THE HIGH COURT

[2023] IEHC 268

[2021 6375 P]

BETWEEN

RICHARD O'HARA

PLAINTIFF

AND

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSSTICE AND EQUALITY, START MORTGAGES DESIGNATED ACTIVITY COMPANY, HELEN O'HARA

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 19th day of May, 2023

1. In the last number of years, there has been a rash of cases instigated and prosecuted by persons representing themselves, in which it is claimed that the relevant plaintiff is protected from all court summonses and court orders by reference to provisions of the Constitution and of the Treaty of Europe.

2. These proceedings are strikingly similar. As Simons J. observed in Fennell v. Collins [2019] IEHC 572, the nature of these cases suggests that there are unscrupulous people availing of the credulity of lay litigants and encouraging them to launch claims which, legally at least, make absolutely no sense. If anything, the number of such cases have multiplied since the judgment of Simons J. in Fennell. Other reserved judgments, coming to the

conclusion that these sort of proceedings are frivolous and vexatious, bound to fail, and an abuse of process are: -

(a) My judgment in Mullins v. Ireland & Ors. [2022] IEHC 296.

(b) The judgment of Dignam J. in Towey and Towey v. Government of Ireland & Ors. [2022] IEHC 559.

(c) The judgment of Butler J. in Kearey v. Property Registration Authority [2022] IEHC 28.

(d) The judgment of Dignam J. in Mullaney v. Danske Bank & Ors. [2023] IEHC 62.

(e) The judgment of Roberts J. in Brennan v. Ireland & Ors. [2023] IEHC 107.

(f) My judgment, delivered today, in Lavery v. Humphreys.

3. In Brennan, Roberts J. expressed concern: -

"that so much court and judicial time has been taken up dealing with what are essentially the same legal arguments advanced by parties over and over again, even though not a single case has been, or indeed could be, successful on these points" (Para. 29).

4. I completely endorse this sentiment. Judges consistently refer to the pressures on the court system caused by the fact that a large amount of cases have to be processed by a relatively small amount of judges. However, the ill – effects of this pressure are felt not predominantly by judges, but rather by litigants. It is individuals and businesses who have to wait lengthy periods for their cases to get on and often significant periods for judgments to be delivered after the cases have been heard. If courts have to deal with a raft of cases such as these (described by Simons J. in Fennell as raising arguments that are "simply preposterous" and by Roberts J. in Brennan as "simply unstateable") then the ability of the courts to deal in a timely manner with genuine legal disputes would be further hampered. To some extent, it is a matter for the conscience of the individual self – represented plaintiff as to whether or not

they can justify bringing proceedings (such as the current claim) which simply make no sense, occupy a significant amount of court time, and run up costs and expenses both to the plaintiff and for those unfortunate enough to be sued by these individuals. It is a matter of some regret that the persons who are peddling this form of claim (to litigants who do not have the benefit of professional representation) have not yet themselves been made accountable for the pointless legal costs and expenses which their activities have generated.

The claim

5. The plenary summons seeks damages for €2 million. The claim, in its entirety, reads as follows: -

> "The plaintiff seeks a declaration from the Honourable Court that his constitutional rights have been denied and the plaintiff is aware of High Court constitutional case law no. 2018 / 9401 P where the Minister for Justice, Charlie Flanagan, and the Attorney General, Seamus Wolfe, failed to enter an appearance and that case was struck out. High Court case law no. 2018 / 9401 P along with Article 40.1 means that like the Justice Minister and the Attorney General, the plaintiff is immune to court summons and the case in court against the plaintiff should have been struck out.
>
> The plaintiff is aware that there is an investigation by the Justice Department under three reference numbers: DJE / MO / 00516 / 2019, DJE / MO/ 04404 / 2019 and DJE / MO / 00889 / 2019, also PULSE number HQCSO.I/348140 / 16 from the Garda Commissioner in relation to this Constitutional Crisis.
>
> The plaintiff is aware of how the DPP failed to comply with High Court order no. 2006 / 1114 P and as the DPP the plaintiff is immune to court orders 165 / 2018 Circuit Court Kilkenny FL 00020 / 2016 Family Law Court Kilkenny.
>
> The plaintiff is aware that the State has failed, since September 2019, to provide a defence in related constitutional case no. 2019 / 6501 P.

