

THE HIGH COURT

[2022] IEHC 254
[2013 No. 14299P.]

BETWEEN

NOREEN HYNES

PLAINTIFF

AND

**CHARLES JAMES MAGUIRE, NOEL MCDONALD, RICHARD CLINCH
AND TOMMY GIBBONS,**

**PRACTISING UNDER THE STYLE AND TITLE OF SEAMUS MAGUIRE & CO., SOLICITORS
DEFENDANTS**

JUDGMENT of Mr. Justice Allen delivered on the 4th day of May, 2022

Introduction

1. This is a judgment on a particularly tedious motion for further particulars which will not be of the slightest interest to anyone other than the parties.
2. The action which was commenced by plenary summons issued on 23rd December, 2013. A form of certificate of readiness for hearing was filed on 15th December, 2020 with an estimate of twelve days but practice direction HC 75 was not complied with and when the case came into the list to fix dates the defendants protested that not only was the case not ready but that they did not know what the claim was.
3. Counsel for the plaintiff was rather indignant that the defendants should be suggesting so long after the pleadings had closed that it had not been properly particularised and I think that it is fair to say that the answers to the long overdue notice for particulars were somewhat coloured by a belief that it was motivated by a desire to delay the trial. The exchange of requests for particulars and responses generated more heat than light and the motion was eventually argued – on both sides – with more passion than would generally be encountered on an application such as this.
4. The application was not altogether easy to follow as counsel moved backwards and forwards through the statement of claim, the notice for particulars, a largely uninformative response, a notice for further and better particulars, another largely uninformative response, and an exchange of affidavits.
5. As I will come to, I found it particularly unhelpful that the plaintiff doggedly insisted that full and detailed particulars of loss had been set out in the statement of claim which had seven headings of special damage, five of which had no figures against them. That said, if I did not share counsel's scepticism of the motivation for the motion, I did understand his surprise that particulars were not sought long ago.

The statement of claim

6. The statement of claim, which was delivered on 21st April, 2016 is rather meandering and, in some respects, very vague.
7. The plaintiff claims that "*In the period from in or about 1998 and at all material times herein [she] engaged the services of the defendants to act as her solicitors in respect of various property and loan transactions and related matters.*"

8. The plaintiff claims that in or about June, 2005, *"in partnership with certain other individuals"*, she established a property partnership syndicate called Moongate Partnership and that Moongate Partnership entered an agreement to purchase a property at Moongate, County Wexford, for *"in or about"* €2.7 million. The purchase was to have been funded with the assistance of a loan of *"circa"* €2.2 million from Anglo Irish Bank Corporation plc (*"Anglo"*). The loan facility, it is said, was drawn down by the defendants on behalf of the Moongate Partnership but was not used to purchase the property.
9. The plaintiff claims that in or about January, 2007 she and her husband, Alan Hynes, agreed to purchase from the Moongate Partnership *"the interest in the Moongate Property not already held by the plaintiff"*. The consideration for the agreement is said to have been the repayment of the Anglo loan and *"to compensate further certain members of the Moongate Partnership, other than the plaintiff, for the transfer of this interest in the Moongate Property to the plaintiff and her husband."*
10. The plaintiff claims that in or about April, 2007 Allied Irish Banks plc (*"AIB"*) agreed *"to provide A & N Properties, the property investment vehicle of the plaintiff and her husband, with a loan facility of in or about €3 million"* on the security of a legal charge to be executed by Alan Hynes and Noreen Hynes over the property at Moongate, which facility was the subject of a letter of sanction dated 22nd May, 2007. That facility is said to have been drawn down by the defendants on foot of a solicitors' undertaking dated 5th June, 2007 to redeem the Anglo loan in the name of Moongate Partnership and to ensure good and marketable title to the Moongate property.
11. The plaintiff claims that the defendants breached their undertaking to AIB by failing to put in place a first charge over the Moongate property executed by Mr. and Mrs. Hynes; by failing to apply the monies to the repayment of the Anglo loan; by failing to ensure that *"the plaintiff"* acquired good and marketable title to the Moongate property; and by failing to account to the plaintiff *"for the above series of transactions in respect of the said loan facility with Allied Irish Banks plc and in respect of the Moongate property."*
12. The plaintiff claims that by reason of the matters aforesaid she remains liable in respect of the Anglo loan and the AIB loan and that AIB has obtained judgment against her and her husband in the sum of €3.1 million; that in proceedings taken by AIB against the defendants the defendants were found to have been in breach of undertaking and to have been held liable in respect of the entire amount of the AIB loan facility; and that the defendants were guilty of breach of contract, negligence, breach of duty, breach of fiduciary duty and breach of statutory duty.
13. The plaintiff claims that by reason of the matters aforesaid she remains liable in respect of the Anglo loan of *"circa €2.2 million"*; has had judgment registered against her by AIB *"in the order of €3.1 million"*; has not acquired good title to the Moongate property; and has suffered loss, damage, inconvenience, upset, distress and expense.
14. The plaintiff claims that on or about 19th December, 2008 the defendants *"purported to execute"* a deed of mortgage and charge on behalf of her and her husband in the sum of

