[2020] IEHC 74

THE HIGH COURT

[2018 No. 7766 P.]

BETWEEN

JOHN M. SEARSON

PLAINTIFF

AND

DUBLIN CITY COUNSEL & BOBBY AYLWARD, PETER BURKE, SHANE CASSELLS, CATHERINE CONNOLLY, DAVID CULLINANE, PAT DEARING, ALAN FARRELL, SEAN FLEMING, ALAN KELLY, MARK MACSHARRY, CATHERINE MURPHY, JONATHAN O'BRIEN AND KATE O'CONNELL (MEMBERS OF THE COMMITTEE OF PUBLIC ACCOUNTS)

DEFENDANTS

(NO.1)

JUDGMENT of Mr. Justice Barr delivered on the 21st day of February, 2020

Introduction

1. The is an application brought on behalf of the second to fourteenth named defendants, who are the members of the Committee of Public Accounts of the 32nd Dáil. In this application the second to fourteenth named defendants (hereinafter referred to as "*the PAC*") are seeking an Order pursuant to Order 19, rule 28 of the Rules of the Superior Courts that the plaintiff's claim against them be struck out on the grounds that it discloses no reasonable cause of action, or in the alternative, that it be dismissed on the grounds that the action is shown by the pleadings to be frivolous and/or vexatious, and in the alternative, they seek an Order pursuant to the inherent jurisdiction of the Court striking out or dismissing the plaintiff's claim on the grounds that it is bound to fail.

2. The plaintiff is a litigant in person. He opposes the application on behalf of the PAC.

Background

3. Unfortunately, the background to this case has a long and somewhat convoluted history. The origins of the action arose out of works which were allegedly carried out to the property of which the plaintiff is a tenant of Dublin City Council at 363 Mourne Road, Drimnagh, Dublin 12. It is alleged that the first defendant, through its servants or agents, carried out various works to the property in 2010. It is alleged by the plaintiff that these works were done in a grossly negligent fashion and in particular, that the windows and doors to the exterior of the property were not fitted correctly into the opes. He further alleges that there were substantial defects in relation to the kitchen and bathroom and in particular to the flooring therein. It appears that in the years after 2010 the plaintiff was in a protracted dispute with the first defendant in relation to the alleged defects in the property.

4. On 3rd March, 2014, the plaintiff by letter addressed to Mr. Ted McEnery, clerk to the PAC, made a complaint to the PAC in relation to his dispute with the first named defendant concerning the works done to the property. With that complaint he also submitted a quantity of other documentation which related to what the plaintiff saw as being various miscarriages of justice which had arisen in other proceedings that he had instituted against the State, arising out of the alleged failure of the Disciplinary Committee of the Law Society of Ireland to take proper disciplinary action against a solicitor against whom he had made a complaint. That action had been dismissed by

Order of Gilligan J. in the High Court as disclosing no reasonable cause of action against the defendant in that action. The plaintiff complained that he had been subject to a miscarriage of justice and made extensive complaint in relation to a large number of Orders that had been made against him in the High Court in the years 2002 – 2010.

5. That litigation eventually came to an end when the plaintiff informed the Supreme Court that he would not be lodging any books of appeal in respect of his appeal against the Order made by Gilligan J. On that basis the Supreme Court struck out the appeal with costs to the defendant.

6. Returning to the present narrative, it appears that the plaintiff's complaint was transferred from the PAC to the Joint Committee on Public Service Oversight and Petitions (herein after referred to as the "*the joint committee*") because on 9th June, 2014, Mr. Ronan Lenihan clerk to the joint committee wrote to Dublin City Council indicating that a complaint had been made in relation to the fitting of windows in the plaintiff's house and requested Dublin City Council to confirm its compliance with current building and disability legislation and regulations and also to specify what avenues of appeal were available to tenants who were not satisfied with services, or refurbishment work provided by Dublin City Council.

