APPROVED NO REDACTION NEEDED

THE COURT OF APPEAL

Civil

Court of Appeal Record Number: 2023/102

High Court Record Number: 2021/3684P
Neutral Citation Number [2024] IECA 66

Faherty J.
Pilkington J.
Meenan J.

BETWEEN/

Record Number: 2020/4769P

JOHN CRONIN

APPELLANT

-AND-

BARRY COWEN

RESPONDENT

Record Number: 2021/3684P

JOHN CRONIN

APPELLANT

-AND-

DREW HARRIS & ANOR

RESPONDENTS

AND

Record Number: 2020/4770P

BETWEEN/

JOHN CRONIN

APPELLANT

-AND-

MICHEAL MARTIN

RESPONDENT

AND

Record Number: 2020/5051P

BETWEEN/

JOHN CRONIN

APPELLANT

-AND-

HELEN McENTEE AND PAUL GALLAGHER

RESPONDENTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 26th day of March 2024

1. This is an appeal from the judgment and order of the High Court (Phelan J.) striking out the above-entitled actions. Though there are four sets of proceedings the judgment of the High Court and this Court are given in one judgment. The appellant represented himself in both this Court and the Court below.

Background: -

2. The appellant, together with his brother, were directors of a company, J & J City Ltd., whose business involved civil engineering works. In or about 1999 J & J City Ltd. was a subcontractor to Irishenco Construction Limited ("Irishenco") who had been awarded a contract for extension works to be carried out to the pier in Dingle, Co. Kerry. The works to be undertaken by J & J City Ltd. included dredging operations.

3. The dredging operations did not proceed well. Whilst the appellants' company had been subcontracted to dredge some 8,500 cubic metres it was claimed that it, in fact, dredged some 14,500 cubic metres. There then followed the inevitable dispute over payment. One might have thought that this dispute was capable of being resolved by negotiation or mediation or, failing that, legal proceedings. However, this was not the case. Initially, legal proceedings were initiated by the appellant's company against Irishenco but for some reason, which is not entirely clear, these proceedings did not progress to a trial. The appellant then commenced the above-entitled proceedings in his own name against various respondents. Given the various diffuse claims that were being made by the appellant it is not at all surprising that the various respondents brought applications to have the proceedings dismissed on grounds, *inter alia*, that the proceedings disclosed no cause of action and/or were frivolous and vexatious. I will now look to the various claims made by the appellant.

The proceedings: -

4. In considering the various claims which the appellant makes, I am assisted by the careful analysis carried out by Phelan J. which I gratefully adopt.

5. Like the Trial Judge, I will start with the case being made against Barry Cowen, who was sued in his capacity as Minister for Agriculture at the relevant time. The statement of claim sets out the background to the claim and makes various allegations concerning the

business practices of Irishenco. Details are given of the various legal avenues which the appellant says he followed to address matters. The statement of claim states: -

> *"51. At this point the knock-on effects on the Plaintiff were catastrophic. Revenue froze his company accounts; he was red flagged in every company or Government department he contacted looking for help. His marriage failed due primarily to the stress of these events and the wrongdoings against the plaintiff and his family."*

and: -

> *"53. The Plaintiff believes he was failed by all the Government Departments involved. The Plaintiff believes that this orchestrated campaign against him was due to the fact that he would not let this breach of contract go unanswered. To this day he is still owed monies for his work in Dingle Harbour. Somehow patents/trademarks were given on his processes to other parties despite caveats lodged."*

and: -

> *"The defendant was negligent in the delivery of his duties to myself, my companies, my servants and agents and the people of the State who entrusted him with the power to protect our rights under the Constitution and to which he swore to do when he obtained his seals of office from President of Ireland."*

6. The second set of proceedings is against Micheál Martin, who is sued in his capacity as being the Taoiseach at the relevant time. The appellant essentially repeats the statement of claim delivered in the Cowen proceedings.

The statement of claim delivered in the proceedings against Helen McEntee (Minister for Justice) and Paul Gallagher (then Attorney General) concentrates on a number of events that arose in the course of family law proceedings following the breakup of the appellant's marriage. The appellant was found to be in contempt of court and imprisoned for 28 days. Whilst in jail the appellant claims that he was assaulted and that he went on hunger strike

until he was seen by an *"independent"* doctor. In these proceedings the appellant claimed damages for, *inter alia*, breach of his constitutional rights.

