THE HIGH COURT

[2023] IEHC 107

2022 No. 1213P

BETWEEN

EDWARD BRENNAN

PLAINTIFF

AND

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY and START MORTGAGES DESIGNATED ACTIVITY COMPANY trading as START MORTGAGES

DEFENDANTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 7 March 2023

Introduction

1. On 28 March 2022 the plaintiff issued plenary proceedings against the defendants seeking the following relief:

> "*The plaintiff seeks a declaration from the honourable court that their Constitutional Rights have been denied due to the fact that the plaintiff is aware of high court case law No.2018/9410P, where the minister for justice, Charlie Flanagan and the attorney general Seamus wolfe failed to enter an appearance and that case was struck out.*

High court case law no. 2018/9410P along with article 40.1 means that like the justice minister and the attorney general, the plaintiff is immune to court summons and any summons brought against the plaintiff must be struck out.

The plaintiff is aware that there is an investigation by the department of justice under 2 reference numbers:DJE-MO-00516 and DJE-M0-00889-2019 also pulse no.HQCSO.-1-348140/16 from garda commissioner in relation to this constitutional crisis.

I have been the victim of court summons and as happened with the justice minister and the attorney general, the case against me should have been struck out.

The plaintiff is aware of how the DPP failed to comply with high court order no. 2006//1114P and like the OPP the plaintiff is immune to court order number 2014/00262 and 2017/37 ca

The plaintiff is aware that the state, since September 2019, has failed to provide a defense in related constitutional case number 2019/6501P

The plaintiff is aware that the state has failed to enter an appearance in related constitutional cases number 2018/9410P and case number 2021/2308P.

The plaintiff is protected from all court summons and court orders under article 40.1 of the constitution also under article 2 of the treaty of Europe.

The plaintiff will provide a detailed statement of claim and reserves the right to provide additional evidence at as it becomes known .

The plaintiffs claim for damages is 3 million Euros".

2. An Appearance was entered by the chief state solicitor on behalf of the first, second and third named defendants (the '**State defendants**') on 4 May 2022.

3. An Appearance was entered by solicitors on behalf of the fourth named defendant on 1 July 2022.

4. A statement of claim was delivered by the plaintiff on 17 August 2022. The statement of claim repeats the relief sought in the plenary summons as set out above. There are also generalised claims for "*breach of duty and breach of constitutional duty*" pleaded as against all defendants but no particulars are provided. In addition to the matters which had been pleaded in the plenary summons the statement of claim also contained the following additional plea: –

> "*The plaintiff is aware of article 40. 5 of the constitution that the dwelling of every citizen is inviolable.*
>
> *I say that I have been bought by start mortgages for financial gain, trafficked, a human slave sold into servitude and bought for their financial enrichment, sold to the highest bidder, All dignity stripped away, all respect and equality ignored,*
>
> *No regard for the mental torture and anguish forcibly inflicted.*
>
> *All of which should be repugnant to any democratic free society.*
>
> *I say that I claim all my constitutional rights under the Irish Constitution, the European constitution and the European courts of human rights*.".

5. On 27 January 2023 this court heard 3 motions, as follows:

(a) A motion by the State defendants for an order pursuant to order 19, rule 28 of the Rules of the Superior Courts 1986 (as amended) ('**RSC**') striking out the plaintiff's claim against them on the grounds that it discloses no reasonable cause of action against them. In the alternative, an order pursuant to the inherent jurisdiction of this court striking out the plaintiff's proceedings against

the State defendants on the grounds that the proceedings against those defendants are frivolous, vexatious, bound to fail and/or an abuse of process.

(b) A motion in similar terms by the fourth named defendant who also sought, in the alternative, an Order pursuant to order 19, rule 27 of the RSC striking out the plaintiff's pleadings against the fourth named defendant on the basis that they are unnecessary and/or scandalous, or may tend to prejudice or embarrass a fair trial of an action.

(c) A motion by the plaintiff seeking an order joining Mazars as defendants in these proceedings and an order for contempt by Hilary Larkin of Mazars who the plaintiff pleads "*sent a threatening letter to the plaintiff dated 2nd JUNE 2022 demanding that the plaintiff vacate his property while knowing that the Plaintiff's related High Court Constitutional Case No 2022/1213P is pending in the High Court*".

