[2024[IEHC 404

THE HIGH COURT

Record No. 2023/2373P

BETWEEN:

PAUL CHRISTOPHER MEEHAN

Plaintiff

AND

IRELAND

Defendant

JUDGMENT of Ms Justice Nuala Jackson delivered on the 7th May 2024.

INTRODUCTION

1. There are two motions before me the first of which is an application brought by the Defendant seeking to strike out the Plaintiff's proceedings pursuant to Order 19, rule 28 of the Rules of the Superior Courts (RSC) on the basis that the Plaintiff's claim is frivolous and vexatious and discloses no cause of action. Further and/or in the alternative, the Defendant invokes the inherent jurisdiction of the High Court to dismiss or stay or strike out the Plaintiff's claim on the basis that it discloses to *bona fide* or stateable cause of action against the Defendant, that it is frivolous and vexatious and that it is bound to fail.

2. The second motion is the Plaintiff's motion for judgment in default of defence, issued on the 31st October 2023, which, in consequence, is chronologically and also logically the motion to be considered second in sequence as if the Defendant is successful in its motion, the second application will fall.

3. The Plaintiff's proceedings herein were commenced by Plenary Summons on the 22nd May 2023. It is clear from this document that the Plaintiff purports to seek

relief against or in respect of the actions of a number of legal entities in circumstances in which such entities are not parties to the within proceedings and in circumstances in which the Defendant cannot not be viewed as having legal responsibility, directly or vicariously, for such persons. It is my intention to deal with this category of claim in the first instance below.

(a) In the first paragraph of the Plenary Summons, damages are sought (presumably from the Defendant) in respect of allegations made against Trinity College Dublin.
(b) In the second paragraph of the Plenary Summons, damages are sought (presumably from the Defendant) in respect of allegations made against Independent News and Media.
(c) In the third paragraph of the Plenary Summons, damages are sought (presumably from the Defendant) in respect of allegations made against An Garda Siochana ('AGS').
(d) In the fourth paragraph of the Plenary Summons, damages are sought (presumably from the Defendant) in respect of allegations made against "a number of companies, as outlined in Exhibit B". A number of private businesses/companies are set out in Paragraph 7 of Exhibit B.
(e) The remaining three paragraphs of the Plenary Summons seek injunctive relief against AGS.

4. It is important to reiterate that none of these entities in respect of which allegations are made and in respect of the which actions the relief of damages is sought are parties to the proceedings. In addition, despite seeking injunctive relief against AGS, the Commissioner of that body is not a party to the within proceedings.

5. There are long and prolix Exhibits attached to the Plenary Summons. These consist of:

(a) Exhibit A (in two parts) – the documents in the first part particularise at length allegations of harassment of the Plaintiff by AGS and includes correspondence between the Plaintiff and the Garda Ombudsman Commission (the Commission). These documents (save for correspondence from the Commission to the Plaintiff) are documents entirely generated by the Plaintiff as to substantive content. There are a small number of incidents referenced therein which name individuals against whom allegations are made but many of the incidents are described without the alleged perpetrators being named or, for the most part, even described save as to generalities. There are 123 incidents of complaint referenced for the period 2006-2007. There are no independent or corroborative documents contained in the exhibit. It would appear from a letter contained in this Exhibit dated the 12th February 2010 that the Plaintiff's complaint was held to be inadmissible on the basis that it was out of time. Exhibit A (second part) sets out further complaints from 2012 and subsequently. The documents contained herein appear to be the results of a data subject access request made by the Plaintiff to the Commission in August 2020 (there is some duplication with the documentation in the first part). In this regard, it should be noted that by letter of the 13th June 2012, the Commission asked of the Plaintiff, *inter alia*:

"Could you clarify if you have had direct contact with any individual who has identified themselves as a Garda member?"