7. The fourth set of proceedings were brought against Drew Harris, Commissioner of An Garda Síochána. These proceedings appear to concern the approach An Garda Síochána took to a complaint made by the appellant against officials in the Central Office of the High Court. It would appear that the appellant was dissatisfied with the procedures followed by the Central Office when he wished to issue a motion for judgment in default of defence in his proceedings against Helen McEntee and Paul Gallagher. The appellant complained to An Garda Síochána at various garda stations about the difficulties he was encountering in the Central Office. The appellant alleged that An Garda Síochána failed to investigate this complaint. The General Indorsement of Claim pleads: -

> *"The defendants (An Garda Síochána) by their actions and inactions are obstructing and delaying justice by not performing their statutory duties of care and are then aiding and abetting the Minister for Justice and Attorney General in the miscarriage of justice for their own gain."*.

Notice of Motion: -

8. In each of the proceedings the respective defendants issued a notice of motion seeking the following reliefs:-

(1) An order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of this Honourable Court, striking out the within proceedings as against the defendants as being frivolous and/vexatious.

(2) Further or in the alternative, an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of this Honourable Court striking out the within proceedings as against the defendants on the

grounds of the proceedings disclosing no reasonable cause of action and/or as being bound to fail.

(3) Further or in the alternative, an order pursuant to the inherent jurisdiction of this Honourable Court striking out the within proceedings as against the defendants on the grounds of the proceedings being statute barred.

(4) Further or in the alternative, an order pursuant to the inherent jurisdiction of this Honourable Court striking out the within proceedings as against the defendants as constituting an abuse of process.

(5) Further or in the alternative, an order pursuant to the inherent jurisdiction of this Honourable Court prohibiting the plaintiff from pursuing and/or initiating any further proceedings against:

(a) the defendants, their servants or agents;

and/or

(b) the State, Ministers of the Government, departments of State or any servants or agents of any of the aforesaid (including legal representatives) without the prior leave of this Honourable Court.

Judgment of the High Court: -

9. In a comprehensive and detailed judgment Phelan J. granted the reliefs sought, save for that at para. 5 of the notice of motion, being an "Isaac Wunder" order.

10. The Trial Judge considered the jurisdiction to strike out proceedings under O. 19, r. 28 RSC and also the inherent jurisdiction of the court to strike out proceedings where the action is bound to fail. Phelan J. stated: -

"66. The distinction between the two strike out jurisdictions invoked in this application viz under the Rules or under the inherent jurisdiction of the court, was addressed by Simons J. in Clarington Developments Limited v HCC International

Insurance Company PLC [2019] IEHC 630 (at para. 24) in terms which were adopted with approval by Dignam J. in Towey as follows (para. 26):

> *'For the reasons explained by the Supreme Court in Lopes v Minister for Justice Equality and Law Reform [2014] IESC 21; [2014] 2 IR 301, [16[to [18[, it is important to distinguish between the jurisdiction to strike out and/or to dismiss proceedings pursuant to (i) Order 19 of the Rules of the Superior Courts, and (ii) the court's inherent jurisdiction. An application under the Rules of the Superior Courts is designed to deal with circumstances where the case as pleaded does not disclose any cause of action. For this exercise, the court must assume that the facts - however unlikely that they might appear - are as asserted in the pleadings.'*

25. By contrast, in an application pursuant to the court's inherent jurisdiction, the court may to a very limited extent consider the underlying merits of the case. If it can be established that there is no credible basis for suggesting that the facts as asserted, and that the proceedings are bound to fail on the merits, then the proceedings can be dismissed as an abuse of process. In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings.

26. Whereas it is correct to say that - in the context of an application made pursuant to the court's inherent jurisdiction - it is open to the court to consider the credibility of the plaintiff's case to a limited extent, the court is not entitled to determine disputed questions of fact."