6. This judgment set out this court's decision on all 3 motions.

The parties and the background to this dispute

7. The plaintiff is a farmer from Cloonerra, Strokestown Co Roscommon (the '**Property**')

8. The fourth named defendant, by deed of appointment dated 19 May 2022 appointed Hilary Larkin of Mazars as receiver over the Property on foot of a mortgage dated 21 August 2006 made between the plaintiff and Irish life and Permanent plc (the ownership of which mortgage and related security subsequently transferred to the fourth named defendant on 1 February 2019).

9. The defendants claim to be strangers to the proceedings referred to by the plaintiff in the plenary summons and the statement of claim being proceedings 2018/9410P and

2021/2308P (both *O'Doherty v Ireland and others*) and proceedings 2019/6501P and 2006/1114P (both *Cafferkey v Ireland and others*). In addition, all defendants claim to be strangers to the Department of Justice investigations and the pulse references outlined by the plaintiff in the proceedings.

10. The State defendants have no involvement in the mortgage arrangements between the plaintiff and the fourth named defendant and appear to have been joined solely for the purposes of the constitutional breaches pleaded by the plaintiff.

11. Ms Hilary Larkin of Mazars is the receiver appointed by the fourth named defendant. In that capacity she sent a letter to the plaintiff dated 2 June 2022 which is the subject of the plaintiff's motion referred to at para 5(c) of this judgment. The letter confirms that Ms Larkin in her capacity as receiver has taken possession of the Property. She informed the plaintiff that he had seven days to make arrangements with her office to remove his items from the Property and she suggested contact details for the plaintiff to make arrangements for the collection of these items under her supervision. She confirmed that if she did not hear from the plaintiff she

> "*will enforce my rights under the Mortgage Deed to remove, store, preserve, sell or otherwise dispose of the goods in such manner in all respects as we think fit. The proceeds of any such sale of disposal will be applied towards partial discharge of the current outstanding arrears*."

12. I propose examining, firstly, the nature of the plaintiff's claim advanced in these proceedings and the legal principles applicable to that claim. I will then deal with the motions issued by the State defendants and the fourth named defendant. I will then deal with the plaintiff's motion.

Outline of the plaintiff's claim advanced in these proceedings.

13. The plaintiff's claim in these proceedings is for damages in the amount of "*3 million Euros*" for breach of duty and "*breach of constitutional duty*" by the defendants. The claim is predicated on the following core pleas, advanced in both the plenary summons and the statement of claim:

(i) The plaintiff is "*immune to court summons*" and any summons brought against the plaintiff must be struck out;

(ii) The plaintiff has "*been the victim of court summons and… the court order against me should be struck out*";

(iii) The plaintiff is "*immune to court order*"; and

(iv) The plaintiff is "*protected from all court summons and court orders under article 40.1 of the constitution also under article 2 of the treaty of Europe*".

(v) That arising from the acquisition of his loan by the fourth defendant the plaintiff has been "*trafficked, a human slave sold into servitude*".

14. The pleadings do not in fact set out any detail as to what is the relationship or the past litigation experience between the plaintiff and the defendants (or the fourth named defendant's predecessor). The absence of that information in the plaintiff's pleadings makes this case even more difficult to understand. However, relevant background information was provided to this court in affidavits filed on behalf of the fourth named defendant and in the judgment of McDermott J in proceedings 2017 No. 37 C.A. (which was the decision of the High Court on the plaintiff's appeal against an order for possession made against him by the Circuit Court).