The Plaintiff's reply of the 15th June 2012 states:

> *"None of the people following me identified themselves nor spoke to me. I understand it may be difficult to prove these offences as the tactic I experienced was for them to rotate who actually harasses or follows me on any one occasion. There was one face, a woman, who it seemed to me, was involved in three incidents. I think it is highly unlikely was being harassed by members of the public for the motive I set out in my first piece of correspondence."*

There is a Determination of the Commission included, dated the 2nd July 2012 which found the complaint to be inadmissible on the basis that *"the behaviour*

described would not amount to an offence or breach of discipline". There would appear to have been a further complaint to the Commission in 2014.

Further information relating to the identities of the gardai being complained about was sought from the Plaintiff by the Commission by letter of the 28th July 2014. The responses of the Plaintiff indicate that he was not in a position to provide this, he refers to the Gardai concerned as *"plain clothes stalkers"* (email 29th July 2014). It is not entirely clear what the ultimate outcome of this complaint was but there is no indication that the requests for further information from the Plaintiff were substantively replied to.

(b) Exhibit B – Paragraph 1 of this document is entitled "Cause of Action". Five complaints are listed thereafter being:

1.1 Medical negligence by a university psychiatrist

1.2 Torts, coercion and failure of duty of care by Trinity College Dublin

1.3 Harassment, stalking, long term warrantless phone and internet surveillance and oppression by an arm of the State

1.4 Disproportionate, inaccurate and adverse online publicity

1.5 Employment termination.

It is without doubt that, save possibly for 1.3 above which I will consider below, the rest are unrelated to the Defendant in these proceedings.

The allegations of harassment and similar behaviour being alleged against AGS are set out in paragraph 8 of Exhibit B. The examples given date from 2008 to 2022 (paragraph 9.1 – 9.29). The allegations thus go beyond the dates of incidents forming part of the complaints to the Commission. As indicated above, these examples are, albeit detailed, lacking in particularity as to the persons involved and as to dates and times, a deficit which is exacerbated by the Plaintiff's claim that the allegations concerned involve plain clothes members of AGS.

Exhibit C relates to newspaper coverage concerning the Plaintiff.

6. A Statement of Claim was delivered on the 27th June 2023 and an Amended Statement of Claim was delivered on the 4th July 2023. These are short documents detailing as to quantum the damages which the Plaintiff alleges are being claimed by him against the Defendant. These relate to alleged damage which he has suffered, responsibility for which the Plaintiff attributes to the Defendant, through the actions of the various institutions, media outlets, private businesses (employers) and AGS.

BACKGROUND

7. The Plaintiff has sworn two affidavits in the course of the within proceedings (21st September 2023 and 7th February 2024) in addition to the Plenary Summons filed and the Statement of Claim and Amended Statement of Claim. There is considerable duplication between documents. In the Affidavit of the 7th February 2024 (in response to the Affidavit of Rachel Dando of the 25th September 2023 grounding the Defendant's motion), the Plaintiff asserts that he was a student in Trinity College Dublin in or around 2005, when a complaint was made by another student about the Plaintiff's behaviour towards her. At around the same time, the Plaintiff asserts that he had attended a college-based psychiatrist for a number of sessions as he was felling unwell but no diagnosis was made or medication prescribed, which he describes as failings. The Plaintiff has misgivings about the handling by the college authorities of the complaint being made against him. The Plaintiff further contacted the complainant and was arrested in connection with harassment on or about January 2006. The Plaintiff was interviewed at Pearse Street Garda Station in relation to these matters. The Plaintiff avers on Affidavit that he was suffering with a delusion disorder at the time of interview. The Plaintiff avers to undue and disproportionate media coverage thereafter. The Plaintiff asserts a long saga of gardai harassment between 2006 and 2023. The Plaintiff admits to subsequent contact by him with the complainant which resulted in further garda investigation and criminal proceedings, albeit some considerable time ago. There would appear to have been convictions before the District Court, at least some of which were overturned on appeal. In particular, the Plaintiff asserts:

(a) Continual surveillance by AGS both in person and through his mobile telephone;
(b) Telephone calls from unknown numbers and unknown persons (although the Plaintiff asserts that in some instances, he recognised the voice of the caller);
(c) Interference with his life and the lives of persons close to him by AGS based upon surveillance via mobile telephone;
(d) Contact by AGS with the Plaintiff's psychiatrist;
(e) Interference with employment opportunities as a consequence;
(f) Continued undue media/press attention;
(g) Disclosure of information concerning the Plaintiff by AGS to third parties (including employers) to his detriment.