11. Having stated the legal principles, the Trial Judge considered the case being made by the appellant: -

"82. The lack of any contractual nexus between the plaintiff and the defendants sued in these proceedings in respect of the Dingle Pier Project is fundamental and must mean that any claim arising from non-payment for that work or the consequences both direct and remote flowing from such non-payment are bound to fail in a court of law unless the plaintiff identifies special and exceptional circumstances which might demonstrate the existence and breach of a duty of care or statutory duty on the part of one of the public bodies sued. .."

12. The Trial Judge found that the appellant had failed to establish any duty of care or statutory duty owed to him on the part of the various defendants to the proceedings: -

"61. W v Ireland and Ors. is relied on as an authority for the very limited circumstances in which a duty of care will be found to arise in respect of the discharge by the Attorney General of public law duties. Smith v McCarthy & Ors. (Hogan J.) is cited as further authority to similar effect in relation to the absence of a general duty of care in respect of the exercise of public powers.

62. In Smith, Hogan J. found that proceedings against the Law Society for Ireland were bound to fail and stated with regard to the claim in negligence pleaded in that case (paras. 35 - 36):

'35. Such a potentially open ended liability is, of course, also entirely contrary to principle and in over 100 years of negligence litigation the courts in all common law countries have reasonably recoiled from the unfairness of open ended duties of care of the kind which would apply regardless of the absence of proximity or other special circumstances as between the claimant and the defendant or other considerations based on foreseeability and remoteness of loss. It is perhaps worth recording that both the English courts (see, e.g., Peasgood v Law Society [1996] EWCA Civ 644) and the Supreme Court of

Canada (see e.g., Edwards v Law Society of Upper Canada [2001] 3 SCR 562) have all stressed that regulatory powers vested by statute in bodies comparable to the Law Society exist for the benefit of the general public and do not give rise to a private law duty of care to a specific private litigant.'"

13. The Trial Judge also considered whether the appellant's proceedings could be *"saved"* by amendment: -

"87. While the plaintiff posited an intention to amend proceedings, he did so in a vague manner which did not demonstrate a better basis for a stateable claim but rather served to highlight even further the wild and inchoate nature of his suspicions and beliefs. The manner in which these proceedings were referred to before the court without any evidential basis and through oral submission is entirely unsatisfactory. The plaintiff has not demonstrated a basis for his claims in a manner in which I can positively assess. He has not demonstrated that an amendment to the proceedings might suffice to advance a case that has some prospect of success.."

14. In the course of her judgment Phelan J. referred to certain correspondence which the appellant sent to the Chief State Solicitor's office. In one email, dated 11 August 2021, the appellant stated: -

"... Please also note that I have been contacted by an international news media outlet that are going to run a news story about all the cases that have been issued to date."

and, in a further email the appellant stated: -

"Dear Sirs and Madam

As per my previous emails to your office for which I have not had a reply to date, I formally request a copy of each of your Law Society practicing certs by return. Please be advised that you are now being notified that you are implicated in a separate High

Court case filed by I. I will need to interview you all separately for to take written statements. Please advise when you can make yourselves available?"

The Trial Judge was, correctly, critical of the manner in which the appellant conducted these proceedings. To this could be added the fact that the appellant sought to subject the staff in the Central Office to a Garda investigation for allegedly failing to issue a notice of motion.

Notice of appeal: -

15. The appellant appealed the decision of the High Court on a number of grounds. These grounds were of a general nature including: -

"The Judge applied the law to the incorrect facts and did not heed the plaintiff's attempts to rectify this.

The Plaintiff's facts were interpreted with bias by the Trial Judge; a factual statement of the Plaintiff was classified as a claim by the Trial Judge; the judge erred in stating that the Plaintiff did not establish a nexus between the events surrounding the Dingle Pier contracts and the actions, or lack thereof, of each of the defendants. There is a direct link."

and: -

"The errors outlined above ensured that the Plaintiff did not benefit from the principles of natural justice as is his right. The Plaintiff attempted to rectify the incorrect facts open to the court and subsequently taken as fact by the Court. The Judge openly said she was confused yet erred by only took (sic) the interpretation of the facts as presented by the Defendants as fact."