"circa €2.45 million in favour of the defendants in respect of the plaintiff's properties at various locations without the consent of the plaintiff and unbeknownst to the plaintiff and arranged for the said indenture of mortgage and charge to be registered with the Property Registration Authority, there being no basis for the drawing up and execution of such indenture of mortgage and charge." The plaintiff claims that by reason of that alleged breach of contract and breach of duty her properties are unlawfully burdened and title to the properties slandered and that *"her reputation has been unjustly damaged and her ability to carry on her business interests has been severely damaged."*

15. Under the heading *"Solicitor's client account"* the plaintiff claims that in the course of her relationship with the defendants their client account *"was utilised to process funds in respect of the plaintiff's property transactions including the holding and disbursement of the plaintiff's funds, and the drawdown of funds from various financial institutions on behalf of the plaintiff on foot of relevant facility letters and the disbursement of funds so drawn down."* She claims that she had an expectation that the monies held in the defendants' client account would be processed in accordance with her instructions and in accordance with the terms of the relevant facility letters and that all monies lodged would be fully accounted for in *"a proper, professional and transparent manner"* and in accordance with the Law Society of Ireland regulations.
16. The plaintiff claims that *"in or about the period from on or about 24th April, 2006 to date"* the defendants have failed to inform the plaintiff or to respond to her queries and/or correspondence in respect of the various transactions processed through the defendants' client account *"on behalf of the plaintiff and in respect of the funds held by the defendant on behalf of the plaintiff in a timely, transparent or unambiguous manner or at all"*; failed to account to the plaintiff for her monies in the defendants' client account; and *"disseminated confidential and sensitive information pertaining to the plaintiff's affairs with the defendants, including the details of the plaintiff's client accounts, property and loan transactions, to third persons without the permission of the plaintiff and unbeknownst to the plaintiff, thereby damaging the plaintiff's reputation and causing the plaintiff unjustified and unwarranted loss and distress."*
17. The statement of claim identifies three property transactions: an investment of €200,000 in Tuskar Residential Investment Properties Limited made in 2005 and realised by a sale in or about February, 2007; a series of transactions in respect of the AIB loan of in or about €3 million; and a loan of €2,446,209.09 provided by Bank of Scotland (Ireland) Limited *"to the plaintiff and certain other individuals 'Castlepark Partnership' by letter of loan sanction dated 27th September, 2007."* It goes on to complain, generally, of a failure to inform the plaintiff or respond to enquiries, queries and/or correspondence *"in respect of various transactions processed through the defendants' solicitor's client account and in respect of the funds held by the defendants on behalf of the plaintiff in the period from 24th April, 2006 to date"*, and to complain of the dissemination of confidential and sensitive information *"including details of the plaintiff's client account, property and loan transactions, to persons such as John Power of Kitestown, Crossabeg, County Wexford and Hughes Blake Chartered Accountants, of Joyce House, 22/23 Holles Street, Dublin 2,*

without the permission of the plaintiff and unbeknownst to the plaintiff in the period from 1st January, 2009 to date."

18. At para. 25 of the statement of claim the plaintiff portends that she will rely on further particulars of breach of contract, breach of duty, breach of fiduciary duty and breach of statutory duty *"which may be adduced at the hearing herein."*
19. The plaintiff claims that by reason of the matters aforesaid the defendants have failed to account for her monies; that she has been unable to determine the nature and extent of funds held by the defendants on her behalf; that her privacy has been breached; that her business interests and reputation have been damaged; and that her ability to carry on her business interests has been severely damaged.
20. Under the heading *"Particulars of loss and damage"* the statement of claim sets out seven heads of damage:-