It is important to note that, with the exception of a very limited number of members of AGS who were directly involved in the investigation in 2005/6, the Plaintiff has not identified any of the gardai allegedly involved in the referred to incidents of harassment.

8. The Plaintiff swore a lengthy Affidavit of the 21st September 2023 which Affidavit preceded the date of issuing of the Defendant's motion under consideration but which Affidavit is relevant to the matters under consideration. It is substantially a repeat of material contained in the Plenary Summons and exhibits attached thereto. The allegations relating to third parties, not parties to the within proceedings, are set out therein in some considerable detail. However, *inter alia*, therein, the Plaintiff alleges mistreatment whilst detained in the Bridewell Garda Station in 2006; that in the course of this interview that the Gardaí conducting the interview called him a 'terrorist' and 'physically intimidated' him; that during the interview, the Plaintiff was asked if he had ever touched the complainant, to which he indicated that he had 'tapped her shoulder'. The Plaintiff was charged with common assault. He alleges undue and inappropriate disclosure of information concerning him to the media by AGS; he alleges a campaign of harassment against him from 2008 until circa 2022 by members of An Garda Síochana involving harassment, stalking, oppression and 'long term warrantless phone surveillance' which has impacted upon all areas of his life. The Plaintiff details this behaviour on Affidavit and provides accounts of

persons, allegedly members of An Garda Síochana and including plain clothes Gardaí, engaging with members of the public so as to obstruct the Plaintiff in the course of his daily life.

9. In the context of the averments of Ms Dando and also the submissions made on behalf of the Defendant, it is important to record that in the Affidavit of the Plaintiff of the 21st September 2023 (and in the Plenary Summons and Exhibits filed) the allegations against AGS are made in Paragraph 8 with "Examples" of harassment and like conduct in Paragraph 9 (which contains 32 sub-paragraphs). These paragraphs detail alleged behaviours between 2008 and 2022 which form the basis of the Plaintiff's claim. While these paragraphs contain considerable detail as to location and alleged intimidatory/harassing conduct, no garda is identified and, for the most part, the alleged perpetrators are described as "plain clothes" guards.

10. The Defendant's motion herein is grounded upon the Affidavit of Rachel Dando aforementioned. This Affidavit sets out a brief factual and procedural history to the within proceedings. It is averred that the pleadings herein do not identify a true cause of action *"with the only perceived claim made against the Defendant relating to a number of alleged instances of "Garda harassment, stalking, long term warrantless phone surveillance and oppression" being carried out by either unnamed, plainly clothed people who the Plaintiff, without merit or foundation, asserts are Gardai, under-cover Gardai, associates of the Gardai or simply other people who are within the vicinity of the Plaintiff on divers dates. In fact, an examination of such allegations reveals that no such "harassment, stalking, long term warrantless phone surveillance and oppression" of the Plaintiff took place by the Gardai, under-cover Gardai, associates of the Gardai or any other servant and/or agent of An Garda Siochana as would be necessary in order for the Plaintiff to maintain this claim against the Defendant."* The Deponent avers that the Plaintiff's pleadings amount to *"mere bald assertions"*. At Paragraph 36 it is averred: *"I say and believe that such assertions are unsupported by any evidence and in such circumstances, are bound to fail. I say that such allegations do not, nor could they ever, result in the Plaintiff having a stateable cause of action against the Defendant."* The Deponent further avers, at Paragraph 37: *"..., he fails to provide any specific details regarding the date or time when such wrongs were allegedly*

perpetrated or indeed provide any details regarding the specific members of An Garda Siochana who allegedly perpetrated such wrongs against him. I say and believe that such assertions are being made by way of innuendo, are unsupported by evidence and furthermore, in the absence of any and/or any discernible evidence, are bound to fail."