Decision: -

16. In support of his appeal, the appellant filed written submissions. In the course of these submissions there was no criticism that the Trial Judge either failed to identify the correct legal authorities or failed to apply correct legal principles. Other than a general assertion

that the Trial Judge was wrong, no statable ground of appeal was advanced, either in the written submissions or in the oral submissions to the court. Further, the claim by the appellant that the Trial Judge was *"confused"* has no basis whatsoever. This is clearly demonstrable from the careful and detailed judgment delivered by the Trial Judge where she considered every submission made by the appellant no matter how unmeritorious they were.

17. The Trial Judge referred to the correct authorities which are set out at paras. 11 and 13 above. The appellant submitted and accepted in this Court that an alleged failure to honour a contract between a company controlled by the appellant and the subcontractor, Irishenco Ltd., was the basis of his various claims. The appellant was not a party to the contract. The various misfortunes that subsequently befell the appellant, i.e., the breakup of his marriage with consequent family law proceedings and his subsequent imprisonment for contempt of court could possibly have been the subject of other legal proceedings brought by the appellant in his personal capacity. No such proceedings were ever brought. The Trial Judge was correct in pointing to the failure by the appellant to identify any duty of care owed to him by the defendants/respondents in the various proceedings he did issue.

18. The dispute over the amount that was allegedly owed to the appellant's company from its dredging activities was the subject of other legal proceedings which came to an end before a full trial was held. It is not permissible and is an abuse of process for the appellant to maintain these proceedings as, in effect, a continuation of those earlier proceedings.

19. When considering a motion to strike out proceedings on the grounds that they are frivolous and/or vexatious, the role of the court is clear. It is not for the court to analyse, parse or interpret the pleadings with a view to identifying a cause of action. As was stated by McGovern J. in *Doherty v Minister for Justice, Equality & Ors.* [2007] IEHC 246: -

> *"Where the extent of the scandalous or vexatious pleading … is sufficiently gross and extensive, it seems to me that it is not the function of the court to sift through the*

material in the statement of claim to see if, perhaps, somewhere within it, a claim can be found in the proper forum. The court is entitled to have regard to the document as a whole. There might well be cases where there is an isolated pleading here or there which may be scandalous or vexatious, but the greater part of the document contains pleadings in a proper form. In those cases, the courts can strike out the offending portions of the pleadings. But that is not the case here."

20. It may be that having considered the proceedings, the claim could be *"rescued"* by an appropriate amendment. This is not the case here. No clear amendment was proposed by the appellant. Had such an amendment been proposed, the court would have to be careful to ensure that such amendment was not, in effect, bringing a new cause of action which would be met by a Statute of Limitations defence.

21. Another aspect of these proceedings is of concern. The role of the courts is to resolve disputes and to enforce or vindicate legal rights. The courts and legal proceedings must not be used to threaten or intimidate people. There is much evidence that this is the case here, as evidenced by the correspondence referred to above. I am satisfied that the appellant (who is a director of a company) fully knows and understands the basic legal principle that an incorporated company has a separate legal identity to that of its members. I am also fully satisfied that the appellant knows and understands that any monies that may be due for the dredging works at Dingle Harbour were owed to the company he controls and not to himself personally. It is also the case that the appellant had legal advice available to him and so ought to have been fully aware that any legal disputes arising from his family difficulties could have been properly litigated.

22. Notwithstanding all of the above, the appellant instituted these legal proceedings, which are a clear abuse of process, which have resulted both in the respondents incurring considerable expense and the unnecessary use of valuable court time. This is compounded

by the fact that the appellant engaged in intimidatory correspondence with the Chief State Solicitors Office and wrongfully attempted to subject the staff of the Central Office to a Garda investigation.

Conclusion: -

23. By reason of the foregoing, I will dismiss the appeals herein. As for costs, the provisional view of the court is that as the respondents have been entirely successful an order for costs will be made against the appellant. Should the appellant wish to contest this order he may do so by filing written legal submissions (not to exceed 1,000 words) within 14 days of the date hereof and the respondents may reply by written legal submissions (also not to exceed 1,000 words) within 14 days thereafter.

24. Faherty and Pilkington JJ. have authorised me to record their agreement with this judgment.