7. By letter dated 22nd July, 2014, Mr. Hugh McKenna, Senior Executive Officer in the Housing Maintenance Section of Dublin City Council, responded stating that he had no hesitation in confirming that the current formula of fitting windows complied fully with building and disability regulations. He went on to outline the various avenues of appeal that were open to tenants who were dissatisfied with refurbishment works carried out by Dublin City Council.

8. By letter dated 10th October, 2014, Mr. Lenihan wrote to the plaintiff on behalf of the joint committee in the following terms:

> *"Dear Mr. Searson,*
>
> *I am directed by the Joint Committee on Public Oversight and Petitions to refer to your correspondence regarding the fitting of windows in local authority houses.*
>
> *In an examination of the matter, the committee engaged with the Housing Maintenance Section (DCC) and in correspondence with DCC requested confirmation as to the following:*
>
> *1. That DCC confirms its compliance with current building and disability legislation and regulations;*
>
> *2. What avenues of appeal are available to tenants where they're not satisfied with services or refurbishment work provided by DCC.*
>
> *With regard to compliance with current building and disability legislation and regulation DCC have confirmed that; "The current formula of fitting windows*

complies fully with building and disability regulations". Furthermore, DCC advised that there is an appeals procedure available to tenants which includes advice on referral to the Ombudsman. I enclose for your attention the response the committee received from Dublin City Council.

At its meeting of 24 September 2014, the Joint Committee on Public Oversight and Petitions agreed that the matter you raised did not constitute a public service oversight issue and therefore will not be progressed further.

Yours sincerely

Ronan Lenihan"

9. It appears that matters went quiet after that between the plaintiff and the PAC and/or the joint committee. However, it appears that there was further interaction between the plaintiff and the first defendant which resulted in some attempts at remedial works being made, which seemed to have broken down for one reason or another, in or about August 2018.

10. On 30th August, 2018, the plaintiff issued a Plenary Summons against the first defendant and the PAC. In essence the bulk of that document was a claim for damages in respect of the allegedly defective remedial works carried out to the property by the first defendant in March 2010 and due to the fact that the plaintiff had been left in an uninhabitable property since that time. The relief claimed against the PAC was set out at paragraph 8 as follows:

> *"The plaintiff's claim is for compensation and damages because of the fact that the second named defendant conspired against the plaintiff's legal rights under Article 40.3 of the Irish Constitution and conspired against the plaintiff's legal rights under Articles 6 and 8 of the Convention on Human Rights for proper and fair procedures about the plaintiff's complaints about the second named defendant."*

11. On 12th September, 2018, the plaintiff served an extensive statement of claim, which ran to some 15 pages in length. In summary the case made by the plaintiff in the statement of claim was as follows: (1) he set out a statement of the alleged deficiencies in the works which had been carried out to his home by the first defendant; (2) he set out the remedies that he wanted against the first defendant, which were essentially a claim for damages and an injunction requiring the first defendant to complete the works to a satisfactory standard; (3) he asserted that he had made a valid complaint to the PAC; (4) he alleged that the PAC did not investigate his complaint properly by asking the questions of Dublin City Council, which they had in their correspondence and in particular by merely asking them to confirm that the works carried out by them had complied with the relevant building regulations and disability regulations and by requesting information on the avenues of appeal that may be open to tenants of such properties; (5) the plaintiff asserted that the response given by Mr. McKenna in his letter dated 22nd July, 2014, was fraudulent and untrue; (6) he asserted that by accepting the response which had been

given by Mr. McKenna, the PAC had conspired with the first defendant to infringe the plaintiff's rights under the Irish Constitution and European Law; (7) he alleged that by accepting the assertions given by Mr. McKenna and by reaching the decision at its meeting on 24th September, 2014 not to investigate his complaint further, the PAC had acted in breach of its obligations under Irish and European Law and he further asserted that by so doing, the PAC had entered into a criminal conspiracy with the first defendant, to commit a fraud on the plaintiff.