(1) Exposure to borrowings from Anglo Irish Bank Corporation plc	circa €2.2 million
(2) Exposure to judgment obtained by Allied Irish Banks plc	circa €3.1 million
(3) Absence of good and marketable title to the Moongate property	ongoing
(4) Unlawful creation and registration of Indenture of mortgage and charge with The Property Registration Authority	ongoing
(5) Economic losses	ongoing
(6) General damages	ongoing
(7) Exemplary damages	ongoing

21. On 9th November, 2016 the defendants – at that time acting for themselves – delivered a defence. They pleaded that all claims against them were statute barred; they complained of inordinate and inexcusable delay; they asserted – without giving any detail at all – that the plaintiff and Alan Hynes had made numerous false, dishonest, scandalous and vexatious claims against the defendants; and they asserted that the claims were baseless and unfounded and have already been litigated in substance *"in numerous collateral proceedings."* Otherwise, the defendants traversed and pleaded that the proceeds of the AIB loan were misapplied because Mr. Hynes suborned one of the defendants' staff.
22. Intriguingly, the defendants denied that they acted in breach of contract or breach of duty or otherwise unlawfully in executing a deed or mortgage and charge in their favour in the sum of circa €2.45 million. How exactly this deed of charge came to be executed and

registered – or perhaps I should say how it is alleged on either side that this deed came to be executed and registered – is entirely unclear.

23. By notice for particulars dated 22nd November, 2016 the plaintiff's solicitors sought particulars of the defence and a form of replies to particulars was delivered on 21st December, 2016, the substance of which was that the plaintiff was well aware of the numerous (unspecified) instances in which Mr. Hynes had made unspecified unfounded and scandalous allegations concerning the defendants in other unidentified proceedings. This does not appear to have been followed up.

The request for particulars

24. As far as the papers now before the court go, it does not appear that any particulars of the claim were sought prior to 2021.
25. On 3rd February, 2020 the action was set down for trial (as a personal injuries action) and on 15th December, 2020 a form of certificate of readiness was filed, with an estimate of twelve days. The form of certificate of readiness was not in conformity with practice direction HC 75 and the prescribed consultation had not been undertaken before it was signed and filed.
26. The action has been listed for mention for various reasons on and off over the years. The first such listing after the purported certificate of readiness was filed was on 22nd April, 2021. On 29th April, 2021 – fully five years after delivery of the statement of claim – the defendants' solicitors served a notice for particulars.
27. Unsurprisingly, the defendants' solicitors sought particulars of *inter alia* the "various property and loan transactions and related matters" the subject of the claim; the "certain other individuals" who are alleged to have been the other members of the Moongate Partnership; the "various other letters of loan sanction" in connection with the Moongate property; the factual basis on which the plaintiff claimed to be entitled to good and marketable title to the Moongate property; the losses claimed in respect of the Moongate property; particulars of the "plaintiff's properties at various locations" the subject of the mortgage and charge of 19th December, 2008; particulars of the confidential and sensitive information allegedly disseminated, and to whom; and particulars of the loss and damage claimed to the plaintiff's reputation and business.
28. Quite unnecessarily, it seems to me, particulars were sought *inter alia* of the alleged agreement by the defendants to discharge their professional obligations in a proper manner and to account to the plaintiff for money handled on her behalf; and the page number of the AIB facility letter of 22nd May, 2007 which stipulated for a legal charge over the lands at Moongate.
29. The plaintiff's solicitors' replies to particulars of 25th June, 2021 protested that the notice for particulars was an abuse of process; that the defendants did not need any further information; and that the defendants had all relevant documents in their possession. The plaintiff's claim in respect of the dissemination of confidential and sensitive information

was said to have been sufficiently particularised "*and will be a matter for evidence at the hearing of the action*". Similarly, the claim for damage to the plaintiff's reputation and business was said to be "a matter for evidence at the hearing of the action."

30. A notice for further and better particulars of 1st November, 2021 and a form of reply on 16th November, 2021 did not advance matters and by notice of motion issued on 9th December, 2021 the defendants moved for an order directing the plaintiff to reply to several paragraphs of the notice for further and better particulars of 1st November, 2021.

