



Neutral Citation Number: [2024] EWHC 1502 (KB)

Case No: KB-2023-002428

This judgment was handed down by release to The National Archives on 25 June 2024 at
10.30am. **IN THE HIGH COURT OF JUSTICE**
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date:

Before:

MASTER ARMSTRONG

Between:

LBA

Claimant

- and -

**(1) GOVERNORS OF ST HUGH OF
LINCOLN RC PRIMARY SCHOOL
(2) TRAFFORD COUNCIL**

Defendants

Mr Justin Levinson (instructed by Bolt Burdon Kemp LLP) for the Claimants
Mr Jack Harding (instructed by Weightmans LLP) for the Defendants

Hearing dates: 01st May 2024

Approved Judgment

Master Armstrong:

THE APPLICATION

1. This is an application brought by the Defendants to strike out the claim pursuant to CPR 3.4. The Defendants assert the claim is an abuse of process as the Claimant's damages in respect of the alleged abuse within these proceedings have already been fixed by a Consent Order dated 9 August 2022 made within previous proceedings brought by the Claimant under Claim number QB-2021-003898 against a concurrent tortfeasor, the Bishop of Salford. That judgment is said to be for the same damage and, having been entered and satisfied, represents a bar to the current claim as a matter of law.

BACKGROUND

2. The Claimant was born on 30th September 1983 and between about September 1988 and about July 1995 the Claimant was a parishioner of St Hugh of Lincoln Roman Catholic Church ("the Church") and a pupil of St Hugh of Lincoln Roman Catholic Primary School ("the school") in Stretford, Manchester, the latter of which was operated by the Defendants. The school was near and affiliated to the Church.
3. The Claimant alleges that between about October 1993 and 1995 he was sexually abused by a priest, Father Aiden O'Reilly. Father O'Reilly was a priest at the Church, operating under Bishop Kelly, who was at all material times, the Bishop of Salford. The alleged abuse was extremely serious in nature and occurred at different times and in varying contexts. Some of the abuse occurred during school hours when teachers at the school permitted Father O'Reilly to remove the Claimant from school to attend the Church with him to assist with services. It is also alleged that abuse occurred at weekends when Father O'Reilly and the Claimant were engaged in preparing mass. Abuse alleged to have occurred within school hours will be referred to as the "school abuse" and the abuse alleged to have occurred at the weekends as the "weekend abuse".
4. The Claimant initially brought proceedings against the Bishop of Salford contending that the Bishop was vicariously liable for assaults by Father O'Reilly. The Claim Form made very broad allegations, but no Particulars of Claim were served. Whilst no Defence was formally filed or served the claim was denied on several grounds including expiry of the limitation period. However, during the course of those proceedings, Bishop Kelly gave disclosure of documents which showed that between 1994 and 1995 staff at the school were aware that Father O'Reilly was behaving in a sexually inappropriate manner with pupils of the school. The Claimant did not know or suspect this prior to the material disclosure.
5. The disclosure provided by Bishop Kelly led the Claimant to believe he could bring a claim against the Defendants on the basis the staff at the school were negligent in entrusting the Claimant to the care of Father O'Reilly, and in breach of a non-delegable duty to keep the Claimant safe, when they had reason to suspect him of sexually abusing children. Such a claim was not limitation barred. Such a claim could only be for the school abuse.

6. Although negotiations between the Claimant and Bishop Kelly commenced in about May 2022 the terms of the order could not be agreed until 9th August 2022 when a Consent Order was made within the proceedings against Bishop Kelly. The Order required Bishop Kelly to pay £35,000 by way of damages and costs within 14 days to the Claimant. By the time the Consent Order was agreed the Claimant was already in correspondence with the Defendant, a letter of claim having been sent on 30th June 2022. In the correspondence and negotiations leading to the terms of the Consent Order being agreed the Claimant expressly stated it was his intention to pursue his claim against the Defendants.
7. Proceedings were issued against the Defendant on the 24th May 2023. By this time the £35,000 has been paid by Bishop Kelly and the terms of the Order of 9th August 2022 had been satisfied.

