

BETWEEN**JOHN HEALY****PLAINTIFF****AND****IRISH LIFE STAFF BENEFITS SCHEME****AND****IRISH LIFE ASSURANCE PLC****DEFENDANT****EX TEMPORE JUDGMENT of Ms. Justice Donnelly delivered on the 26th day of January, 2018**

1. This matter came before me on 24th January, 2018 pursuant to a notice of motion issued by the plaintiff seeking injunctive and other reliefs. The reliefs claimed are almost identical to the reliefs claimed in the plenary summons dated 14th December, 2017. Both defendants have adopted identical attitudes in respect of the plaintiff's claims and the second defendants adopted the submissions of the first defendant as their own.

2. Both defendants have entered memoranda of appearance contesting the jurisdiction of the High Court. Both defendants have issued motions seeking to dismiss or stay the proceedings on the grounds that "exclusive jurisdiction over the subject matter of these proceedings is conferred on the courts of England and Wales by virtue of the provisions of Regulation (EU) 2015/848 of the European Parliament and of Council of 20th May 2015 on insolvency proceedings" (as claimed by the first named defendant) and for orders setting aside service of the plenary summons or staying the proceedings "[b]y reason of the courts of England having exclusive jurisdiction in respect of the matters pleaded in the plenary summons" (in the case of the second defendant). There is a certain urgency in giving this judgment as some of the reliefs claimed by the plaintiff concern an oral hearing listed before the High Court of England and Wales on 5th February, 2018.

3. The core facts are not in dispute. In February 1985, the plaintiff became an employee of the second defendant. It appears that up to November 1990, he was a member of the Irish Life Staff Pension Scheme ("the old scheme"). Those members, assets and liabilities were all transferred to the Irish Life Staff Benefits Scheme ("the new scheme") by order of the High Court on 6th November, 1990, following the public flotation of the second defendant. The first defendants are the trustees of the new scheme.

4. In or about May 2011, the plaintiff left the employment of the second defendant. In his affidavit, the plaintiff makes complaints about his treatment by the second defendant. It appears he compromised an action against the second defendant in or about May 2011 when he agreed to take statutory redundancy. The only reference in the Plenary Summons (and in the Notice of Motion) to issues concerning his employment is an indirect one; a claim that medical reports from his time at Irish Life be made available to him. When the plaintiff left his employment with the second defendant, he became a deferred member of the new scheme with an entitlement to a deferred pension rather than a pension in payment.

5. Like many other people in Ireland affected by the downturn in the economy, the plaintiff moved to the UK in or about October 2011. Matters did not work out for him there and in April 2013 he petitioned for bankruptcy in the United Kingdom.

6. By order of the High Court in Manchester dated 19th July, 2013, he was adjudicated bankrupt. That Order records the application of the EC Insolvency Regulation to the proceedings and states that the proceedings are main proceedings as defined in Article 3 of the EC Regulation. That is a reference to Council Regulation (EC) No 1346/2000 which was then in force.

7. In November 2013, a Trustee in Bankruptcy ("TIB") of the estate of the plaintiff in bankruptcy was appointed in the United Kingdom. This TIB claimed an entitlement to the plaintiff's rights and benefits under the new scheme.

8. By further Order of July 2014, the plaintiff was discharged from bankruptcy. While that Order is silent as to any other matter, it is not in dispute between the parties that the plaintiff's assets in bankruptcy remain vested in the TIB who has a continuing duty to realise them. It is the extent of his assets in bankruptcy that forms the central core of the plaintiff's complaints in this jurisdiction as well as in the United Kingdom.

9. In March 2017, the plaintiff made an application to the UK High Court, Chancery Division, to have his pension under the new scheme excluded from his estate in bankruptcy. A decision was given by the relevant judge in September 2017 refusing the relief sought by him. By Order of the said judge in October 2017, costs were awarded against the plaintiff. There is no stay on this order. Leave to appeal was refused but it now appears that the matter is listed for an oral reconsideration of the application for leave to appeal on 5th February, 2018.

The claims in the plenary summons

10. In the plenary summons the plaintiff claims:

1. "Injunction reliefs seeking an order directing Irish Life Staff Benefits Scheme and Irish Life Assurance to stop all correspondence with trustee in bankrupt, debt focus, Anthony Fisher or legal representatives.
2. To prevent any payment to said Mr. Anthony Fisher, trustee and bankruptcy insolvency in relation to Irish Life Staff Benefits Scheme.
3. To reimburse any payment taken from the Irish Life Staff Benefits Scheme in relation to court order above.
4. To apply to the relevant court to have Irish Life Staff Benefits Scheme and its beneficiaries approved by HMRC or excluded from bankruptcy under UK law or apply to have judgment ruled by the ECJ through the necessary court jurisdiction.

