



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2023] CSIH 23
P173/23

Lord Justice Clerk
Lord Malcolm
Lord Pentland

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in the Petition

by

THE RT HON DOROTHY BAIN, KC, HIS MAJESTY'S ADVOCATE

Petitioner

for

AN ORDER UNDER SECTION 100 OF THE COURTS REFORM (SCOTLAND) ACT 2014

in respect of

FORBES BRUCE SIME

Respondent

Petitioner: McLean, Solicitor Advocate; Scottish Government

Respondent: Party

8 June 2023

Introduction

[1] The Lord Advocate seeks a vexatious litigant order against Mr Forbes Bruce Sime in terms of section 100 of the Courts Reform (Scotland) Act 2014. Since 2017, Mr Sime has

instigated multiple litigations, legal applications and appeals against his former solicitors.

At their core, the litigations proceed on the basis that the respondent's former advisors have participated in serious fraudulent conduct. An interim order limiting the respondent's ability to raise new proceedings or make any appeals against previous decisions was granted on 2 March 2023.

The statutory framework

[2] Sections 100 and 101 of the Courts Reform (Scotland) Act 2014 provide as follows:

“ 100 Vexatious litigation orders

(1) The Inner House may, on the application of the Lord Advocate, make a vexatious litigation order in relation to a person (a “vexatious litigant”).

...

101 Vexatious litigation orders: further provision

(1) The Inner House may make a vexatious litigation order in relation to a person only if satisfied that the person has habitually and persistently, without any reasonable ground for doing so—

(a) instituted vexatious civil proceedings, or

(b) made vexatious applications to the court in the course of civil proceedings (whether or not instituted by the person).

(2) For the purpose of subsection (1), it does not matter whether the proceedings—

(a) were instituted in Scotland or elsewhere,

(b) involved the same parties or different parties.

...”.

History of litigations

Forbes Bruce Sime v McCash & Hunter LLP – PER-A76-17

[3] This was a professional negligence action against Mr Sime's former solicitors, in 2017, seeking damages in the sum of £100,000. It was maintained that the defenders did not

properly represent him at a licensing hearing, in consequence of which his taxi/private hire car driver's licence was suspended. It was also averred that the defenders negligently failed to conclude missives for the sale of his house resulting in financial loss.

[4] Decree of absolvitor was granted on the defender's successful plea that the claims had prescribed. An appeal presenting new arguments was refused in 2018 on the basis that the pleadings did not support the argument advanced.

Forbes Bruce Sime v Iain William Nicol – A145/18

[5] In this ordinary cause action in Livingston Sheriff Court it was alleged that the defender was professionally negligent and in breach of his fiduciary duties by reason of conflict of interest. This too resulted in decree of absolvitor, in January 2019, the sheriff concluding that "there was a sufficient basis to hold that the pursuer's case had no realistic prospects of success and there were no compelling reasons not to grant summary decree" of absolvitor.

[6] At a further hearing on the matter in June 2019 the Sheriff considered that the action was fundamentally incompetent. In subsequent appeal proceedings the respondent was ordered to find caution by 7 October 2019 but failed to do so.

[7] In January 2021 a motion for late leave to appeal was refused with expenses.

Forbes Bruce Sime v Iain William Nicol – XA142/19

[8] This was an application for leave to appeal to the Court of Session, on the purported basis that the bond of caution required for the action A145/18 was unlawful. By interlocutor dated 28 May 2002, the application was refused, with expenses granted in favour of the respondent on the basis that nothing in the circumstances justified an appeal to the Court of

Session. Lord Woolman noted that in submissions the respondent made several intemperate allegations about the respondent's conduct and probity.

Forbes Bruce Sime v Iain William Nicol – EDI-A687-20

[9] The respondent raised a further ordinary cause action at Edinburgh Sheriff Court, in which essentially he sought to interdict the defender from recovering the awards of expenses in his favour relative to the previous actions. The initial writ repeated the respondent's earlier claims and contained scandalous averments about a number of solicitors and law firms

[10] The sheriff refused interim interdict on 14 December 2020. The respondent appealed and on 1 February 2021, was ordained by the Sheriff Appeal Court to find caution within 14 days. On his failure to do so the action was sisted and on 9 May 2022 he was again ordered to find caution within 14 days, on the understanding that failure to do so might lead to refusal of the appeal. He failed to find caution and the appeal was refused.

[11] The matter was remitted to the sheriff court to proceed as accords. The respondent presented various motions including motions to sist the action, and to allow a 69 page minute of amendment to be received. The defender moved for summary decree of absolvitor. The Sheriff considered that the amendment served to obscure matters rather than focus them and refused to receive it. There was no real prospect of success and no compelling reason why decree of absolvitor should not be granted. The action was nothing more than an attempt to reargue the previous failed actions.

