

Neutral Citation No: [2024] NIMaster 10

ICOS No: 16/3205, 16/3209,
14/74992

Judgment: approved by the court for handing down (subject to editorial corrections)

Delivered: 11/04/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

(1) PATRICK ASKIN, AS PERSONAL REPRESENTATIVE OF THE ESTATE
OF PATRICK ASKIN (DECEASED) AND ON BEHALF OF THE
DEPENDANTS OF THE DECEASED

(2) ALAN WHITE BY HIMSELF AND AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF MARGARET PEGGY WHITE (DECEASED)

(3) DEREK BYRNE

Plaintiffs

and

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

First Defendant

and

MINISTRY OF DEFENCE

Second Defendant

and

SECRETARY OF STATE FOR NORTHERN IRELAND

Third Defendant

Mr Frank O'Donoghue KC leading Mr Stephen Toal BL
(instructed by KRW Law) for Mr Askin

Mr Brian Fee KC leading Mr Nick Scott (instructed by KRW Law) for Mr White

Mr Cormac Ó Dúlacháin SC leading Mr Malachy McGowan
(instructed by KRW Law) for Mr Byrne

Mr Paul McLaughlin KC (instructed by the Crown Solicitor) for the defendants.

Mr Adrian Colmer KC leading Ms Julie Ellison (instructed by the Attorney General)
proposed fourth defendant

MASTER HARVEY

Introduction

[1] The plaintiffs were directed by the court to consider whether to consolidate or quasi-consolidate the actions. Consequently, the plaintiffs have applied to the court seeking that:

“Pursuant to Order 4 rule 5 of the Rules of the Court of Judicature (Northern Ireland) 1980, that the court orders that this claim be consolidated, in relation to liability, together with the similar claims brought by (i) Patrick Askin, as personal representative of the estate of Patrick Askin (Deceased) (hereafter referred to as Patrick Askin) and on behalf of the dependants of the Deceased; and (ii) Alan White by himself and as Personal Representative of the Estate of Margaret Peggy White (Deceased)(hereafter referred to as Margaret White), or that the court otherwise order that these claims be tried together.

Leave be granted to amend the writ and any other pleadings as consequence thereof.”

[2] The three actions of Derek Byrne, Patrick Askin and Alan White are clearly linked following the bombings on the 17 May 1974. The bombings took place in different locations, but common questions of law and fact arise in all three cases. The plaintiffs contend the three matters should therefore be consolidated so that liability can be determined at the same hearing.

Background

[3] By way of background, the plaintiffs state that dozens of families representing the estates of the deceased, and those who were injured, issued proceedings in this case up to 10 years ago. The legal representatives queried whether the families would consent to proceeding with test cases as that was a more manageable approach to the litigation. They state that after many meetings on the issue the plaintiffs reduced the number of actions to three.

[4] The chronology thereafter is lengthy, involved various reviews before the court, is referred to in the parties’ respective skeleton arguments and is in dispute. I do not propose to rehearse this as it has no bearing on the outcome and will only do so in seeking to briefly summarise the background to the application.

[5] In short, the plaintiffs' claim the defendants suggested that it would be of assistance to consolidate the pleadings into a single document. The defendants dispute this. They state they agreed at the outset it was appropriate to identify lead cases and those selected included, at the time, a survivor and dependency cases. The defendants argue that it was extremely difficult to understand the claim given the nature of the pleadings which required simultaneous reading of the statement of claim, notice for further and better particulars and replies. Following a court review, the defendants state that the plaintiffs acknowledged the difficulties and agreed to prepare a revised statement of claim. The plaintiffs then served the first version of a single consolidated statement of claim. The defendants therefore assert that they merely requested clarity of the pleadings and did not require or request consolidation. A further dispute arose as the families expressed concern and strong objection to the seeming defence suggestion that post consolidation, only one action would proceed. The defendants state they did not suggest this and, in any event, rightly point out that the effect of a consolidation order would be that the three claims remain as independent actions but would proceed to determine common issues of liability.

[6] Ultimately, the current consolidation application was brought after the plaintiffs were directed to consider doing so by the King's Bench Judge.