THE DEFENDANTS' POSITION

8. The Defendants reference Charlesworth & Percy at 3–99 and contend that:

“Three situations can arise where two or more wrongdoers have committed torts which have caused damage to a claimant: (1) where the wrongdoers are joint tortfeasors; (2) where they are independent tortfeasors, causing the same damage; and (3) where they are independent tortfeasors, each causing different damage
9. The Defendants submit they are not joint tortfeasors since the cause of action against them is one of negligence, whereas the cause of action against Bishop Kelly was one of vicarious liability for trespass to the person. The Defendants position is whilst that they, along with Bishop Kelly, are independent tortfeasors, the alleged negligence of the Defendants led to the Claimant being placed in the care of Father O’Reilly, who perpetrated the same abuse, leading to the same damage, for which Bishop Kelly was liable. The Defendants rely upon the general principle as set out in Halsbury’s Laws at 97A.48:

“Judgment recovered against any person liable in respect of any debt or damage is not a bar to an action, or to the continuance of an action, against any other person who is (apart from any such bar) jointly liable with him in respect of the same debt or damage. However, a satisfied judgment (except in the case of a foreign judgment) is a bar to a claim against other tortfeasors, whether joint or several, who are liable for the same damage.”
10. The principle in respect of concurrent tortfeasors, as opposed to joint tortfeasors, was confirmed by Lord Hope in *Jameson v CEGB (1999) 2 WLR 141* :

“It cannot be doubted that, once the amount of the damages has been fixed by a judgment against any one of several concurrent tortfeasors, full satisfaction will have been achieved when the judgment is satisfied ... as the law now stands, a plaintiff is barred from going on with a separate action against another tortfeasor if the judgment which he has obtained in the first action has been satisfied.”
11. The Defendant goes on to describe any further award made in respect of the Claimant’s damage as being a collateral attack on the judgement, and Mr Harding

brought the Court's attention to *Heaton v AXA (2002) 2 WLR 1081*, and in particular to the judgement of Lord Bingham who explained matters as follow:

“A brings an action against B claiming damages for negligence in tort. The claim goes to trial, and judgment is given for A for £x. There is no appeal and the judgment sum is paid by B to A. £x will thereafter be taken, in the ordinary way, to represent the full value of A's claim against B. A cannot thereafter maintain an action for damages for negligence in tort against C as a concurrent tortfeasor liable in respect of the same damage for two reasons: first, such a claim will amount to a collateral attack on the judgment already given; and secondly, A will be unable to allege or prove any damage, and damage is a necessary ingredient for a cause of action based on tortious negligence”

12. The Defendant submits that, following *Vanden Recycling v Tumulty (2017) EWCA Civ (2017) CP Rep 33*, the Consent Order arising in the proceedings against Bishop Kelly must be treated in exactly the same way as a judgment for the purposes of the above rule and cannot be dealt with in the same way as, say, a Tomlin Order or settlement agreement. Mr Harding quotes paragraph 50 of Lord Justice Hamblen (as he then was) :

“Since in substance and in effect the order for payment made by the Consent Order is the same as would be made following a judgment I consider that the judge was correct to conclude that it is to be treated as a judgment for the purpose of the rule that satisfaction of a judgment bars claims against tortfeasors liable for the same damage.”

13. As such the parties' intentions when negotiating the settlement against Bishop Kelly are irrelevant in determining the effect of that order. This is so even if the wording of the final Consent Order specifically sets out that the Claimant would continue with his claim against the Defendants. In *Vanden* the Court of Appeal concluded that intention is irrelevant when determining the effect of a judgment, as opposed to a settlement agreement or Tomlin Order. At paragraph 51 of *Vanden* Lord Justice Hamblen (as he then was) held:

*“The judge was also correct to hold that in those circumstances the question of whether there was an intention to fix the full amount of the loss does not arise. The judgment fixes the loss regardless of what may have been intended – see *Bryanston Finance Ltd v de Vries [1975] 1 Q.B. 703 at pp.717E-F, 733 (per Lord Denning MR) and p.739E-740B (per Lawton LJ).*”*

14. The Defendants' position in summary then is that they were concurrent tortfeasors for the damage caused by Father O'Reilly, and that the damage caused by the concurrent tortfeasor, Bishop Kelly, is the same damage. Since that damage has been remedied by the satisfaction of an Order for payment of compensation and costs, the Claimant is barred from bringing the claim against the Defendant. As such, the claim represents an abuse of process and falls to be struck out.

THE CLAIMANT'S SUBMISSIONS

15. The Claimant's starting point is found at CPR 3.4(2)(a):

The Court may strike out a statement of case if it appears to the Court –

(a) *That the statement of case discloses no reasonable grounds for bringing or defending the claim;*

16. The Claimant refers to *Hughes v Colin Richards & Co [2004] EWCA Civ 266* and submits that an application to strike out under this provision ought not be granted unless the court is certain the claim is bound to fail. This is not a low hurdle. The permissive language of CPR 3.4(2)(a) is matched by permissive language used by Lord Justice Hamblen at paragraph 37 of *Vanden* when he says:

“It is clear that a satisfied judgment ordinarily bars claims against other tortfeasors who are liable for the same damage.”