SUBMISSIONS

11. The Defendant submits that the Plaintiff's claim for damages against the Defendant in respect of the alleged actions of third parties who are not parties to the within proceedings cannot succeed. In this regard, it should be noted that the statutory relief being claimed in the motion under consideration does not include relief under Order 19, rule 27 of the RSC which would allow for portions of the proceedings to be struck out (in this regard, reference is made to the judgement of this Court (Noonan J.) in **Burke and Woolfson v. Beatty [2015] IEHC 353** at Paragraphs 12 – 14). The Defendant does accept that the only party identified in respect of which the Defendant could have any perceived liability is AGS. However, in respect of AGS, the Defendant submits that no true cause of action has been identified on the basis that the alleged "Garda harassment, stalking, long term warrantless phone surveillance and oppression" has not been particularised as to identities of those allegedly involved or the dates/times of same. It is further submitted that no extraneous evidence has been submitted that would in any manner corroborate the Plaintiff's allegations. Alternatively, the Defendant submits that the Plaintiff's proceedings should be struck out pursuant to the broader inherent jurisdiction of this Court. In this regard, the Defendant again references the Plaintiff's evidential deficits and asserts that such deficits are at such a level that the inherent jurisdiction of this Court to afford protection against claims amounting to an abuse of process should be exercised.

12. In his submissions, the Plaintiff repeats his allegations of harassment in a multitude of forms and referencing incidents. He also makes reference to section 62 of the An Garda Siochana Act 2005 and alleges a breach or breaches thereof. He references the harm allegedly suffered by him from the alleged behaviours. The

discretion of this Court is referenced. In oral submissions, the Plaintiff also made reference to the Defendant and/or AGS being in possession of information relating to these alleged events and incidents which information is not currently available to him but which may be pursued in the context of pre-hearing applications for discovery and similar type applications. There is no indication of any steps having been taken to date, outside of the proceedings, to seek any such information save for the data access request to the Commission which revealed only the Plaintiff's communications with that body and *vice versa*.

THE LAW

13. Order 19 rule 28 of the RSC states:

> *"28. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."*

14. This provision was considered by Butler J. in **Keary v. PRAI [2022] IEHC 28** where it is stated at paragraph 35:

> *"Essentially pleadings can be struck out under Order 19 rule 28 where they fail to disclose a reasonable cause of action or where they are frivolous or vexatious. The striking out of pleadings, particularly a plaintiff's statement of claim can have the effect of disposing of the entire action. In this case if I accede to the defendants' applications to strike out the plaintiff's pleadings it will inevitably follow that his entire action will be dismissed. In considering an application under O.19, r. 28 in principle the court is confined to looking at the pleadings and must assume that the pleaded facts will be established in evidence by the party against whom the application is brought. Thus, the question is a legal one, namely whether, accepting the facts as asserted, the case as pleaded gives rise to a cause of action that is legally capable of succeeding. The issue*

is not whether it will or will not succeed but whether it is legally capable of doing so."

15. The Court in that case was also mindful of the challenge which pleadings may pose so far as a lay litigant, such as the Plaintiff is concerned:

"The court must be careful to differentiate between a bad case simpliciter and a case that is merely badly pleaded."

16. Similarly, in **Burke and Woolfson v. Beatty [2016] IEHC 353**, Noonan J. stated:

"12. An application under O. 19, r. 28 is concerned solely with what appears on the face of the pleadings. If the facts as pleaded by the plaintiff could not conceivably give rise to a cause of action, then the proceedings may be dismissed. The court does not, and cannot, look outside the pleadings or examine the facts or the evidence to determine if the cause of action is sustainable."