12. On 4th February, 2019, the plaintiff brought a motion against the defendants seeking an early trial of the matter. That application was heard before MacGrath J. It appears that MacGrath J. did not accede to the plaintiff's application, because while the perfected Order, which was made as a result of that hearing, was silent in relation to the plaintiff's application for an early trial pursuant to Order 50, rule 2 of the Rules of the Superior Courts, the plaintiff has brought a similar application before this Court, which is the subject matter of a separate judgment. The Order made by MacGrath J. provides that the title of the second defendant in the proceedings up to that time, which had read "Public Accounts Oireachtas Committee", was to be amended to members of the Committee of Public Accounts and the named members of that committee, who are named in the title hereof as the second to fourteenth named defendants. The Court further ordered that the newly substituted defendants, being the PAC, were to have one week within which to lodge an appearance to the proceedings. That Order was perfected on 6th February, 2019. On 11th February, 2019, an appearance was entered on behalf of the second to fourteenth named defendants.

The Present Application

13. As previously noted, the present application seeks an Order on behalf of the second to fourteenth defendants that the plaintiff's claim be struck out on the grounds that it discloses no reasonable cause of action against them, or on the grounds that the action is shown by the pleadings to be frivolous and/or vexatious, or alternatively pursuant to the inherent jurisdiction of the Court on the grounds that the plaintiff's claim against these defendants was bound to fail.

14. The application was grounded on the affidavit sworn by Ms. Ramona Quinn, a solicitor in the office of the Parliamentary Legal Advisors of the Houses of the Oireachtas sworn on 15th May, 2019. It is not necessary to set out the content of that affidavit, as the history of the matter as set out above, was largely deposed to by Ms. Quinn.

15. In her affidavit, Ms. Quinn also exhibited a letter dated 31st October, 2014, from Mr. Lenihan to the plaintiff, wherein he replied to a letter from the plaintiff dated 30th October, 2014, and wherein he explained in some detail to the plaintiff that he had merely written to the joint committee with his concerns and they had reached a decision on 24th September, 2014, that the matter he had raised did not constitute a public service oversight issue and therefore they would not be dealing with the matter further. It was pointed out that such correspondence did not represent a petition in a formal sense. It was also pointed out that the joint committee could not arbitrate or decide the dispute between the plaintiff and the joint defendant. That was a matter for the courts.

16. Counsel on behalf of the second to fourteenth defendants submitted that on the basis of the facts which had been deposed to by Ms. Quinn, which in turn were not disputed, as they were confined to correspondence that had passed between the plaintiff and the joint committee; it was clear that there was no case to be made by the plaintiff against the second to fourteenth defendants. On that basis, it was submitted that they were entitled to an Order pursuant to Order 19, rule 28, or pursuant to the inherent jurisdiction of the Court striking out the plaintiff's action against them as being frivolous and vexatious, or on the basis that the pleadings disclosed no cause of action against them.

17. In response to the application, the plaintiff swore a comprehensive affidavit on 31st January, 2020, which ran to some 43 pages. While much of the affidavit was repetitive, it is possible to summarise his essential objections to the application in the following terms: firstly, he alleges that a fraud was perpetrated on the Court at the hearing held before MacGrath J. on 4th February, 2019, by virtue of the fact that the names of the second to fourteenth defendants, who were then members of the PAC of the 32nd Dáil, were given as the persons who should represent the Public Accounts Committee. He asserted that that committee had only been established on 4th July, 2018, whereas he had made his complaint to the joint committee in 2014. Secondly, he alleged that Ms. Quinn has committed perjury and fraud on the Court, as had counsel, in respect of the submissions that they had made at the hearing before MacGrath J. on 4th February, 2019, such that he alleged that the Order made by MacGrath J. was void and of no effect.