15. The judgment of McDermott J delivered on 30 April 2019 in *Permanent TSB plc v Brennan* [2019] IEHC 309 sets out a very useful summary of the background to the relationship between the plaintiff and his original lenders, Permanent TSB plc ('**PTSB**') formerly Irish Life and Permanent plc. That judgment confirms that on 3 February 2017 the Circuit Court granted an order for possession of the Property to PTSB. Mr Brennan appealed to the High Court and Meenan J dismissed that appeal on 19 October 2017. The order for possession was then served on Mr Brennan on 10 November 2017 and he was requested to vacate the Property. By motion dated 14 December 2017 Mr Brennan applied for liberty to re-enter his appeal alleging that he had become unwell during the hearing of the original appeal and that he had a bona fide defence to the claim for possession. The appeal was re-entered. At the hearing of the re-entered appeal, Mr Brennan focused his defence on arguments regarding alleged breaches of the Code of Conduct on Mortgage Arrears and on the alleged misapplication of interest to his mortgage account and an argument that he had a tracker mortgage. McDermott J found on the evidence that Mr Brennan had not advanced any stateable or *bona fide* defence in law or in fact to PTSB's claim. He held that PTSB had established that it was entitled to an order for possession of the Property and dismissed the appeal.

16. It is in those circumstances that Mr Brennan now appears to have taken a different approach, raising the arguments set out in this judgment regarding his entitlement to apparently ignore the court orders previously made against him and raising generalised claims regarding breach of his constitutional rights and an entitlement to damages should he have to comply with those court orders.

17. Further statements are made by the plaintiff in his affidavit sworn on 17 January 2023, by way of additional explanation of the claims advanced in the summons and statement of claim. In this affidavit the plaintiff avers, among other things, that:

(i) The "*government failed to enter an appearance in high court constitutional case number 2022/1213P against me should have been struck out as that equality is guaranteed under article 2021/6436p and that constitutional case was struck out*";

(ii) "*in identical constitutional case number 2021/2308p which relies on case law no. 334/2007 and case law no. 2021/9410p, john o Doherty, the plaintiff has won his case which means that the case is already decided by the high court;*

(iii) "*the defendants have no standing in this constitutional case and their applications to the court are contempt of court as they are aware that constitutional rights are untouchable*;

(iv) "*the defendants have committed perjury in their invalid applications, describing the constitution as invalid, frivolous and vexatious, by law the perjury must be prosecuted*;

(v) "*start mortgages is under investigation for fraud on Roscommon circuit court office where they failed to pay stamp duty on documents in relation to high court constitutional case number 2021/6436p*;

(vi) "*the chief state solicitor has been reported for fraud as they are not entitled to represent judges who have been sued for treason when they strike out identical constitutional cases*;

(vii) "*the applications by the defendants cannot be heard while there is an ongoing criminal investigation in relation to fraud by the defendants*".

18. In coming to a determination on an application grounded on order 19 rule 28, the court is confined to the statement of claim as actually pleaded. Affidavits and other matters before the court ought to be disregarded. As O'Higgins CJ stated in McCabe v Harding [1984] ILRM 108, "*vexation or frivolity must appear from pleadings alone*". However, where the court in exercising its inherent jurisdiction it is not confined to the pleadings and may engage with the facts asserted in affidavits, although the plaintiff's case should be taken at its realistic factual height.

19. It is fair to say that the pleadings in this case are entirely incoherent. They refer to pleadings and outcomes in other cases which the plaintiff argues are authority for the wide-ranging claim of "*immunity"* from court orders which he states he is entitled to. It is instructive to examine not just the other pleadings that are referred to by the plaintiff but also to consider the cases which have been pleaded by other parties on largely the same template used by the plaintiff in this case and to see how the High Court has dealt with those cases.

20. One of the cases referenced by the plaintiff are proceedings in the case of *Eugene Cafferkey v DPP* (2006/1114P). A summary of the background to those proceedings is set out by Simons J in his judgment in *Fennell v Collins* [2019] IEHC 572. It was alleged that the DPP in *Cafferkey* failed to comply with an order directing the delivery of a defence (in fact the *Cafferkey* proceedings were dismissed and in those circumstances there was no obligation on the DPP to deliver a defence). It was then alleged in *Cafferkey* that the failure to punish the DPP for contempt of court in that case indicated that he was being treated as immune from having to comply with court orders. It was then said to follow that, if the DPP is immune, then all citizens are immune from

having to comply with court orders on the basis of the guarantee of equality under Article 40.1 of the Constitution. Simons J described this argument at para 19 of his judgment in *Fennell* as "*simply preposterous*".