5. Indemnify me against any costs in relation to Part 5 of the same order 5020 of 2013 made by Judge Obodai on the 11th October, 2017.

6. To make available immediately funds for existing costs to date and any further costs for my legal representation in the oral appeal in Manchester High Court Appeal Centre on Monday 5th February, 2017. This should also include funds in relation to any connected matters between Irish Life and Irish Life Staff Benefits Scheme.

7. Make available all files in relation to myself, John Healy, that have been previously discussed between Irish Life, Irish Life Staff Benefits Scheme, Anthony Fisher, Debt Focus Solicitors, Pension Authority, Pension Ombudsman, Financial Ombudsman, Data Commissioners and any other agency.

8. All medical records from Chief Medical Officers including independent medical reports to made available to me.

9. Pay relevant pensions to me, John Healy, taking into account my history and health related issues caused by this matter.

10. Be provided with any compensation ruled by a relevant judge.

11. Protection from the High Court.

12. Any other direction the honourable High Court judge provides."

11. The notice of motion is in virtually identical terms and need not be repeated. The plaintiff was not prepared to fully concede at the oral hearing that some of these claimed reliefs were more in the nature of final orders that a court might usually only make after a full hearing of the case. The plaintiff appeared as a litigant in person and he does not appear to have any legal training. There is no doubt that in bringing and arguing his case, he is putting forward what he truly believes is a genuine grievance and is doing so to the best of his ability.

12. In his affidavit, the plaintiff sets out a detailed history of what he says were his interactions with his employer, the second defendant, over the years of his employment. He also outlines how initially when he was involved with the insolvency service in the UK, they took the view that his entitlements under the new scheme was worth zero, in other words, that the new scheme was not an asset in bankruptcy. He believes that the UK courts and the TIB erred in holding otherwise.

13. The plaintiff makes various complaints that he did not receive full documentation from the first defendant as to communications with the TIB. He explains how the TIB wanted to have him draw his pension and arrange for an income payment and/or qualifying agreement but he did not agree with this as in his view, the pension should be automatically excluded from the bankruptcy estate as a UK approved pension. He refers to a UK decision of *Horton v. Henry* [2016] EWCA Civ 989 which he submits says that a pension not in payment cannot be forced to be drawn by UK bankruptcy trustees.

14. In his affidavit he seeks protection of the benefit scheme that was set up in this jurisdiction in 1990. A central complaint in that affidavit is that the first defendants, as pension trustees, have taken no responsibility in making sure that this pension, which was set up by the High Court, was protected from bankruptcy in the UK. He claims that they did nothing to contest that his pension should not form part of the bankruptcy under UK or EU law; in circumstances where the old scheme had been exempt i.e. it had been approved by the UK Revenue Commissioners ("HMRC"), and the new scheme that replaced it, however, is not. It appears that the old scheme included members who were employed in the UK but that in 1990 none of the employees in the new scheme were at that time employed in the United Kingdom. The plaintiff's complaint is that the trustees have decided to take a neutral position and have informed him that they would only respond to court orders and would copy any information requested to the TIB. His complaint is that it is being left to him to challenge the lack of exemption in the UK, although it should be a matter for the trustees.

15. In relation to his application for an injunction, the plaintiff's central point was that he was asking that this Court would protect his pension by way of providing for legal representation in the UK proceedings on 5th February or ordering that Irish Life should represent him during those proceedings. He also sought an order stopping any money being paid out and he wished that the matter be referred to the European Court of Justice. He relied strongly on his claim to an order requiring the first defendants as trustees of the new scheme or the second defendants, as his former employer, to apply to HMRC to approve the new scheme. This was a slight change from the wording of his notice of motion because that notice of motion said "apply to the relevant court".

16. The plaintiff also sought an order preventing any payments being made to the TIB from the new scheme. He also wanted an order indemnifying him against any costs in relation to the order of bankruptcy made by the UK High Court. He also claimed that he was entitled to his pension at the present moment. He also claimed that he wanted compensation as it had been very stressful as to what he was doing. He also wanted protection from the court as he was not legally qualified and any other order that might apply. He claimed that he was not seeking to deal with the bankruptcy matter in the United Kingdom but that he was talking about protecting his pension.

