

**THE HIGH COURT**

**[2024] IEHC 29**

**[Record No. 2021/3275P]**

**BETWEEN**

**AMANDA HENDERSON**

**PLAINTIFF**

**AND**

**DUBLIN AIRPORT AUTHORITY T/A DAA PUBLIC LIMITED COMPANY**

**AND RYANAIR DESIGNATED ACTIVITY COMPANY**

**DEFENDANTS**

**JUDGMENT of Ms Justice Bolger delivered on the 22<sup>nd</sup> day of January 2024**

**1.** This is the first defendant's application for security for costs pursuant to O. 29 of the Rules of the Superior Courts, Rule 3 of which provides:

*"No defendant shall be entitled to an order for security for costs by reason of any plaintiff being resident out of the jurisdiction of the Court, unless upon a satisfactory affidavit that such defendant has a defence upon the merits."*

**2.** The court has an additional discretion to refuse security for costs in special circumstances including an inability to provide the security due to the defendant's wrongs and a greater difficulty or expense in enforcing a costs order against a plaintiff as compared to enforcing such an order against a person resident in Ireland (as per O'Neill J. in *Ditt v. Krohne* [2012] 3 IR 120).

**Background**

**3.** The plaintiff has pleaded in her Personal Injury Summons that she sustained injuries while descending an escalator in the public area of the first defendant's premises at Dublin Airport while waiting for her flight with the second defendant as a result of the negligence, nuisance and breach of duty of both defendants. She goes on to plead at para. 7:

*"Further and/or in the alternative, the plaintiff's injuries were sustained in an accident which occurred during the course of embarkation the second-named defendant's aircraft, on which*

*she was scheduled to fly, with the result that it is strictly liable for same under the said 2004 Act and the Montreal Convention."*

The first defendant's grounding affidavit exhibits a draft defence which pleads at para. 1:

*"Without prejudice to the matters pleaded below, the First named Defendant expressly pleads that as the Plaintiff has pleaded that she was in the course of embarkation at the time of her accident and in circumstances where the Plaintiff has named the Second named Defendant as the airline carrier with which the Plaintiff was flying, the Plaintiff is confined to pursuing her claim against the Second named Defendant pursuant to the provisions of the Montreal Convention 1929 as transposed into Irish Law by the Air Navigation and Transport (International Conventions) Act 2004 and is precluded from pursuing the alleged or any cause of action against the First named Defendant."*

The first defendant asserts that it had a *bona fide* defence to the plaintiff's claim.

4. In her replying affidavit the plaintiff sets out her income, savings and equity in her family home. She says she took three weeks sick leave as a result of the accident and that she lost out on a bonus of approximately STG£12,000 for having taken too much sick leave in the year of her accident, though she does not say whether she took leave for any reason other than her accident. In relation to her plea at para. 7 of her personal injury summons she says that the accident occurred during embarkation, she says *"with the result that [the first defendant] is strictly liable for same under the said 2004 Act and the Montreal Convention."* She avers that she is in a position to pay any costs order should such an order be made against her and that it will be *"possible and straightforward"* for the first defendant to engage in the UK courts system to recover any such costs.

### **Discussion**

5. The plaintiff says she is entitled to plead her case in the alternative, *i.e.*, that her accident occurred at the first defendant's premises due to their negligence *etc.*, or alternatively in the course of embarkation. If it was the latter then the Montreal Convention may well arise given the decision of the Court of Appeal in *Bell v. DAA* [2016] IECA 384 where the court held, at para. 7,

*"[t]here is high authority in decisions of the House of Lords on the corresponding provisions of the Warsaw Convention to the effect that the system of international air carriage regulation is complete, closed and exhaustive. These decisions are acknowledged by the Supreme Court. They mean that a plaintiff claiming injury in circumstances covered by the Convention can only claim compensation in accordance with its provisions."*

There the court, having found that the plaintiff sustained her injuries when disembarking from the airplane, held (at para. 42) that "*she can **only** bring her claim subject to the conditions of the Convention*" (my emphasis) and was therefore restricted to proceeding against the airline only.

**6.** Making the plea in relation to the Convention in the alternative does not render the first defendant's defence in relation to the Convention any less *bona fide*. It will be a matter for the trial judge whether a claim rests against the first defendant, given the decision in *Bell* and possibly depending on the evidence as to whether the locus of the accident was, as the plaintiff has pleaded albeit it in the alternative, in the course of embarkation or not. That does not alter the fact that the first defendant has established, in an appropriate affidavit, the prerequisites of O. 29 *i.e.*, that the plaintiff resides outside the jurisdiction and that it has a *bona fide* defence. In truth, neither claims are denied by the plaintiff.

**7.** That leaves only the question of whether the plaintiff has established special circumstances around her ability to pay any security due to the first defendant's wrongdoing. No such claim is made by her. She clearly deposes to her ability to pay costs albeit she has sustained a loss of a bonus of approximately STG£12,000 as a result of excessive sick leave but, significantly, in her replies to particulars she says she is making no claim for loss of earnings in these proceedings. The relevance, therefore, of this loss of bonus is unclear and does not establish the necessary special circumstances to refuse the order being sought.

**8.** The plaintiff says it will be straightforward for any costs to be enforced in the UK courts, however the question is whether it would be more difficult or expensive than enforcing such a costs order in Ireland. Whilst the plaintiff avers at para. 9 of her affidavit, that the UK is "*the neighbouring jurisdiction with the same legal system and language being used*" it is, very significantly, no longer part of the EU and therefore not within the Brussels Convention on the Enforcement of Judgments. A plaintiff residing, or registered, within the EU was a fact considered relevant by Clarke C.J. in *Quinn Insurance Ltd (Under Administration) v. Pricewaterhousecoopers* [2021] IESC 15 which was relied on by O'Moore J. in *Be-Spoke Capital AG v. Altum Capital Management LLC* [2022] IEHC 524.

### **Conclusions**

**9.** The first defendant is, in principle, entitled to an order for security for its costs against the plaintiff pursuant to O. 29 as it has established the plaintiff resides outside the jurisdiction and that it has a *bona fide* defence. The plaintiff has confirmed her ability to pay any costs order that may be made against her but the enforcement of any such order will be more difficult and expensive for the first defendant as it will have to be made in the UK, a non-EU jurisdiction.

**10.** The first defendant is entitled to an order for security for a proportion of their cost and I will hear counsel as to what that portion should be.

**Indicative view on costs**

**11.** As the first defendant has succeeded in this motion and in accordance with the provisions of s. 169 of the Legal Services Regulation Act 2015, my indicative view on costs is that the first defendant is entitled to the costs of this motion.

**12.** I will put the matter in before me at 10.30am on 6 February 2024 to deal with final orders. should either party wish to make written submissions they should be filed with the court at least 48 hours in advance of the matter coming back before me.

**Counsel for the plaintiff:** Darach MacNamara BL.

**Counsel for the defendant:** Eamon Marray BL.