21. Another case referenced by the plaintiff in these proceedings is *O'Doherty v Ireland and others* (2021/2308P). The plaintiff appears to argue that as no appearance was entered in those proceedings by the State and a default judgment was obtained as a result, this means that the Minister or Attorney General are immune from court summonses and that, applying equality principles under the constitution, the plaintiff must also be immune. This argument does not withstand analysis. Even if the Minister for Justice and Attorney General failed to enter an appearance or a defence in an individual case this could not give rise to the conclusion which the plaintiff argues for, namely that the Minister or Attorney General are immune from court summonses or that no other cases which raise the same arguments can be litigated as the High Court is bound to apply the same default judgment in every case. The argument that the plaintiff has immunity from court summons or orders is simply unstateable.

22. Counsel for the State defendants provided details of five recent reserved judgments of the High Court which have considered applications in cases bearing a striking similarity to the within proceedings and which appear to have been advanced by the plaintiffs in each case largely on the same template used in these proceedings, as follows:

(1) *Fennell v Collins* [2019] IEHC 572 (Simons J):

(2) *Mullins v Ireland & Ors* [2022] IEHC 296 (O'Moore J);

(3) *Keary v Property Registration Authority* [2022] IEHC 28 (Butler J);

(4) *Towey and Towey v Government of Ireland & Ors* [2022] IEHC 559 (Dignam J) and

(5) *Mullaney v Danske Bank A/S & Ors* [2023] IEHC 62 (Dignam J).

23. The level of similarity between the present claim and the above claims is evident from the judgments delivered in those other proceedings.

24. *Fennell* was an application by a receiver to vacate a *lis pendens*. As in the present case, affidavits were filed by a party seeking to advance an argument that he was *immune from court orders*. Mr Justice Simons noted at para 16 of his judgment that this argument was predicated on the procedural history of an entirely unrelated set of proceedings entitled *Eugene Cafferkey v DPP* (2006/1114P) – also one of the proceedings referred to by the plaintiff in the present case.

25. In *Mullins* the judgment of O'Moore J (at paras 6 and 7) sets out almost identical pleas in the plenary summons and statement of claim in that case to the present proceedings save that the level of damages claimed was *"€5 million euros*".

26. In *Keary,* Butler J noted at para 3 of her judgment the central argument advanced in that case regarding "*the plaintiff's belief that he is immune from court orders*" and that *"the "victims" of such orders can sue the state for damages, as he purports to do in the proceedings he describes as his constitutional case"*.

27. In *Towey* the judgment of Dignam J references similar claims to the present case including (at para 16) "*the plaintiffs are immune from court summonses and court orders*". A very similar set of pleas are set out at para 32 of his judgment. In that case the plaintiffs claim for damages was "*10 million Euros*".

28. In *Mullaney,* as is clear from paragraph 23 of the judgment of Dignam J the relevant pleas are almost verbatim to those in the within proceeding, save that the claim in that case was for "*one million Euros*".

29. I am concerned that so much court and judicial time has been taken up dealing with what are essentially the same legal arguments advanced by parties over and over again, even though not a single case has been, or indeed could be, successful on these points. These unstateable legal arguments do not get any better simply because they are repeated in multiple proceedings. Given the detailed analysis which has already been carried out by the courts in the judgments referenced above, I do not propose to prepare a further lengthy judgment on essentially the same points. I will therefore deal briefly with the applicable legal principles and then apply them to the pleas in this case.

Applicable legal principles to strike out applications

30. Where an application is brought under Order 19 rule 28 to dismiss proceedings as disclosing no cause of action, the court must consider if the facts asserted by the plaintiff, assuming them to be true, would give rise to a potentially valid cause of action. If so, then the proceedings should not be struck out.

31. On an application to dismiss under the court's inherent jurisdiction, on the other hand, there may be a limited analysis of the facts to ascertain whether they are likely to be true. As noted by Dignam J in *Towey* at para 25

> "*under the inherent jurisdiction, the Court can, to a very limited extent, consider whether there is any credible basis for suggesting that the facts as asserted are true and if not then the proceedings may be struck out on the basis that they are bound to fail on the merits*".