18. Thirdly, he stated that the second to the fourteenth named defendants in respect of whom a memorandum of appearance had been entered on 11th February, 2019, had had nothing to do with the consideration of his complaint, which had been made in 2014. Fourthly, he complained about the conduct of the first defendant in and about their attempt to carry out further refurbishment works to the property in 2018.

19. Fifthly, he went into the proceedings that were alleged to have taken place before MacGrath J. at the hearing of the motion on 4th February, 2019, and alleged that the learned High Court Judge had not allowed him sufficient opportunity to make his submissions and on that basis he asserted that the judge had entered into a conspiracy with the defendants to infringe his rights. Sixthly, he complained that counsel for the defendants had conspired to present fraudulent submissions to the Court on that occasion to the effect that he was not entitled to an Order under Order 50, rule 2 for an early trial and that the trial judge had acted fraudulently in accepting those submissions. In his seventh point, he asserted that his pleadings had closed and therefore it was not possible for the second to fourteenth defendants to be successful in their application. He further asserted that his claim against the defendants was not frivolous or vexatious and ought not to be struck out.

20. In his oral submissions at the hearing of this application, the plaintiff submitted a number of photographs showing the condition of his property. He stated that having regard to the severely dilapidated condition of the property, it was clear that Mr. McKenna had not told the truth in his response to the joint committee in his letter dated 22nd July, 2014. He

stated that it was incorrect of Ms. Quinn to aver in her grounding affidavit that he had consented to the change in title of the second defendant at the hearing before MacGrath J. He stated that he had never asked for that change to be made. He stated that it was fraudulent for an appearance to have been entered on behalf of the second to fourteenth defendants, who had only come into existence as a committee in 2018, when he had made his complaint years earlier in 2014. He repeated the assertion that there was no right to strike out the proceedings against the defendants, because the pleadings had been closed after eight days had elapsed after issuance of the Plenary Summons on 30th August, 2018, and because no valid appearance had been lodged to the Plenary Summons within that period as required by the rules.

21. Mr. Searson also spent some time making oral submissions in relation to matters concerning the report that he had made to the Disciplinary Committee of the Law Society about a solicitor in the connection with the sale of a property that had occurred many years previously. It is not necessary to summarise these submissions as they were not relevant to the issue before the Court.

Conclusions

22. Article 40.3 of Bunreacht na hÉireann guarantees an individual a right of access to the courts. It is necessary, however, for the courts to balance this constitutional right of a plaintiff to institute proceedings, with the interests of defendants who should not be forced to defend proceedings that are vexatious or bound to fail. In addition, the courts have a duty to uphold the integrity of the judicial system by declining to adjudicate on matters which constitute an abuse of the process of the courts. As McKechnie J. stated in *Ewing v. Ireland* [2013] IESC 44 at paragraph 23:

> *"Court time is now a scare resource; the courts have a public duty to ensure that such time is used appropriately. As well as rights of access to the courts, both represented litigants and litigants-in-person have duties. There is no duty to allow the continuance of unstateable cases to full hearing. Pleadings must be focused on the real issues, as must written and oral submissions."*

23. The courts have a power pursuant to both Order 19, rule 28 of the Rules of the Superior Courts and their inherent jurisdiction, to make an Order striking out proceedings where it discloses no reasonable cause of action, or where it can be shown by the pleadings to be frivolous or vexatious. The onus of proof lies with the defendants who seek to have the proceedings dismissed, and as stated by Hardiman J. in his judgment in *Grant v. Roche Products (Ireland) Ltd* [2008] IESC 35 at page 30, this onus is a heavy one.

24. Pursuant to Order 19, rule 28 a pleading can be struck out where it fails to disclose a reasonable cause of action, i.e. where the facts and matters pleaded do not constitute a cause of action that is known to the law; see *Flanagan v Kelly* [1999] IEHC 116; *Moffitt v Bank of Ireland* (Supreme Court, 19th February 1999).