The plaintiff is aware that the State has failed to enter an appearance in related constitutional cases no. 2018 / 9401 P and no. 2021 / 2308 P which s due before the High Court on November 1st, 2021.

The plaintiff is protected from all court summons and all court orders under Article 40.1 of the Constitution, also under Article 2 of the Treaty of Europe".

6. The statement of claim, having described the plaintiff as a farmer residing in Kilkenny, reads: -

"The plaintiff's indorsement of claim makes it very clear that the plaintiff, like the DPP, is immune to court orders and like Seamus Woulfe and Charlie Flanagan, is immune to court summons.

The defendants are aware that there is NO defence possible as the plaintiff's constitutional rights are UNTOUCHABLE which is confirmed in the Supreme Court ruling Denis O'Brien v. Oireachtas Member.

The plaintiff is aware that since September 2019, the Chief State Solicitor has FAILED to provide a defence in the related High Court constitutional case no. 2019 / 6501 P which exposes the fact that all court summons and court orders are unconstitutional under Article 40.1 of the Constitution and Article 2 of the Treaty of Europe. The plaintiff is aware that the Chief State Solicitor has failed to provide a defence in related High Court constitutional case no. 2021 / 2308 P.

The plaintiff is aware that judgment no. 2017 / 210 CA was removed from courts.ie as the State fears that 450 million EU citizens will realise that like the DPP they are immune to court orders, also, like Charlie Flanagan and Seamus Woulfe, they are immune to court summons.

The plaintiff is aware that the State has failed to enforce High Court order no. 2008 / 1680 JR and that the related High Court order no. 2015 / 239 JR was ignored by GSOC".

7. Like the plenary summons, the statement of claim then claims damages of €2 million.

8. During the course of the evidence, and during the course of the submissions made to me, I was not enlightened about "judgment no. 2017 / 210 CA" which it is alleged was removed from the website of the Courts Service because of some concern on the part of the State that 450 million EU citizens would realise that they are immune to court summonses. The suggestion seems quite a fanciful one and should have been stood up in some form of evidence. This did not happen.

<u>This motion</u>

9. By motion dated the 4th of October 2022, the fourth defendant (Start Mortgages) sought an order striking out these proceedings as against that defendant pursuant to O. 19 r. 28 on the grounds that they are frivolous, vexatious, failed to disclose a reasonable cause of action and are bound to fail. Alternatively, an order was sought striking out the proceedings pursuant to the inherent jurisdiction of the court.

10. The motion was grounded on an affidavit of Grainne Dever, a solicitor in the firm of A.B. Wolfe & Co. who are the solicitors to Start Mortgages in these proceedings. This affidavit set out the history of the proceedings, noted that (in other decisions of this Court) similar proceedings had been described as "Cafferkey proceedings" and finally asserted that the proceedings were issued by Mr. O'Hara "as a retaliatory attack as against [Start Mortgages] for the purpose of embarrassing [that defendant] . . ..".

11. In response, Mr. O'Hara swore an affidavit which made completely groundless allegations against Ms. Dever. As I have said, Ms. Dever's affidavit was a brief one, focused on setting out the facts upon which Start Mortgages relied in seeking the dismissal of the

current claim against it. Mr. O'Hara's affidavit, oddly enough, did not dispute Ms. Dever's averment that the current proceedings were issued for the purpose of embarrassing and frustrating Start Mortgages. Instead, Mr. O'Hara focused on what he described as the perjury of Ms. Dever in the averments which she made. A flavour of Mr. O'Hara's affidavit can be found in the following paragraph: -

> "I say and believe that Start Mortgages must remain as Defendant as Grainne Dever alleges in PERJURY that the Constitutional Cases has no merit and means that Start Mortgages has a vested interest in remaining in the Case so as to achieve Material Benefit in the related Proceedings which resulted in this Constitutional Case".

12. Mr. O'Hara then goes on to repeat the allegation of perjury against Ms. Dever, accuses her of treason, says that she is "attempting to implicate a judge in TREASON. . ." and then (rather strangely) challenges Ms. Dever to report Mr. O'Hara for perjury and says (quite illogically) that "she [Ms. Dever] must succeed in a PROSECUTION in order to validate her Motion to remove Start Mortgages from these Proceedings".