The motion for particulars

31. The motion was grounded on an affidavit of the defendants' solicitor which identified the outstanding particulars sought and sought to explain why answers were needed. In response the plaintiff swore quite a long affidavit "*to clarify any extant matters in the proceedings which may cause confusion.*"
32. The plaintiff got off to a very bad start by asserting that "*the statement of claim has particularised the loss and damage so far as such may realistically quantified prior to a full hearing of the matter.*" This is demonstrably not so. While approximate figures are given for the Anglo and AIB liabilities the other five heads of damage are said to be "*ongoing*". In her replying affidavit the plaintiff went on to quantify her claim for damage by reason of the absence of good and marketable title to the Moongate property at "circa" €1.52 million (€40,000 x 38 units), on the basis that planning permission was obtained for 38 residential units in April, 2021. As to the loss claimed in respect of the Tuskar Residential Investment Properties Limited, the plaintiff deposed that it had been extensively particularised at para. 25 of the statement of claim – which it was not – and went on to say what it was: €37,413.00 for a one twelfth share of retained profits of €448,959, plus, I suppose, the plaintiff's alleged original investment of €200,000 which was referred to in the statement of claim.
33. As to the dissemination of sensitive and confidential information, the plaintiff deposed that it was outlined at para. 25(5) of the statement of claim and expanded upon at para. 9 of a supplemental affidavit of Mark Walsh sworn on 12th November, 2018 pertaining to her discovery. She went on to identify those to whom the information was published as the chairman and registrar of the Chartered Accountancy Regulatory Body, as well as Mr. Power and Hughes Blake but did not specify what information was given to them, or to any of them. The plaintiff must give particulars of her claim and the alleged damage suffered by her. It is not sufficient to ask the defendants to work it out or to guess what it might be from various other documents.
34. As to the claim for damage to the plaintiff's business, credit rating, and reputation, the plaintiff has deposed that it is not possible nor practicable to specify the particular losses, other than in a general sense, "*pertaining to the plethora of negligent actions of the defendants as outlined in the statement of claim*" and that it will be necessary for the court, having heard from all of the parties "*to determine precise loss and damage regarding many of the issues outlined in the statement of claim, in particular those relating to reputational damage, loss of business opportunity, negligent behaviour and*

breach of duties owing to me by the defendants." This, in my firm view, is to misunderstand the adversarial nature of litigation and the role of the court. The defendants are entitled to know in advance the claims which they will have to meet and the court must know the nature and amount of the claims in order to adjudicate on them. If the plaintiff's claim is limited to general damages, she must say so. If there is to be a claim for loss of business opportunity, the defendants are entitled to know what that opportunity or those opportunities was or were and what loss the plaintiff claims flowed from her inability to pursue it or them.

35. The plaintiff pleads that she was a member of a number of property syndicates and the statement of claim identifies Moongate Partnership, A & N Properties, Castlepark Partnership and Tuskar Residential Investment Properties Limited. In her affidavit on this motion the plaintiff has identified the other members of these four syndicates but apart from Tuskar, has not given particulars of her interest in them.
36. A plaintiff cannot be compelled to give particulars of a good case, or even perhaps of a coherent case, but as matters stand she appears to be claiming that she is at the loss of the entire opportunity in connection with the Moongate property, in respect of which she was to have been initially a member of a syndicate of nine – who may or may not have been equal partners – and later a partnership of two – in which she may or may not have been an equal partner. The defendants are entitled to be told unambiguously that the case is limited to the four identified syndicates and they are entitled to particulars of the plaintiff's interest in each of those syndicates.
37. The plaintiff pleads that she engaged the defendants to act on her behalf "*in respect of various property and loan transactions and related matters*". In replies to particulars it is suggested that this merely introduces the parties. I disagree. While the statement of claim refers to four syndicates and identifies some transactions there is a wide ranging allegation that the defendants have failed to account to the plaintiff in respect of – as far as I can see – all of the business in which they were instructed by her. The defendants are entitled to know what business it is for which they have allegedly failed to account.
38. The plaintiff pleads that in a telephone call made on 24th April, 2006 to Mr. Fergal Dowling, a solicitor employed by the defendant, she said that she was not to be included in any transactions without her express instructions. I do not understand the defendants' argument that this requires elaboration. They do not need a list of the transactions in which the plaintiff was not to be included without her express instructions. Indeed, I doubt that it is possible to compile such a list.
39. Incidentally, the plaintiff does not expressly plead that she had previously been included in transactions without her express instructions. If that is to be inferred, she does not claim to have suffered any loss by reason of any such exclusion. She does not plead that she was later, in breach of her instruction by telephone, included in any transaction without her express instruction.