17. The broader inherent jurisdiction to strike out proceedings was also considered by Noonan J. at Paragraph 14:

"Applications to dismiss under the inherent jurisdiction of the court are quite different. Here, the court is not confined to an examination of the proceedings but may look outside them at uncontroversial facts to determine if the claim is bound to fail."

18. The extent to which a court may look beyond the pleadings in the exercise of the inherent jurisdiction has been considered in a number of decisions. The Supreme Court in **Lopes v. Minister for Justice** [2014] 2 IR 301 (Clarke J.):

"2. The Jurisdiction to Dismiss

2.1 Applications to dismiss at an early stage of proceedings are, when brought, frequently based alternatively on the provisions of O.19, r.28 of the Rules of the Superior Courts ("RSC") and the inherent jurisdiction of the Court. It is important to emphasise that the inherent jurisdiction of the Court should not be used as a substitute for, or means of getting round, legitimate provisions of procedural law. That constitutionally established courts have an inherent

jurisdiction cannot be disputed. That the way in which the ordinary jurisdiction of those courts is to be exercised is by means of established procedural law including the rules of the relevant court is also clear. The purpose of any asserted inherent jurisdiction must, therefore, necessarily, involve a situation where the Court enjoys that inherent jurisdiction to supplement procedural law in cases not covered, or adequately covered, by procedural law itself. An inherent jurisdiction should not be invoked where there is a satisfactory and existing regime available for dealing with the issue under procedural law for to do so would set procedural law at nought.

2.2 Against that background, it is important to distinguish between the jurisdiction which arises under O.19, r. 28 of the RSC and the inherent jurisdiction often invoked. The inherent jurisdiction can be traced back to the decision of Costello J. in Barry v. Buckley [1981] I.R. 306. However, that jurisdiction needs to be carefully distinguished from the jurisdiction which arises under the RSC, precisely because it would be inappropriate to invoke the inherent jurisdiction of the Court in circumstances governed by the rules. In that context, I said, at para. 3.12. of my judgment in the High Court in Salthill Properties Limited & anor v. Royal Bank of Scotland plc & ors [2009] IEHC 207, the following:

"3.12 It is true that, in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19, the court must accept the facts as asserted in the plaintiff's claim, for if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim. However, I would not go so far as to agree with counsel for Salthill and Mr. Cunningham, to the effect that the court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the court. A simple example will suffice. A plaintiff may assert that it entered into a contract with the defendant which contained certain express terms. On examining the document the terms may not be found, or may not be found in the form pleaded. On an application to dismiss as being bound to fail, there is nothing to prevent the defendant producing the contractual documents governing the relations between the parties and attempting to persuade the court that the plaintiff has no chance of establishing that the

document concerned could have the meaning contended for because of the absence of the relevant clauses. The whole point of the difference between applications under the inherent jurisdiction of the court, on the one hand, and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other hand is that the court can, in the former, look to some extent at the factual basis of the plaintiff's claim."

2.3 The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v Buckley, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked.

2.4 It is important to keep that distinction in mind. It is also important to note the many cases in which it has been made clear that the inherent jurisdiction of the court should be sparingly exercised. This was initially recognised by Costello J. in Barry v Buckley and by the Supreme Court in Sun Fat Chan v Osseous Ltd [1992] 1 I.R. 425. In the latter case, McCarthy J. stated that "generally the High Court should be slow to entertain an application of this kind". This point has been reiterated more recently in Kenny v Trinity College Dublin [2008] IESC 18 at para. 35 and in Ewing v Ireland and the Attorney General [2013] IESC 44 at para. 27.