13. It is difficult to know where to start with this affidavit. In the first place, Ms. Dever has not committed perjury. Secondly, despite the very extreme language which he uses and the unfounded allegations he makes against a solicitor who is simply doing her job, it is almost certainly the case that Mr. O'Hara has not committed perjury either. The idea that Ms. Dever must instigate a prosecution of Mr. O'Hara for perjury, and it is only if that prosecution succeeds that the motion to decide that Start Mortgages motion to strike out the claim against it can be successful, is a sign how far Mr. O'Hara's position in these proceedings has become separated from legal reality.

14. Ms. Dever swore a supplemental affidavit, objecting to the allegations made against her by Mr. O'Hara and stating that she found "his untrue averments extremely offensive".

Ms. Dever also describes as "absent any merit, denied and outrageous" the allegations made by Mr. O'Hara that Start Mortgages were behaving illegally.

The hearing of the motion

15. The motion was heard on the 19th day of April 2023. Mr. O'Hara sought an adjournment of the motion, in order to allow it to catch up and be heard with a separate motion that he issued on the 6th of April 2023. That motion, returnable for the 15th of May, sought an order for contempt against certain persons and an order for an injunction preventing certain of the defendants from advertising for sale what was described as "the occupant's land Folio no. KK 5172".

16. I refused to adjourn the Start Mortgages application for three reasons: -

(a) The motion returnable for the 15th of May had nothing to do with Start Mortgages. It was not a respondent to the motion, and no relief was being sought against it. Linking the two applications was therefore unnecessary.

(b) Even if Start Mortgages had some commercial interest in the outcome of the second motion, the fundamental nature of the motion seeking that the proceedings be dismissed as against Start Mortgages meant that that motion should be heard first. It was important for Start Mortgages (and, indeed, for Mr. O'Hara) to understand as soon as possible how they stood in respect of the proceedings between Mr. O'Hara and Start. If, in fact, the proceedings against Start Mortgages were to be found to be without any merit, the sooner this was done the better.

(c) Adjourning the Start Mortgages motion would have simply added further costs to the proceedings as far as Mr. O'Hara and Start Mortgages were concerned, to no avail. Counsel and solicitors (on behalf of Start Mortgages) and Mr. O'Hara himself (on his own behalf) were present and ready to argue the motion in front of me. There

was no cogent reason as to why that motion should not proceed on the day it was listed for hearing.

17. I therefore proceeded to hear the motion. I have carefully considered the submissions made by both

18. In considering the merits of the application to strike out, I had the advantage of the various judgments delivered by judges of this Court. No judgment of the Court of Appeal and the Supreme Court has been brought to my attention which deals with the specific form of claim made in these proceedings.

19. At para. 27 of Towey, Dignam J. summarised the relevant principles that apply to an application such as this as follows: -

> ". . . first, it is a jurisdiction to be exercised sparingly, given that it relates to the constitutional right of access to the courts; second, the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the case is bound to fail or that it is an abuse of process and the threshold to be met is a high one; third, the Court must take the plaintiff's claim at its high-water mark; fourth, the Court must be satisfied not just that the plaintiff will not succeed but cannot succeed; and fifth, the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the utilisation of pre-trial procedures such as discovery or by the evidence at trial".

20. Applying these principles and considering the specifics of the claim made in these proceedings, it involved what I described in Mullins (at para. 21) as a "phenomenally far-ranging proposition. . .". As in Mullins, in this case Mr. O'Hara "has not even attempted to establish" as a stateable proposition the contention that he is protected from all court summonses and all court orders. As I pointed out in Lavery, there is a piquancy in making this claim in proceedings in which (presumably) a court order is sought in circumstances where the foundation stone of the proceedings is that there is no such thing as a valid summons and no such thing as a valid court order. Even without relying upon this profound failure in logic which lies at the heart of the current claim, the proceedings launched by Mr. O'Hara cannot succeed. They therefore constitute an abuse of process. These proceedings also fail to disclose any reasonable cause of action.

21. This action will therefore be dismissed pursuant to the provisions of O. 90, r. 28 of the Rules of the Superior Courts, and pursuant to the inherent jurisdiction of this Court.

22. I will list the matter for mention on the 21st day of June 2023 at 11 am for the purposes of deciding any outstanding issues, including the costs of this motion and of these proceedings inasmuch as they relate to Start Mortgages.