supreme Court. It was an attempt to set up the same case again. I am satisfied that it was in fact inappropriate to apply to the court for this order. The dictum of Lord Halsbury L.C. in Reichel v. MacGrath [1889] 14 App. Cas. 665 was referred to by counsel. That dictum was cited with approval by Keane J. in Belton v. Carlow County Council [1997] 1 I.R. 172 at p. 182 and by this court in McCauley v. McDermott [1997] 2 I.L.R.M. 486 at p. 497. The dictum was:-*
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> > *'I think it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again.'*
>
> *I adopt and apply this law."*

11. That *dicta* was described by Clarke J. in the High Court in *Salthill Properties Ltd and Cunningham v. Royal Bank of Scotland & ors* [2009] IEHC 207 at para. 3.2 as the "'*dismiss as being bound to fail' jurisprudence".* He said *"[i]f a case sought to be made is bound to fail because it has, in substance if not in form, already been decided, then it will be dismissed."*

12. In the within case, the plaintiff is seeking to relitigate a case that has already been decided by the High Court, the Court of Appeal and in which the Supreme Court has twice

refused leave to appeal. It is difficult to think of a more obvious abuse of the court's process which affords a litigant a right of appeal but does not allow them an unlimited right of appeal. The plaintiff is not entitled to plead against the State on a vague and non-specified basis claiming generalised breaches of the Constitution, EU Treaties and the Universal Declaration of Human Rights, because he feels aggrieved at a decision of the High Court which he has appealed unsuccessfully to the Court of Appeal and has twice been refused leave to appeal to the Supreme Court. The plaintiff's claim is undoubtedly frivolous and vexatious as his proceedings are doomed not to succeed and should, therefore, be dismissed in accordance with the provisions of O. 19, r. 28. In addition, the facts he has asserted have no credible basis and are bound to fail on the merits, which justifies the invoking of the court's inherent jurisdiction to dismiss the proceedings.

Conclusion

13. I grant the defendant's application to dismiss the plaintiff's proceedings. There is, therefore, no need to give separate consideration to the plaintiff's motion seeking reliefs against the defendant and other entities not party to the proceedings.

Indicative view on costs

14. My indicative view on costs is that, as the defendant has succeeded in their application to dismiss and in accordance with the provisions of s. 169 of the Legal Services Regulation Act 2015, the defendant is entitled to the costs of this motion and of the proceedings against the plaintiff. I will put the matter in for mention at 10:30am on 28 June for the parties to make whatever submissions they wish in relation to final orders and costs.

The plaintiff represented himself.

Counsel for the defendant: Cian McGoldrick BL