In such an instance the proceedings can be dismissed as an abuse of process. Where there is a conflict of evidence, the matter should be allowed to proceed to trial.

32. In *Towey*, Dignam J summarised the overarching principles that apply to strike out applications, whether the application to strike out is moved under Order 19 rule 28 or pursuant to the court's inherent jurisdiction as follows (at para 27):

> "*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*".

The decision of this Court

33. I respectfully agree with the following conclusions reached, on almost identical pleas, in the judgments already referred to.

34. In *Mullins*, O'Moore J at para 21 concluded in respect of similar pleas to those advanced in these proceedings that:

> "*The claim currently made is incoherent and without any legal validity… He asserts that, because of a range of other investigations and proceedings, "all Court summons and Court Orders [are] repugnant to the Constitution under Article 40.1". This phenomenally far ranging proposition is one which Mr Mullins has not even attempted to establish as a stateable one.*"

35. O'Moore J at para 22 of his judgment said as follows: –

"*I have not referred to any of the other proceedings mentioned in the statement of claim but even if they are as Mr Mullins describes them in his pleadings, even if there are three reference numbers issued by the Department of Justice in relation to what is described as the "Escalating Constitutional Crisis and even if the gardai are investigating the chief state solicitor…" none of this establishes that the case made by Mr Mullins is anything other than frivolous and vexatious and/or bound to fail.*"

36. I also accept and agree with the comments of Butler J in *Keary* at para 12 of her judgment where she stated as follows: –

"*The contention that all citizens are immune from court orders is incompatible with the essential nature of the judicial power itself. Contrary to the plaintiff's view, this does not give rise to a constitutional crisis, it simply means that the plaintiff's argument is devoid of any legal merit whatsoever*."

37. I am satisfied that the plaintiff's overarching contention of immunity from suit is unstateable and fundamentally misconceived. Even were I to assume the facts as asserted by the plaintiff to be correct (as I do) there is simply no foundation in those facts for the claim made by the plaintiff that the Minister, the Attorney General or the DPP is immune from court orders or court summonses. This claim does not constitute a reasonable cause of action and has no legal foundation whatsoever.

38. In relation to the further information provided by the plaintiff in his replying affidavit sworn 17 January 2023 it is worth commenting specifically on this. The statements mirror the type of pleas made in the other proceedings already referred to. The averment at paragraph 7 of the plaintiff's affidavit is to the effect that "*I say and believe that the chief solicitor has been reported for fraud as they are not entitled represent*

judges who have been sued for treason when they strike out identical constitutional cases". It is apparent from *Towey* that treason was alleged against members of the judiciary in those and related proceedings but the application to dismiss brought by the defendants in those cases was successful. Even taking this plea at its height and, assuming it to be correct, it could not give rise to a cause of action in favour of the plaintiff in these proceedings.

39. Paragraph 5 of the plaintiff's affidavit states that "*I say and believe that the defendants have committed perjury in their invalid applications, describing the constitution as invalid, frivolous and vexatious, by law the perjury must be prosecuted*." I am satisfied that the applications brought by the defendants do not describe the Constitution as invalid, frivolous and vexatious but rather the claims brought by the plaintiff as such. It is the proceedings which are asserted to be frivolous and vexatious, not the underlying rights or the Constitution. The plaintiff is entirely misconceived in how he has construed the defendants' applications.

40. With regard to the plaintiff's averment at paragraph 4 of his replying affidavit that his constitutional rights are "*untouchable*", this misstatement of the law also arose in *Keary*, where Butler J noted at para 13 that

> "*[t]he plaintiff's emphasis on this right being "untouchable" is, in my view misplaced. As a matter of basic principle personal rights guaranteed by the Constitution are generally not absolute but may be proportionately restricted if necessary to serve another, legitimate, purpose*".

41. The allegation by the plaintiff in his statement of claim that he has been "*trafficked, a human slave sold into servitude*" (because his mortgage and related security was acquired by the fourth named defendant) does not disclose the basis for any credible or

valid cause of action. There is a simply a commercial arrangement between these parties. There is no evidence whatsoever or any basis on which the plaintiff could credibly plead and succeed in recovering damages against the fourth named defendant for what is essentially the offence of "human trafficking".