2.5 It is also important to remember that a plaintiff does not necessarily have to prove by evidence all of the facts asserted in resisting an application to dismiss as being bound to fail. It must be recalled that a plaintiff, like any other party, has available the range of procedures provided for in the RSC to assist in

establishing the facts at trial. Documents can be discovered both from opposing parties and, indeed, third parties. Interrogatories can be delivered. Witnesses can be subpoenaed and can, if appropriate, be required to bring their documents with them. Other devices may be available in particular types of cases. In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in Sun Fat Chan (at p. 428), that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance.

2.6 At the same time, it is clear that certain types of cases are more amenable to an assessment of the facts at an early stage than others. Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss. In that context, it is important to keep in mind the distinction, which I sought to analyse in Salthill Properties, between cases which are dependent in themselves on documents and cases where documents may form an important part of the evidence but where there is likely to be significant and potentially influential other evidence as well."

19. The issue therefore is the extent to which and circumstances in which it is permissible to go behind the pleadings and to interrogate the evidential basis of the claim being asserted at, in the present instance, a very early stage in the proceedings, in order to determine whether the abuse of process jurisdiction may be invoked on the basis that the case is bound to fail. This has been considered in by Clarke J. in **Keohane v. Hynes & Anor [2014] IESC 66** where the extent to which this is permissible was described as "extremely limited" (Paragraph 6.2). He continued:

"6.8 What the Court can analyse is whether a plaintiff's factual allegation amounts to no more than a mere assertion, for which no evidence or no credible basis for believing that there could be any evidence, is put forward. Likewise,

the Court can go into documentary facts where the relevant documents govern the legal relations between the parties or form the only possible evidential basis for the plaintiff's claim (as in Lopes). As Barron J. noted in Jodifern, a court can look at a contract and it may become clear beyond argument as to what that contract means. On that basis, it may follow that a plaintiff's claim may be bound to fail. But there may be cases where, notwithstanding the text of a contract, facts are asserted and backed up either by evidence or by the possibility that evidence might be found, which might lead to the contract being construed in some different way or the consequences for the wrong alleged in the proceedings being differently considered. In such cases, as Barron J. made clear, the case must go to trial.

6.9 In summary, it is important to emphasise the significant limitations on the extent to which a court can engage with the facts in an application to dismiss on the grounds of being bound to fail. In cases where the legal rights and obligations of the parties are governed by documents, then the court can examine those documents to consider whether the plaintiff's claim is bound to fail and may, in that regard, have to ask the question as to whether there is any evidence outside of that documentary record which could realistically have a bearing on the rights and obligations concerned. Second, where the only evidence which could be put forward concerning essential factual allegations made on behalf of the plaintiff is documentary evidence, then the court can examine that evidence to see if there is any basis on which it could provide support for a plaintiff's a legations. Third, and finally, a court may examine an allegation to determine whether it is a mere assertion and, if so, to consider whether any credible basis has been put forward for suggesting that evidence might be available at trial to substantiate it. While there may be other unusual circumstances in which it would be appropriate for the court to engage with the facts, it does not seem to me that the proper determination of an application to dismiss as being bound to fail can, ordinarily, go beyond the limited form of factual analysis to which I have referred.

6.10 It is an abuse of process to bring a claim based on a breach of rights or failure to observe obligations where those rights and obligations are defined by documents and where there is no reasonable basis for suggesting that the

relevant documents could establish the rights and obligations asserted. Likewise, it is an abuse of process to maintain a claim based on facts which can only be established by a documentary record and where that record could not sustain any necessary part of the factual assertions which underlie the case. Finally, it is an abuse of process to maintain a claim based on a factual assertion in circumstances where there is no evidence available for that assertion and, importantly, where there is no reasonable basis for believing that evidence could become available at the trial to substantiate the relevant assertion. However, the bringing of a claim based on a factual assertion for which there is or may be evidence (even if the defendant can point to many reasons why it might be argued that a successful challenge could be mounted to the credibility of the evidence concerned) is not an abuse of process. It is for that reason that a court cannot properly engage with the credibility of evidence on a motion to dismiss as being bound to fail and it is for that reason that the very significant limitations which I have sought to identify exist in relation to the extent to which a court can properly engage with the facts on such an application." (Underlining added)