Separate legal teams

[7] At hearing, a further issue emerged as the plaintiffs were represented by one firm of solicitors but three sets of "counsel teams" ie one senior and one junior counsel per plaintiff, with six in total. The plaintiffs' legal representatives referred to the desire of the plaintiffs to retain their existing legal teams.

[8] The defendants point to the fact the plaintiffs have the benefit of legal aid and while it is not relevant to the issue of consolidation, the defendants felt it was appropriate to make clear its position in this regard. The defendants state that three separate plaintiff legal teams all derived from the same firm of solicitors for the purposes of a single action, albeit a complex one, would not be justified in a consolidated action and that position will be maintained to the Legal Services Agency and/or in the event of taxation of costs. The fact of a consolidation order evidences the community of interests and points very clearly away from the existence of separate interests or the need for separate representation on the issue of liability.

[9] The plaintiffs contend that each plaintiff is entitled to their own legal team who has represented them for a number of years. Equally, they state that the issues for each plaintiff are different due to their location or the impact upon the plaintiff and the breadth of the evidence behind the allegations is in keeping with multiple senior and junior counsel. They claim that the plaintiffs allocate responsibility for preparation and presentation of the case in an economical way and the court should not prevent individual plaintiffs from representation by individual counsel teams. For those

reasons the plaintiff asserts that the court is invited to order consolidation on liability but make no further directions as to the elimination of any plaintiff.

Legal principles

[10] Order 4 rule 5 empowers the court to consolidate two or more causes or matters pending, or order that they be tried together or sequentially. It provides as follows:

“the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or immediately after another or may order them to be stayed until after the determination of any other of them.”

[11] The court’s power is available in three alternative circumstances:

- (a) where this is some common question of law or fact; or
- (b) where the claims arise out of the same transactions or series of transactions; or
- (c) where for some other reason it is desirable.

Consideration

[12] There is no dispute that the court’s power is available in this case. The allegations involve common questions of law and fact, and that the plaintiffs claim that the bombs formed part of a co-ordinated but single plan. The proposed amended statement of claim pleads the same facts, causes of action and particulars in relation to all three claims.

[13] If the claims are to proceed, it is clear that the most efficient means of doing so is by consolidation for the purposes of liability. This will allow common questions of law and fact to be case managed and determined at the same time. The process of discovery can then be coordinated and communications between parties and with the court will be more easily manageable as a result. In the event that the claims succeed on liability, they would then proceed in relation to quantum individually.

[14] An issue was raised by the defendants in relation to limitation. If established, it is a defence to the actions and falls within the scope of liability. Having regard to the discretion under Article 50 of the Limitation (NI) Order 1989, if Northern Ireland limitation law applies, it is possible that the balance of prejudices may be slightly different in relation to each plaintiff. That is not, however, a procedural barrier to consolidation as the court can give individual consideration to the Article 50

discretion. However, if Republic of Ireland limitation law applies, the discretion would not be available to the court and the issue would not arise. For this reason, the defendants assert that it is appropriate for the court to make a determination on the governing law on limitation at this stage. I will deal with the limitation issue in a separate judgment.

[15] It was apparent at the hearing that with one firm of solicitors representing all the plaintiffs, and submissions led by one senior counsel, assisted by junior counsel, it may prove neither necessary nor proportionate to have three separate sets of “counsel teams” at trial. The consolidated statement of claim does not seek to distinguish between the three plaintiffs. Having regard to the overriding objective, the court may further consider the issue of separate legal representation in relation to liability or reserve the issue of any duplication in costs to the conclusion of the proceedings, however, it is not relevant to the issue of consolidation at this interlocutory stage and at trial the volume of discovery, length of the hearing and complexity of the issues will be significantly different to the issues before this court.

[16] The breadth of evidence and documentation to be scrutinised is almost identical in relation to liability across the three cases. The evidence will obviously differ in respect of the impact of the bombing and quantum but those are matters that can be dealt with subsequently.

Conclusion

[17] I grant the plaintiff’s application pursuant to Order 4 rule 5 and direct that the actions shall be consolidated. I further direct that the costs of the application shall be costs in the cause.