[12] The respondent sought to appeal that decision and was again ordered to find caution.

Forbes Bruce Sime v Iain William Nicol – LIV/B430-22

[13] This summary application sought to restore to the Register of Companies Compensation Lawyers (Scotland) Limited, a company of which Mr Nicol had been sole director. The Sheriff refused to grant warrant to cite the defender, there being no obvious basis to direct the action against Mr Nicol as an individual. Moreover, the application was presented under sections of the Companies Act 2006 which applied to factual situations which did not arise; and the true subject matter of the action had already been determined.

Awards of expenses

[14] Mr Nicol holds extract decrees for expenses in the sum of £14,171.94 the full amount of which remains outstanding. Three further judicial accounts totalling £8,909.89 have not been presented for taxation because Mr Nicol does not want to continue incurring costs. Solicitors appointed by Mr Nicol's professional indemnity insurer to defend the proceedings against him anticipate their fees to be in the region of £45,000.

Interim orders

[15] *Interim* orders were granted on 2 March 2023 (i) preventing the respondent from raising proceedings without satisfying a judge of the Outer House that there is a reasonable ground for such proceedings and obtaining leave so to do; and (ii) preventing the respondent from making any motion or appeal against any future decision, judgment or interlocutor in the cause A687/20, without satisfying a judge of the Outer House that there is a reasonable ground for such a step and obtaining leave so to do.

Letter to Deputy Principal Clerk of Session

[16] On 30 March 2023, the respondent wrote to the Deputy Principal Clerk of Session

alleging that he and his wife are victims of a fraud. The letter echoes the allegations seen in each of the litigations raised by the respondent. He sought "a relaxation" of the *interim* orders in order to allow him to progress *inter alia* an appeal and defend sequestration proceedings.

Submissions for the Lord Advocate

[17] The respondent has habitually and persistently instituted vexatious legal proceedings and made vexatious applications to the court in the course of civil proceedings instituted by him, without any reasonable ground for doing so. None of the actions raised, applications made or appeals taken by the respondent have been successful. All of the actions have dealt with a related subject matter. Repeated awards of expenses have been made against the respondent. Mr Nicol has suffered inconvenience and expense. No awards of expenses made against the respondent in favour of Mr Nicol have been satisfied.

[18] The respondent has demonstrated a refusal to accept judicial decisions which are unfavourable to him. He has repeatedly attempted to re-litigate matters already judicially determined. He appeals against decisions automatically regardless of whether the appeal has a proper basis or any prospects of success. The respondent is persistent because when one route of challenge fails he attempts new litigation to argue the same point again, including by raising proceedings that are incompetent. He has wasted the time and resources of the court on claims which are without merit. His written pleadings and oral submissions have been the subject of criticism by the court. The actions brought by the respondent have involved allegations of an increasingly scandalous tone, directed towards a widening circle of individuals.

Submissions for the respondent

[19] The written submissions for the respondent did not directly address the relevant statutory test. His submissions comprised five chapters. The first set out the background of the various litigations and reiterated the allegations made in each of those actions relative to allegedly fraudulent actings of Mr Nicol and a firm of which he was a consultant.

[20] The second chapter advanced motions (i) to have the Petition dismissed (ii) to find the Crown Office liable for the expenses (iii) to hold the Crown Office liable to the respondent for (a) interfering in the administration of justice (b) falsely incriminating him as a vexatious litigant (c) fabricating evidence against him (d) making false accusations with insubstantial evidence and without prior full investigation.

[21] The third chapter asserted malicious prosecution of the respondent by the petitioner, who was in fact the victim of fraud. These proceedings were initiated in bad faith in the full knowledge that they were without merit or foundation, resulting in malfeasance and an abuse of process.

[22] The fourth chapter, headed 'competency' sets out at length various allegations against the respondent's previous solicitors.

[23] The fifth and final chapter, under the heading "relevancy", states that in light of all this to allow the petition to proceed would amount to an abuse of process.

[24] In oral submissions the respondent complained that if the prayer of the petition was granted he would be locked out of proceedings which he wished to pursue.

Decision and analysis

[25] The test for making an order of the kind sought was recently addressed in the

SLT 1321:

“[18] In terms of section 101(1) of the 2014 Act, the Inner House may make a vexatious litigant order if satisfied that a person: ‘has habitually and persistently, without any reasonable ground for doing so (a) instituted vexatious civil proceedings, or (b) made vexatious applications to the court in the course of civil proceedings (whether or not instituted by the person).’

....