20. This is not a case based on documents or upon facts which can only be established by documentary records. It is also important to note that there have been no previous proceedings involving the issues raised which would render these proceedings moot or a collateral attack on the previous proceedings. Additionally, the position in this case is distinguishable from **James v. Watters and Anr [2023] IECA 115**, a case in which a robust affidavit denying responsibility, exhibiting contemporaneous documentary material in support of such denial, had been sworn by the Defendant and was relied upon by him to show *"that the appellant's claim is contrary to the objectively verifiable facts."* This is not the position in the present case. In the **James** Case, the issue did not involve facts which were in dispute but the inferences to be drawn from agreed facts which inferences were robustly challenged by the Defendant in his sworn averments. In the present instance, the focus of the Defendant is on the evidential deficiencies in the Plaintiff's case as pleaded rather than on any denial or acceptance of inference from agreed facts.

21. This case is one in which the third category of circumstance referenced in the judgment of Clarke J. at paragraph 19 above must be considered. It must be remembered that these proceedings are at a very early stage. In so far as deficiencies in the pleadings in respect of dates and times of alleged incidents are concerned, it is open to the Defendant to seek particulars which, if not responded to, can be assessed by the Court as to the appropriateness of same and the consequences which should follow. It is clear that, based upon the information before me, the Plaintiff has little to no evidence which he has adduced in support of the factual assertions made by him upon which his claim is founded. It is also clear that such additional information was sought from the Plaintiff in the context of previous complaints made to the Commission in respect of the incidents and events alleged in the within proceedings and such information was not forthcoming, indeed, the responses from the Plaintiff tend to confirm that he does not have such information (for the avoidance of doubt, while the Defendant's grounding affidavit averred that these complaints had been deemed inadmissible on "each occasion", it appears to me from a perusal of the documentation provided to me that only one such complaint was found to be inadmissible on substantive grounds – the first appears to have been out of time and the third seems to have fallen due to the Plaintiff's failure to provide additional information). However, the current unavailability of or unsatisfactory nature of evidence is not determinative – as stated in **Keohane** above, is there any reasonable basis for believing that evidence could become available at the trial to substantiate the relevant assertion? If the answer to this is in the positive, which I consider it to be, the Plaintiff should be permitted to proceed with his claim and to invoke such pre-trial procedures as he deems appropriate. As was stated in **Lopes**:

> *"2.5 It is also important to remember that a plaintiff does not necessarily have to prove by evidence all of the facts asserted in resisting an application to dismiss as being bound to fail. It must be recalled that a plaintiff, like any other party, has available the range of procedures provided for in the RSC to assist in establishing the facts at trial. Documents can be discovered both from opposing parties and, indeed, third parties. Interrogatories can be delivered. Witnesses can be subpoenaed and can, if appropriate, be required to bring their documents with them. Other devices may be available in particular types of cases. In order*

to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in Sun Fat Chan (at p. 428), that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance."

22. There is no doubt that there are considerable weaknesses and deficiencies in the Plaintiff's case as currently pleaded. However, as stated by Clarke J. in **Keohane**, applications such as the present are not an invitation to resolve issues on a summary basis rather, as stated at Paragraph 6.6:

"It is for that reason that all of the jurisprudence emphasises that the jurisdiction is to be sparingly exercised and only adopted when it is clear that the proceedings are bound to fail rather than where the plaintiff's case is very weak or where it is sought to have an early determination on some point of fact or law. It is against that background that the extent of the court's entitlement to look at the facts needs to be judged."

23. The applicable principles have been succinctly stated by Dignam J. in **Towey v. Ireland [2022] IEHC 559** where, at Paragraph 27 he states:

"27. In addition to these principles, the jurisdiction, whether under the Rules or the court's inherent jurisdiction, is subject to a number of overarching principles: 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 (see Keary v. The Property Registration Authority of Ireland [2022] IEHC 28; Scanlan v. Gilligan & ors [2021] IEHC 825, Irish Bank Resolution Corporation v Purcell & Ors [2016] 2 IR 83)."