25. An Order may also be made where an action is shown to be frivolous or vexatious. As to what is contemplated by this, Barron J. stated in *Farley v Ireland* (Supreme Court, 1st May 1997) at paragraph 3:

> *"[…] if [a plaintiff] has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly it is a hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious."*

26. In *Lowes v. Caoilte Teoranta* (High Court, 5th March 2003) Herbert J. expressed the view that the court should consider the pleadings in each particular case and determine whether a claim could properly be described as clearly frivolous or vexatious. In the Court of Appeal decision of *Fox v. McDonald* [2017] IECA 189, at paragraph 20, Irvine J. referred to the description of Birmingham J. (then a judge of High Court) in Nowak v Data Protection Commissioner [2012] IEHC 499, stating that the word frivolous "*when used in the context of O. 19, r. 28 is usually deployed to describe proceedings which the court feels compelled to terminate because their continued existence cannot be justified having regard to the relevant circumstances".*

27. With regards to the discretionary nature of this rule, it was emphasised by Denham J. (as she then was) in *Aer Rianta cpt v. Ryanair Ltd* [2004] IESC 23, that the jurisdiction under rule 28 is one which a court will be slow to exercise and it should "*exercise caution in utilising this jurisdiction*". However, she further stated that if a court is convinced that a claim will fail, it should be struck out. In *Wilkinson v. Ardbrook Homes Ltd* [2016] IEHC 434, Baker J. (then a judge of the High Court), stated at paragraph 19, that the approach the court should take is to:

> *"[…] ask whether the plaintiff could possibly succeed on the case as pleaded and in light of the facts asserted, and only if it is satisfied that a plaintiff could not possibly establish those facts, or could not possibly succeed on the pleadings, should the proceedings be struck out".*

28. In addition to the power conferred by Order 19, rule 28, the court also has an inherent jurisdiction to strike out or stay proceedings, if they are frivolous or vexatious or bound to fail. It is important to emphasise that the inherent jurisdiction of the court should not be used as a substitute for, or means of getting around, legitimate provisions of procedural law. This inherent jurisdiction can be traced back to the decision of Costello J. in *Barry v. Buckley* [1981] I.R. 306 where at page 308 he explained that the "*jurisdiction exists to ensure that abuse of the process of the courts does not take place*" and if the court was satisfied that the plaintiff's case must fail, "*then it would be a proper exercise of its discretion to strike out proceedings whose continued existences cannot be justified*". Costello J. further emphasised that the jurisdiction to strike out proceedings is one to be *"exercised sparingly and only in clear cases*".

29. Clarke J. (as he then was) further emphasised this point in *Keohane v. Hynes* [2014] IESC 66 at paragraph 6.6., stating 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".

30. A claim will be struck out where, on admitted facts or undisputed evidence, it is clearly unstateable or bound to fail. This was the reasoning of Hanna J. in dismissing the action in *Lopes v. Minister for Justice, Equality and Law Reform* [2008] IEHC 246. The decision of Hanna J. was subsequently upheld by the Supreme Court in *Lopes v. Minister for Justice, Equality and Law Reform* [2014] IESC 21.

31. Turning to the consideration of this application, the court is satisfied that a number of facts are not realistically in dispute between the parties. Firstly, the plaintiff made a complaint in writing to the clerk of the PAC. That complaint was obviously passed to the joint committee, as the clerk of that committee wrote to the first defendant enquiring about the matter. Dublin City Council responded by the letter issued by Mr. Hugh McKenna, the Senior Executive Officer of the Housing Maintenance Section on 22nd July, 2014.

32. The joint committee considered the position in light of that response at its meeting held on 24th September, 2014; at which time they made the decision that the issue which had been raised by the plaintiff did not constitute a public service oversight issue. Accordingly, they declined to deal with the matter further.

33. That conclusion was communicated to the plaintiff by letter from the clerk of the joint committee, Mr. Lenihan, on 10th October, 2014. The plaintiff was given a copy of the response that had been furnished by the first defendant. The position of the joint committee and, in particular, its inability to deal with the matter further was further clarified in the letter sent by Mr. Lenihan on 31st October, 2014.