17. In his final reply to the Court, the plaintiff stated that the point he was making was that his pension was "an excluded asset". He said that he was disputing that the pension, to which he had an entitlement to under the new scheme, was not an asset in bankruptcy. He further complained that the pension trustees had not bothered to get the approval from the UK. He made points that his pension was protected under European law and that the entire matter was covered by EU law as he had in effect an "EU pension".

18. Both defendants in this case relied upon the relevant EU regulations concerning insolvency proceedings. In particular, they referred to Article 3.1 of the 2000 Council Regulation on Insolvency Proceedings and the subsequent EU Regulation of May 2015 (EU) 2015/846 which provides that "[t]he courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings".

19. Article 4 of the 2000 Insolvency Regulation expressly provides for the law which is to apply to the bankruptcy proceedings. Article 4 has since been replaced by Article 7 of the 2015 Insolvency Regulation, the relevant part of which provides:

"1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the member state within the territory of which proceedings are opened, hereafter referred to as the 'State of the opening of proceedings'.

2. The law of the State of the opening of proceedings shall in particular determine the conditions for the opening of those

proceedings, their conduct and their closure. It shall determine in particular:

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
 - (b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
 - (c) the respective powers of the debtor and the liquidator;
 - (d) ...;
 - (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- ...

20. The defendants also relied upon the case of *Re Eurofood IFSC Ltd*, 2004, 4 IR 370 where the High Court (Kelly J. as he then was) held that as the High Court in Ireland had opened main proceedings by appointing a provisional liquidator to a company, it was not open to the courts in Italy to purport to exercise a jurisdiction in respect of the same matter. He held that the appointment of a provisional liquidator in this country constituted the opening of main proceedings and "[s]uch being so, that judgment given by this court which had jurisdiction pursuant to article 3 of the Regulation to make it, must be recognised in all the other member states from the time that it becomes effective."

The High Court decision was appealed to the Supreme Court and a reference was made to the Court of Justice of the European Union. Ultimately, the judgment of Kelly J. was upheld, the CJEU having clarified in the meantime, the criteria for determining a debtor's centre of main interest for the purpose of the insolvency regulation. The 2015 Insolvency Regulation also provides, at Article 19, that: "1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings."

21. In the view of this Court, the fact that bankruptcy proceedings have been initiated in the United Kingdom is a decisive factor in how this Court must deal with the attempt by the plaintiff, the debtor in the UK proceedings, to interfere with the course of those proceedings in the United Kingdom. The application to become bankrupt within the UK system is first and foremost an acceptance that UK law will apply to those bankruptcy proceedings. Insofar as any question arises about recognition and subsequent enforcement of orders made in those bankruptcy proceedings, the EU Insolvency Regulations govern the position. As Recital 19 of the May 2000 Regulation clearly states, the UK court's decision to open bankruptcy proceedings "should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision." Consequently, this Court must recognise the UK proceedings and this Court does not have the power to take any action that would amount to the scrutiny of the UK court's decision.

22. Therefore, the plaintiff's decision to seek bankruptcy in the United Kingdom has real consequences for him in respect of how his assets may be dealt with. Some of those consequences may have been beneficial to him, but others, in particular relating to the treatment of his pension under the new scheme arising from his employment with the second defendant, have been detrimental to him. While the Court cannot but have a certain sympathy for the predicament in which he finds himself, the Court is constrained from interfering with the UK bankruptcy proceedings. Where his claims involve such a trespass on those proceedings, this Court must dismiss them.

23. I do note that when invited to reply specifically to the defendants' submissions on the UK court's competence to deal with these issues, the plaintiff stressed that he was not contesting the bankruptcy proceedings themselves, but was contesting that his pension entitlements could be called an asset in those proceedings. The determination of what is, or what is not, an asset of a debtor, is quintessentially a matter for the determination of the court seized of the bankruptcy proceedings. Put simply, it is for the UK courts to decide in accordance with UK law whether the pension arising from his employment in Ireland with the second defendant, is excluded from his assets in bankruptcy. Insofar as the plaintiff has claimed that he has an entitlement under European Union law to have his personal pension exempted from being considered an asset in bankruptcy, that too is a matter that arises in the course of the bankruptcy proceedings in the UK. Therefore, if that argument is to be made, it must be made in the context of the UK proceedings. For this Court to make the reference to the Court of Justice of the European Union as requested by the plaintiff would in effect be precisely the type of interference with the UK bankruptcy proceedings which the EU regulations prohibit.

24. That finding deals with the central complaint that this plaintiff makes, but it is necessary to deal individually with each of the plaintiff's claims. This is because he has made a range of claims and the Court must adjudicate on whether these all amount to a trespass on the jurisdiction of the UK courts to deal with all issues arising out of his bankruptcy. I will go on to consider whether there are any reliefs claimed by the plaintiff which might fall outside this Court's determination that it must recognise the UK bankruptcy proceedings and not interfere with their exercise.