40. The plaintiff pleads that the €2.2 million Anglo loan was drawn down by the defendants on behalf of the Moongate Partnership to complete the purchase of the Moongate property and that the money so drawn down was not used for that purpose. The defendants want particulars of who drew down the money and whether the plaintiff gave express instructions for this to be done. It is quite clear that it is the defendants who are alleged to have drawn down the monies and that the allegation is that they did so on the instructions of the Moongate Partnership – which included the plaintiff – for the purpose of completing the purchase of the Moongate property. No further particulars are required.
41. The plaintiff pleads that she and her husband made an agreement with Moongate Partnership and immediately thereafter that they agreed with AIB that AIB would provide a loan facility to "*A & N Properties*", without spelling out who A & N Properties was. The defendants are entitled to confirmation – if it was the fact – or to be told – if it was not – that A & N Properties is one and the same as Mr. and Mrs. Hynes, and to be told precisely what the alleged agreement was.
42. The plaintiff pleads that the defendants failed to ensure that she obtained good and marketable title to the Moongate property. She was asked by way of particulars to confirm that she was alleging that she should have had good and marketable title to the entire property and, if so, the factual basis of that claim. Acknowledging that I am close to the line between requiring the plaintiff to articulate what her case is and requiring her to articulate a sensible case, it seems to me that if there is any factual basis upon which the plaintiff claims that she alone was to be entitled to a property which she had agreed to purchase with her husband and which was to have been registered in their joint names, the defendants are entitled to know what it is.
43. The plaintiff claims that by reason of the defendants failure to apply the proceeds of the AIB loan as they should have she has suffered judgment for €3.1 million and a loss of her investment. The defendants sought particulars of the loss and damage claimed. Contrary to the plaintiff's insistence, this has not been sufficiently particularised and is not a matter for evidence at the hearing of the action. The defendants are entitled to particulars of the claim they are asked to meet.
44. The plaintiff claims that by reason of the registration of the deed of mortgage and charge dated 19th December, 2008 she has suffered damage to her reputation and that her ability to carry on her business interests has been severely damaged. Contrary to the plaintiff's repeated insistence this has not been sufficiently pleaded in the statement of claim and will not – save to the extent that it has been properly particularised in advance – be a matter for evidence at the hearing of the action. The defendants are entitled to the particulars sought.
45. The plaintiff claims that she was entitled to expect that "*the plaintiff's monies*" held in the defendants' client account would be dealt with and accounted for in accordance with good practice and the relevant regulations. In my view this plea is clear. While it may very well have been the case that others were interested in the loans and purchases, the duty

pleaded is a duty to account to the plaintiff for her monies: perhaps her share of a larger fund in which others were interested.

46. The plaintiff's case as to the duty is clear. Her case as to the alleged breach is not.
47. The plaintiff claims that the defendants failed to inform and/or to respond to the plaintiff's enquiries, queries and/or correspondence in respect of various transactions. Contrary to the plaintiff's repeated assertions this is not a matter which has been particularised or something which is to be explored without notice at the trial. The defendants are entitled to notice in advance of the case which they must meet at trial in order that they may – if they can – answer it.
48. The plaintiff claims that the defendants have disseminated confidential and sensitive information to third parties. At para. 25(5) of the statement of claim it is pleaded that the information so disseminated *included* details of her client account, property and loan transactions and the persons to whom the information was given as persons *such as* Mr. Power and Hughes Blake. The claim so framed would leave the plaintiff more or less at large to expand at trial on the information alleged to have been shared and the list of those to whom it was allegedly sent. The defendants are entitled to be told precisely what information they allegedly wrongly disseminated, when, and to whom.
49. The defendants are entitled to full and detailed particulars of the ownership of the several syndicates identified in the statement of claim and of the interest which the plaintiff had in each of those entities and of the "*various transactions*" in respect of which complaint is made.

Order

50. There will be an order directing the plaintiff to reply to the following paragraphs of the defendants' solicitors' notice for further and better particulars dated 1st November, 2021: Paras. 1, 2, 8(iv), 11(i)(c), 15, 16, 18(iv), 18(v), 21 (ii) to (viii), 22, 23, 24 and 25.
51. As to the costs of the motion, it seems to me that the defendants have been substantially successful and that the small number of issues on which they have failed did not materially add to the cost or time of the preparation for or hearing of the motion. Provisionally, my view is that the plaintiff should be ordered to pay the costs of the motion but that execution on foot of the order should be stayed pending the trial of the action.
52. I will list the motion for mention only at 10:30 a.m. on Friday 13th May, in case either party wishes to argue otherwise.