24. I adopt these principles herein.

CONCLUSION

25. It is my view, on the authorities, that there are three issues to be addressed in this application:

A. <u>Do the pleadings herein disclose a reasonable cause of action?</u>

26. Clearly the pleadings herein do not do so as regards the actions of entities in respect of which the Defendant cannot be liable. In this regard, I would make reference to paragraph 4 of the Defendant's submissions:

"The only party identified above, in respect of which the Defendant named in these proceedings could have any perceived liability for, is An Garda Siochana. The remaining 16 entities are private companies, in respect of whom, the State bears absolutely no liability. None of these 16 entities are Defendants in these proceedings."

This is a matter which might properly be addressed in the context of an application pursuant to Order 19, rule 27 of the RSC but there is no such application before me.

B. <u>Is the action shown by the pleadings frivolous or vexatious?</u>

27. Clearly, this question must be answered in the positive in relation to the actions of entities in respect of which the Defendant cannot be liable. Again, in this regard, I would make reference to paragraph 4 of the Defendant's submissions:

"The only party identified above, in respect of which the Defendant named in these proceedings could have any perceived liability for, is An Garda Siochana. The remaining 16 entities are private companies, in respect of whom, the State bears absolutely no liability. None of these 16 entities are Defendants in these proceedings."

This is a matter which might properly be addressed in the context of an application pursuant to Order 19, rule 27 of the RSC but there is no such application before me.

28. However, the striking out of portions of proceedings which are bound to fail is permissible in the exercise of the inherent jurisdiction. In this regard, I refer to the **Burke and Anr v. Beatty** [2016] IEHC 353 at Paragraph 25 thereof. Therefore, in the exercise of inherent jurisdiction, I propose to strike out those parts of the Plaintiff's plenary summons and statement of claim that refer to claims arising from the actions of the sixteen private entities for which the Defendant can have no responsibility (that is all save in respect of AGS). In addition, I am of the view that injunctive reliefs being sought in respect of the actions of AGS, the Commissioner not being a party to the proceedings, are likewise bound to fail and should be struck out.

29. In so far as the Plaintiff asserts a claim for damages against the State in respect of alleged harassment, stalking and other oppressive behaviours by AGS, I do not believe that such a claim can be viewed as a failure to disclose a cause of action. Nor can it be considered to be frivolous or vexatious. I therefore refuse the relief sought by the Defendant on this basis.

C. <u>Can it be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits such as invokes the inherent jurisdiction?</u>

30. The present case, in my view, is not unlike the situation being addressed by Noonan J. in **Burke and Anr v. Beatty** [2016] IEHC 353 at Paragraph 32 when he states:

> *"However, at this juncture, I do not think it is possible for me to say that there are no circumstances in which this claim could succeed irrespective of what evidence may be led by the plaintiffs at the trial. The plaintiffs' case may be weak in that regard, it may be lacking in credibility and perhaps even contradicted to an extent by their own pleadings, but to conclude that the case is thus bound to fail would involve embarking on precisely the kind of analysis and weighing of the evidence that is impermissible in an application of this nature for the reasons explained in the authorities to which I have already referred."*

31. I am therefore refusing the Defendant the relief sought pursuant to the inherent jurisdiction of the Court save in respect of the amendment of the pleadings as provided for at paragraph 28 above.

(a) I direct that an amended plenary summons and statement of claim in accordance with the terms of this judgment be served by the Plaintiff within 14 days of the date of this judgment.

(b) I will extend the time for the delivery of a Defence by a period of 28 days from receipt of the amended pleadings.

(c) I propose reserving the costs of the motions herein to the hearing of the action. However, I will give liberty to apply on notice if either party wishes to make submissions in this regard.