25. The first three claims of his plenary summons above all relate directly to the UK proceedings and seek to interfere with the scope and effect of those orders. These claims are premised on his contention that there is no legal basis for the UK court to take into account his entitlements under the new scheme. That is a matter for the UK courts. His fifth and sixth claims in so far as they relate to either an indemnity for his costs in the UK proceedings and to provide for his legal representation in the UK are matters that are tied up to the course of his bankruptcy proceedings there and for this Court to make those orders would be a scrutiny of those proceedings and is expressly prohibited.

26. The seventh claim is to have access to documentation and is really a discovery claim. Even if it exists as a claim in itself, it is so tied up with the dealings with the TIB that it would again involve prohibited scrutiny of the UK proceedings. The ninth claim to pay him relevant pensions, taking into account his history and health related issues caused by this matter is again on its face a claim that goes behind the UK bankruptcy proceedings. The plaintiff seeks to make a claim that his health problems, which he says were caused by his employer resulted in a 110% loading of life cover with Irish Life. If there is a claim about extra payment for life cover, the link with his pension payment has not been clarified, or expressly or implicitly pleaded. Most importantly however, this claim is clearly based upon his claim that notwithstanding the UK court's decision, he is entitled to his pension payment. For that reason it is not permitted to be advanced in this jurisdiction and is dismissed. The eleventh claim for protection of the High Court is clearly related to a claim for protection from the consequences of the bankruptcy proceedings and it must be dismissed.

27. His fourth claim is for an order "to apply to the relevant court...." for certain steps to have the new scheme approved by HRMC in

the UK and excluded from UK bankruptcy law. In so far as that fourth claim is also for the "judgement [to be] ruled by the ECJ through the necessary court jurisdiction" this is clearly only a matter for the UK court to deal with. That part of claim 4 is dismissed. Although neither the Plenary Summons nor the Notice of Motion makes explicitly clear, his main claim here is that the Trustees of the new scheme should apply to have the said scheme and its beneficiaries approved by HMRC or excluded from bankruptcy under UK law. At the hearing of the application, the plaintiff firstly advanced the contention that the first defendant, or perhaps the second defendant, should get involved in the proceedings in the UK. On the face of the matter, that seems to be an attempt to have this Court scrutinise the UK proceedings and therefore intervene impermissibly. That is prohibited. However, in the course of his submissions, and contained within his affidavit, the plaintiff made clear that his application was somewhat different. He wants the defendants to apply to have the new scheme approved under UK law under the same terms and conditions as the old scheme.

28. The plaintiff pointed to s. 6 of the Insurance Act, 1990 which was the Act which dealt with issues arising from the public floatation of Irish Life. Section 6(2) provides:

"Every person who is a member of or entitled to benefit under a pension or superannuation scheme of the original Company shall, with effect from the transfer date, become a member of or be entitled to the corresponding benefit under a corresponding pension or superannuation scheme established in respect of the New company on terms not less favourable than those under the first mentioned scheme."

29. The plaintiff has also provided extracts from what he describes as High Court pension trust deeds. The provenance of the extracts is possibly less clear than it should be, but it is undisputed that by Order of the High Court (Mr. Justice Costello) 1990 the members, assets and liabilities of the old scheme were transferred to the new scheme which is the first defendant to these proceedings. In essence, the plaintiff makes the case that one of the terms of the old scheme was that it was approved by HMRC and this one was not. The plaintiff's affidavit also makes the point that this Court must take into account the "lack of responsibility and negligence" of the defendants in the matter of not having taken into account the position of persons like the plaintiff who might find themselves living in the United Kingdom.

30. At the hearing, the Court enquired about the timing of this approval and was informed by counsel for the first defendant that it seemed that the old scheme had been approved from the beginning and that in respect of the new scheme, approval was not sought. Counsel maintained that none of that was relevant as a matter of law. It seems to me that it might possibly be relevant to a claim that the new scheme was actually operating on terms that were less favourable to the plaintiff as a person who had been a member of the old scheme. If the old scheme had continued, the plaintiff's argument is that his pension entitlements would be exempt as an asset in UK bankruptcy law. However, because it is not, his pension terms are, potentially at least, arguably less favourable.