34. Thereafter, the plaintiff did nothing for almost four years. On 30th August, 2018, the plaintiff issued his Plenary Summons against Dublin City Council and the PAC. On 12th September, 2018, he furnished a statement of claim. On 4th February, 2019, MacGrath J. made an Order amending the title of the second defendant in the terms that have been outlined previously in this judgment, whereby the second to fourteenth named defendants were substituted for the named second defendant, as they were the members of the PAC. That Order further provided that the second to fourteenth defendants would have a period of seven days within which to file their appearance. That was done within seven days of perfection of the High Court Order, by entry of an appearance on 11th February, 2019.

35. It was the plaintiff who elected to sue the PAC, when he was well aware that his complaint had been dealt with by the Joint Committee on Public Service Oversight and Petitions and he was aware that for the reasons set out in their letter dated 10th October, 2014, that committee had declined to accept his complaint and declined to issue any determination upon it.

36. Accordingly, the Court is of the view that as the second to fourteenth defendants are members of the PAC of the 32nd Dáil, which committee or a predecessor of it, merely received the initial correspondence from the plaintiff and passed it to another committee, which then dealt with his concerns in the manner of which he complains, there can be no case against the second to fourteenth defendants, simply because they did not deal with his complaint. On this basis alone, the plaintiff has no cause of action against the second to fourteenth named defendants.

37. However, even if I am wrong in that, and if I were to treat the second to fourteenth defendants as being in some way representative of the Joint Committee on Public Service Oversight and Petitions, I would still have to reach the same conclusion. The plaintiff's complaint is that the joint committee acted in breach of his rights in writing to the first defendant and in accepting the content of the letter from Mr. McKenna dated 22nd July, 2014 and in reaching the decision in light of the correspondence before them, that the matter raised by the plaintiff did not constitute a public service oversight issue and, therefore, could not be progressed further by that committee. Effectively, the joint committee made a decision that the issue raised by the plaintiff was not within their remit. Accordingly, they made a decision that they could not progress the matter further. They communicated that decision to the plaintiff. If he was dissatisfied with that decision, his remedy was to bring an application by way of judicial review seeking an Order of mandamus compelling the committee to consider his complaint.

38. The joint committee did not make any determination on the core dispute between the plaintiff and the first defendant, nor did they make any determination affecting his rights or good name. All they did, was decline to deal with his complaint, as they were of the opinion that it did not fall within their area of jurisdiction. The fact that four years later the plaintiff instituted proceedings alleging wilful fraud and conspiracy between the defendants does not mean that his action is not frivolous or vexatious. I am satisfied on the facts as disclosed on the correspondence, that the plaintiff does not have any cause of action against either the second to fourteenth named defendants, or against the members of the Joint Committee on Public Service Oversight and Petitions.

39. There is simply no evidence or basis for alleging a conspiracy between the joint committee and the first defendant to interfere with the plaintiff's rights under Irish law or European law, or to injure his good name. I am satisfied that the plaintiff has not established the existence of any cause of action against the second to fourteenth defendants, or the PAC, or the joint committee, arising out of the decision of the joint committee not to consider his complaint further, which decision was made on 24th September, 2014.

40. In relation to the assertion by the plaintiff that the pleadings had closed and no appearance was entered on behalf of the PAC as originally named in the Plenary Summons within eight days of the issuance thereof; there is no substance in this point. The second to fourteenth defendants were substituted by virtue of the Order of MacGrath J. on 4th February, 2019. An appearance was entered on their behalf within the time

prescribed in that Order. They were entitled to bring this application before having to file their defence.

41. For the reasons set out herein, I dismiss the plaintiff's action against the second to fourteenth defendants on the grounds that it is frivolous and vexatious and is an action that on the pleadings is bound to fail.