[20] The critical question is whether the conduct in question can be classified as ‘vexatious’. Delivering the opinion of the court in *Aslam* [*Lord Advocate v Aslam* [2019] CSIH 17], Lady Dorrian stated:

‘[10] ... it is not enough for an individual to be classed as a vexatious litigant that actions which he has instituted, or applications made, have not succeeded or been abandoned: it is not persistent failure which is the key, rather that the failure in question has been based on there being no merit even to commence the litigation or make the application. The critical finding will be that repeated litigations and applications have failed for reasons of competence, irrelevance and the like. It is the fact that repeated actions were commenced with there being no reasonable grounds for doing so which can render them vexatious’.

[21] It is recognised that the provisions permitting the granting of vexatious litigant orders amount to an interference with the rights of the citizen (see *McNamara*, para [19]). However, the extent of that interference is limited and designed to prevent abuses of court processes. It should also be recognised that the granting of an order under section 100 does not mean that the individual in question is prohibited from raising a court action. Instead, he or she simply has to satisfy the court that there is a reasonable ground for raising proceedings.”

[26] There is no question that the respondent has habitually and persistently instituted civil proceedings and made applications to the court in the course of civil proceedings. The first limb of the test is thus satisfied.

Have the proceedings been vexatious?

[27] We are also satisfied that these proceedings and applications may properly be classed as vexatious. It is clear from the determinations in each case that the proceedings

lacked any identifiable substantive merit. In the proceedings A687/20 Sheriff KJ Campbell

KC stated, in reference to the writ,

“In the first place, it is 69 pages long, and seeks to supplement pleadings which already run to 20 pages. Secondly, the averments assert serious wrongdoing by regulated professionals. They are in the technical sense scandalous having regard to their form and content; further, the averments in the Minute of Amendment, are unsupported by evidence of any kind ...”

He added:

“... the court has to be satisfied there is no compelling reason why decree should not be granted in the particular context of this case. On review of the circumstances narrated above, I am satisfied that there are no such reasons. On the contrary, in my opinion, this action is an attempt to re-litigate a matter in which the pursuer has been unsuccessful in another court, and in which he has been unsuccessful in appealing against that decision.”

[28] In the proceedings B430-22, Sheriff Kinloch stated:

"The basis on which, and the purpose for which, the pursuer seeks to restore the limited company to the register is not entirely clear from the averments... The defender is a practising solicitor, and these allegations are serious. The paucity of averments against the defender, and in particular the lack of any supporting averments to substantiate the alleged serious breaches of duty ... gives me great hesitation in granting a warrant to cite."

Sheriff Kinloch concluded that the action was another attempt to pursue the same claim that had been brought against Mr Nicol in 2018. Sheriff Craig in A145/18 stated that “there is an air of vendetta about his approach”.

[29] It is clear from the court papers that the respondent has attempted at every turn to prolong the litigations by mounting wholly fruitless appeals. In each case there was little or no effort to engage with the relevant tests for leave to appeal, with the focus instead being on a mere repetition of the allegations against Mr Nicol and firms with which he has been associated. In each case he has made very serious accusations against legal professionals which he has failed to substantiate with any evidence, documentary or otherwise.

[30] The productions in this petition include an amended initial writ extending to 125 pages in the application for interim interdict in 2020. The pleadings have been described variously as “inept, incompetent and unintelligible” by Sheriff Mundy, “fundamentally incompetent” by Sheriff Craig, and “in the technical sense scandalous having regard to their form and content” by Sheriff K J Campbell KC. In the present application his answers are 93 pages long.

[31] We agree with the submission of Mr McLean that the proceedings have been of a vexatious nature, involving complex and incoherent pleadings of an increasingly scandalous tone directed towards a widening circle of individuals. We note that the circle of wrongdoing now includes, apart from Mr Nicol, solicitors with Perth & Kinross Council, at least 3 separate law firms, and individuals therein, officials of the Law Society of Scotland, and now, the Lord Advocate who is alleged to be acting maliciously in bringing these proceedings. As Mr McLean observed, the unsubstantiated allegations being advanced by the respondent are escalating in gravity.

[32] We are also satisfied that it is in the interests of justice to make the order sought. While the *prima facie* right of all citizens to invoke the jurisdiction of the civil courts must be treated with the utmost respect, this must also be balanced with the need to protect parties from unfounded and unjustified litigation and the costs associated therewith. The interests of justice also require the effect on the court’s resources of dealing with persistent and unfounded litigation to be taken into account. The persistence of the respondent’s conduct may be seen in his letter to the Deputy Principal Clerk of Session attempting to air the same issues as already determined in the various litigations noted above.

[33] The granting of the order does not prevent the respondent from raising new proceedings or engaging with existing litigations. Instead it represents a safeguard where

the respondent will be able to do so only if he satisfies the court that there is a reasonable ground for taking such a step in terms of section 101(4) of the Courts Reform (Scotland) Act 2014.

Conclusion

[34] We shall grant the prayer of the petition. We are satisfied that expenses should follow success. Accordingly we award the expenses of process in favour of the Lord Advocate.