17. In the present matter the Claimant submits that there is no certainty the Claim will inevitably fail. The intention of the parties in the litigation as between the Claimant and Bishop Kelly was to compromise that element of compensation which could be recovered from Bishop Kelly in his capacity as having vicarious liability arising from the assaults and for the damage caused by Father O’Reilly in the “weekend abuse” as distinct from compensation recoverable from the Defendants for the damage caused by the negligence which gave rise to the “school abuse”. As noted in paragraphs 20(f) and 22(c) of the Defence, the Claimant was assaulted by Father O’Reilly on occasions unrelated to the school as well as before the date upon which the Defendant is said to have been negligent. This, it is said amounts to different damage and although there may be some overlap in the harm caused to the Claimant it is not the same damage.

18. Mr Levinson was at pains to point out that each individual assault suffered by the Claimant is compensable. The level of compensation addressed by the Order of 9th August 2022 as against Bishop Kelly is self-evidently not reflective of an award of damages which a successful Claimant would expect to recover if successful at trial in a claim for all assaults and losses for the damage caused by Father O’Reilly. That it was never intended to be is reflected not only within the correspondence between the Claimant and Bishop Kelly, but also in the wording of the Consent Order entered into which states at paragraph 2;

“The Defendant do pay the sum of £35,000 to the Claimant solicitors in full and final settlement of the Claimant’s claim for damages and legal costs against this Defendant.”

19. Accordingly, it is submitted by the Claimant that whilst it may be difficult for the Trial Judge to unpick which Defendant is liable for which damage it ought not be impossible. It is not the role of this Court within this application to attempt such unpicking and ultimately it should fall to the Trial Judge to drill down and make the necessary distinction and accordingly the test for strike out under CPR 3.4(2)(a) is not met particularly in a case where the Court retains discretion.

CONCLUSION

20. I am satisfied that the Defendants have not met the test as required under CPR 3.4(2)(a). This matter does not fall in the same category as *Vanden* where the Defendants,

who were all sued within the same proceedings, were, according to paragraph 34 of the judgment “*alleged to have acted in concert throughout*” and where it was noted, at paragraph 57, “*if Kras is liable for damages on the conspiracy claim it is for the same damage as the claim against Bolton*”. In the present claim the liabilities of Bishop Kelly and the Defendants are, at the very least, arguably distinct. The legal basis of the claims are distinct and the individual harm of each assault is distinct. It cannot be said that Bishop Kelly and the Defendants acted together, in concert, or with each other’s knowledge. They are independent tortfeasors arguably liable for different damage.

21. Neither can it be concluded that the assaults as pleaded against Bishop Kelly and the Defendants have been pleaded in identical terms, since the claim against Bishop Kelly did not progress as far as the serving of a Particulars of Claim. The position is neatly described by Senior Master Fontaine in *IXA v Scout Association (1) Tuck (2) (2018) EWHC 1821 (QB)* at paragraph 32:

“it is not appropriate for this court, not having heard oral evidence, to attempt to distinguish between allegations which a trial judge may have found within the scope of the First Defendants vicarious liability for the acts of the Second Defendant and those which they may have determined at trial did not. Further, I accept that in the circumstances of this case there are good reasons why it is not necessarily appropriate to try and distinguish between the allegations against the First and Second Defendant in respect of the particular allegations of sexual abuse. That is a matter best left for the trial judge to determine, having heard oral evidence”.

22. It cannot be said the Consent Order made in proceedings against Bishop Kelly fixed the Claimant’s loss. The Consent Order correctly identified it fixed the Claimant’s loss for the damage caused by Bishop Kelly, hence it specified “*the Claimant’s claim for damages and legal costs against this Defendant.*” The assaults were not identified and pleaded in detail within the Claim Form or Particulars of Claim as against Bishop Kelly. The only reasonable conclusion to reach in giving effect to such an Order is that it set the losses for the so called “weekend abuse” with the “school abuse” in effect carved out and left to be pursued as against the Defendant. The Consent Order does not, in this instance, represent a “satisfied judgment ... against other tortfeasors... who are liable for the same damage”. The intention of the Order is the same as the effect and the matter is properly distinguished from *Vanden*, it does not serve as a bar against further proceedings against an independent tortfeasor who is liable for different damage.
23. For these reasons that the application to strike out is dismissed.