31. The pleadings before me are consistent with pleadings drafted by a lay litigant. They lack the precision and clarity of those drafted by a legally trained person. That is not surprising, there is after all a huge premium on the knowledge gained by a lawyer after years of study. I am left with the very difficult task of seeking to be fair to the plaintiff whose pleadings are less than perfectly clear but who appears to have made a point that is potentially arguable, whilst also not being unfair to the defendants.

32. The manner in which the plaintiff drafted his affidavit emphasised that he had an issue with the fact that the old scheme was protected under UK law whilst the new scheme was not, and that this was contrary to the High Court Order of Costello J. in 1990. The plaintiff takes the view that there is a duty on the defendants to right this situation by taking steps (he has referred to simply filling in a form for submission to HMRC) and makes the point that he cannot do this himself. I am of the view that this is the true nature of the claim that he is making at point 4 of the plenary summons. I am also of the view that due to the inadequate nature of his pleadings, the defendants did not specifically address this as a claim that was different to the other claims that he made. Those other claims were a direct challenge to the UK's jurisdiction to hear the case and stand dismissed. I am also of the view that the plaintiff's inadequately expressed claim for compensation was a claim for damages arising out of what he said were breaches of the duty to seek approval. I am of the view that his claim for compensation may only proceed in so far as it relates to or arises from a claim that the defendants are or were required to ensure that the new scheme is approved by HMRC and thereby excluded from consideration as an asset in UK bankruptcy law. These claims operate entirely outside the present proceedings in the United Kingdom.

33. The gravamen of the Plaintiff's claim is that the second named defendants as his employers or the first defendants as pension trustees of the new scheme, were or are required to ensure that his pension terms were no less favourable than the old scheme; that they have been negligent in not ensuring that the new scheme would have the same exempt status as the old scheme; that he is entitled to an order that they apply for exemption; and that he is entitled to damages for the loss he has suffered due to that situation. That is a claim that only the courts in this jurisdiction can consider. It is not in any way an interference with or usurpation of the jurisdiction of the UK courts. Those proceedings can and must proceed without interference from the Irish Courts and the UK courts can be assured that their judgments will be recognised and enforced in this jurisdiction.

34. I must make clear that at this point I am ruling that all of the plaintiff's claims except for number 4, no 10 (only in so far as it relates to no. 4) and no. 12 in so far as the Court is always entitled to make ancillary or other orders necessary for the purposes of ruling on the main issues in a case, are dismissed on the basis that this Court must recognise the opening of bankruptcy proceedings in the UK and must not scrutinise those proceedings. The claim under no. 4 arises solely out of obligations that may arise in this jurisdiction to have the plaintiff's rights, if any, under s. 6 of the Insurance Act, 1990 protected.

35. As his pleadings have been inadequately expressed, I am of the view that there should be an opportunity given to the plaintiff to consider a redraft which will more adequately express his intentions under that heading. It may be that a statement of claim would be the best way forward. In light of the lack of clarity in the proceedings, I would propose holding over the consideration of the defendants' notices of motion to strike out the proceedings under Order 19 Rule 28 of the Superior Courts or pursuant to the inherent jurisdiction of the Court. Indeed, that may be procedurally the correct step to take in any event where the initial appearance was entered into solely for the purpose of contesting jurisdiction. I will however hear the parties as to how this matter should proceed.

36. I am also ruling that in so far as the plaintiff seeks an interlocutory injunction in respect of either relief number 4 or relief 10, he has not made out sufficient grounds to do so. He seeks in effect a mandatory injunction. It is unnecessary to go into any great detail in respect of the test to be met for an interlocutory injunction as set out in *Campus Oil v. Minister for Industry and Energy* [1983] IR 88, although I note the plaintiff never addressed why damages would not be an adequate remedy and he has not given any undertaking as to damages. This is because he has not satisfied the criteria as set out in *ICC v. Verling* [1995] ILRM 123 and *Kavanagh v. Lynch* [2011] IEHC

348. Under the test identified in those cases, where a mandatory injunction will effectively conclude the matter, the court must look for something more than a mere arguable case. I find that the plaintiff in this case has not made out anything more than a potentially arguable case. I say "potentially arguable case" because I am in effect holding over the determination of whether this entire matter

should be struck out pursuant to Order 19 Rule 28 or to the inherent jurisdiction of the Court.

37. The only outstanding claim is that for medical records. I have difficulty in seeing how that relates to any claim that the plaintiff has either in respect of his bankruptcy proceedings in the UK or indeed his claim that the defendants are bound to take steps to have the pension approved in the UK. I have however determined that I am not ruling at this stage on the motions to strike out pursuant to Order 19 Rule 28 or to the inherent jurisdiction so finalisation of the claim to strike out his eight claim seeking medical records will be held over.