42. I do not believe that any of these issues can be addressed by an amendment of the pleadings or by any interlocutory steps such as the raising of interrogatories or discovery.

43. In all the circumstances I will grant the defendants the relief sought in their notices of motion to strike out the plaintiff's claim under Order 19, rule 28 and under the court's inherent jurisdiction on the grounds that the plaintiff's claim discloses no reasonable cause of action against the defendants and that the proceedings are frivolous and vexatious and bound to fail. I am also satisfied that the intent of these proceedings is to frustrate the fourth named defendant and/or their appointed receiver from taking action which they are legally entitled to take pursuant to the court orders in place and for that reason these proceedings are also an abuse of process.

44. I find that the continuation of these proceedings would only act to cause oppression, hardship and considerable expense to the defendants to have to take steps to defend a claim which cannot succeed against them. The plaintiff is already indebted to the fourth named defendant in respect of mortgage arrears due on the Property. The evidence is that no loan repayments have been made since 2012.There appears to be no logic as to why the plaintiff, by bringing these vexatious proceedings, should increase his own personal exposure to further costs including adverse costs orders being made against him.

45. I find myself entirely in agreement with the comments of Simons J who noted in his judgment in *Fennell* (para 24 and 25) that

> "*it appears that unscrupulous individuals are encouraging litigants, who do not have the benefit of professional legal advice, to advance this argument, and supplying them with documents from the Cafferkey proceedings…. Any individual who advises a lay litigant to pursue what are preposterous arguments does them a considerable disservice*."

46. In circumstances where I have determined that these proceedings should be struck out in their entirety it is strictly unnecessary for me to deal with the plaintiff's motion seeking to join Mazars as a defendant in these proceedings and an order for contempt against Hilary Larkin of Mazars in relation to the correspondence she issued to the plaintiff. However, I also propose to formally deal with that motion to conclude all aspects of the motions before this court.

47. I am entirely satisfied that the plaintiff's motion is without merit. I have not been provided with any evidence that would justify the joinder of Mazars as a party to these proceedings under Order 15 rule 4 of the RSC. On the pleadings filed, there is simply no identifiable relief being sought as against Mazars (or indeed Ms Larkin) as receiver. In the plaintiff's replying affidavit sworn on 5 October 2022 he alleges that if the receiver is not joined to the proceedings, the receiver "*could exert undue influence over me at any time they wanted*". This hypothetical argument does not form the basis of any claim that would justify the joinder of Mazars to these proceedings. In those circumstances the plaintiff has failed to demonstrate any justifiable basis for adding Mazars as a co-defendant to these proceedings. Furthermore, the motion for contempt is grounded squarely on the sole fact that the Ms Larkin, in her capacity as receiver, issued a letter to the plaintiff calling on him to remove his goods from the Property. The

issuing of such a letter is a routine matter of correspondence between borrowers and receivers carrying out their duties on foot of a deed of appointment and it does not constitute a contempt of court. There is no suggestion of a breach of any court order by Ms Larkin and no basis whatsoever on which a finding of contempt could then be made against her.

Conclusion

48. For the reasons set out in this judgment I will make the following orders:

(1) An Order in favour of the State defendants in the terms of paragraphs 1 and 2 of their notice of motion dated 27 October 2022;

(2) An Order in favour of the fourth named defendant in the terms of paragraphs 1 and 2 of its notice of motion dated 28 October 2012;

(3) An Order refusing the plaintiff the relief sought in his notice of motion dated 8 June 2022.

49. As to costs, my provisional view is that the defendants, having succeeded in their respective motions against the plaintiff, are entitled to recover their costs of the motions and the proceedings to date as against the plaintiff. If the plaintiff wishes to contend for a different form of costs order he should file and serve any written legal submissions on that point by Monday 20 March. The defendants having resisted the plaintiff's motion would also appear entitled to their costs in respect of same. I will list this matter for mention on Tuesday 21 March at 10.45am to give each of the parties an opportunity to address me on the question of costs and any other outstanding issues